Neutral citation: [2024] EWFC 191 (B)

IN THE CENTRAL FAMILY COURT

Case Number 1686-6487-6256-0014

B E T W E E N:

RM Applicant

and

WP Respondent

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published, but no other.

Nobody may be identified by name or location. The anonymity of everyone other than the lawyers must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Ms Karen Staunton (Counsel instructed by Barker Gotelee, Solicitors) appeared on behalf of the Applicant wife.

Ms Jenna Lucas (Counsel instructed by Eleanor Wood and Jim Richards of Lawrence Stephens, Solicitors) appeared on behalf of the Respondent husband.

Written Judgment of His Honour Judge Edward Hess dated 28th June 2024

1. This case concerns the financial remedies proceedings arising out of the divorce between RM (to whom I shall refer as "the wife") and WP (to whom I shall refer as "the husband").

2. The case proceeded to a final hearing over 3 days on 26th, 27th and 28th June 2024.

3. Both parties appeared before me by Counsel. Ms Karen Staunton (Counsel instructed by Barker Gotelee, Solicitors) appeared on behalf of the wife. Ms Jenna Lucas (Counsel instructed by Lawrence Stephens, Solicitors) appeared on behalf of the husband. I want to thank Counsel and the wider legal teams for the helpful and efficient way the case has been presented to me.

4. The court was presented with an electronic bundle running to 649 pages and a number of other documents have been exchanged during the final hearing. I have considered all the documents presented to me, in particular I have considered:-

    (i) A collection of applications and court orders.

    (ii) Material from the wife including her Form E dated 14th August 2023, her answers to questionnaire dated 18th December 2023 and her narrative statement dated 21st June 2024.

    (iii) Material from the husband including his Form E dated 10th November 2023, his answers to questionnaire dated 18th December 2023 and his narrative statement dated 21st June 2024.

    (iv) Material from various SJEs on valuation and tax issues.

    (v) Properly completed ES1 and ES2 documents.

    (vi) Selected correspondence and disclosure material.

5. I have also heard oral evidence from both parties, subjected to appropriate cross-examination.

6. I have also had the benefit of full submissions from each counsel in their respective opening notes and their closing oral submissions and further email submissions today.

7. The history of the marriage is as follows:-

    (i) The wife is aged 52. Prior to the commencement of the relationship with the husband she resided in, and was a citizen of, a South American country. In 2023 she became a British citizen. Spanish is her first language, but she also speaks good English and language has not been an issue here. She currently (in the last few months) works in the civil service, based at a location in central London.

    (ii) The husband is aged 75. He is, and always has been, a British citizen, but has enjoyed living in a European country at times and there is an international flavour to his life. In this context he has had a career in an energy market industry, but is now retired (I shall deal with this in more detail below).

(iii) They met online in 2004, first met in person in late 2004, started a relationship of cohabitation in May 2005 and married on 4th May 2007.

(iv) The marriage produced two children (neither party has any other children, so there is a significant poignancy to what has happened here):-

(a) A is aged 16. He is apparently very bright (his ambition is to read Medicine at Cambridge University) and notably tall. He has just completed his GCSEs at a Central London state school and is looking to move to another Central London state school for the sixth form. He has rather become caught between his battling parents in recent years and currently lives with the husband and is estranged from the wife. It is no part of my task to investigate why this has happened (each party, of course, blames the other), but the absence of contact is plainly and understandably a matter of great pain to the wife. I express the hope that, when the dust settles on this litigation, the relationship between mother and son will begin to heal and recover, but there is certainly work to be done here.

(b) B was born in 2010, but tragically died, aged 8, in 2018. I have a clear impression that this awful event has had a deep effect on both parents, and on A, and it is understandable that they have all found it very difficult to come to terms with what happened.

(v) Unfortunately, in July 2020, the marriage broke down and the parties separated. It has been a difficult and acrimonious separation ever since, with much unhappy and contentious litigation under Children Act 1989 (concerning child arrangements for A), Family Law Act 1996 (where each party has sought occupation and non-molestation orders) and this financial remedies litigation.

(vi) Divorce proceedings were commenced by the wife on 21st July 2022. Decree Nisi (Conditional Order) was ordered on 19th January 2023. Decree Absolute (Final Order) awaits the outcome of the financial remedies proceedings and is not, in itself, controversial and my order will include permission to apply for Decree Absolute straight away, notwithstanding the delay since Decree Nisi.

8. The financial remedies proceedings chronology is as follows:-

(i) The wife issued Form A on 20th June 2023.

(ii) At each stage in the proceedings the husband has sought adjournments. At the final hearing stage both parties sought an adjournment. Looking back on all these applications I observe that in my view the court was right to refuse an adjournment on each occasion it was requested. In the end the facts of the case have not proved to be very complicated and what was

needed was a resolution of the parties' differences. Adjournments often have the unhappy consequence of achieving nothing apart from delaying resolution and increasing costs and stress and I am sure that would have been the case here. As well as that, asking for an adjournment of a three-day hearing a week or so before, without compelling reasons (and there were none here), runs the risk of wasting precious court resources at a time when these resources are highly stretched. Parties and lawyers allocated a slot in the court diary really should concentrate on getting themselves ready for it rather than becoming distracted by making unmeritorious adjournment applications. For avoidance of doubt, I did not observe in the husband's presentation in court and in his oral evidence anything to suggest that he was too stressed to attend court.

(iii) A First Appointment was heard by me on 18th September 2023. Amongst normal timetabling directions, I made a costs order against the husband in the sum of £3,500 to reflect his failure to produce a Form E in time for this hearing. I suspended enforcement until the end of the proceedings. I do not intend to discharge this order and my order now will record that this costs order may now be enforced.

(iv) An FDR hearing took place on 8th January 2024 before DJ Mulkis; but sadly no settlement was reached. He made timetabling directions to take the matter to final hearing.

(v) The final hearing has taken place before me over three days on 26th, 27th and 28th June 2024. I completed the evidence and submissions at the end of the second day and have taken the third day to write this judgment.

9. In dealing with the claim I must, of course, consider the factors set out in **Section 25 and Section 25A Matrimonial Causes Act 1973** together with any relevant case law.

10. Section 25Matrimonial Causes Act 1973 reads as follows:-

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A or 24B above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of the powers of the court under section 23(1)(*a*), (*b*) or (*c*), 24, 24A or 24B above in relation to a party to the marriage, the court shall in particular have regard to the following matters:-

(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) in the case of proceedings for divorce or nullity of marriage, 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.

11. Section 25A Matrimonial Causes Act 1973 reads as follows:-

(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1) (*a*), (*b*) or (*c*), 24 or 24A or 24B above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

12. Accordingly, I bear in mind that I must give first consideration to the welfare while a minor of any child of the family who has not attained the age of eighteen. In this case, A falls into this category. It is therefore necessary for me to consider how his needs and interests will affect this case. As I have said, his primary carer for now and for the foreseeable future, is the husband and, to this extent, the husband's housing needs should be assessed in this context. In my view it is not unreasonable for the wife to aspire to live in accommodation where A can come and stay occasionally in the future, even if this seems unlikely in the immediate future.

13. In relation to the "**property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future**" most of the figures have not in the end been controversial and I do not need to deal with them in detail, but I want to make a number of comments before setting out my own asset schedule.

14. Both parties have significant debts arising from their legal costs. Within the financial remedies proceedings the wife has incurred fees of £61,345 and has paid £14,249 towards them, leaving £47,096 outstanding and the husband has incurred fees of £77,727 and has paid £23,000 towards them leaving £54,727 outstanding. The wife dealt with the other proceedings as a litigant-in-person; but the husband has an outstanding costs liability to his solicitors of £17,339. Although these figures are not as high as in some cases which come before the court, this is still a not insignificant leakage of family resources.

15. The valuation figures for the four real properties ('1 & 2 London Apartments', a 'country cottage' and a 'property in a European country') which form the majority of the asset base here were in the end not controversial, as were the deductions (CGT, sale costs and mortgage redemption figures) to reach the net equity figures in the table.

16. It is of note that all four of the real properties were owned by the husband prior to the parties' first meeting in 2004 and remain to this day in his sole name. I shall discuss below the extent to which each of them were occupied as the family home and whether they did or did not become 'matrimonial property' in the course of the marriage and how this might affect the outcome in this case.

17. At the outset of the case there were suggestions that the wife owned some land in the South American country of her origin, that the husband owned another house in a European Country and that the husband had undisclosed and valuable business held in off-shore countries. In my view none of these allegations has been established and I have been satisfied by the denials, and the reasons for the denials, made by the party against whom the accusation was made. On a balance of probabilities I find that the wife no longer holds the small portions of arable land in the South American country that she once held (which were of insignificant value anyway), that the husband has long since sold the other house in the European Country (for which he received a modest amount of money, which has long since been spent) and that, whilst the husband did own a company called X Foundation LLC ('X') registered in Panama and a company called Y Limited registered in Gibraltar, these companies have long since ceased trading and are dormant with no assets. In X's case it has been struck off the company register. I accept the husband's explanation that the companies were created in the context of his business career in the energy industry and that he has not worked in this field (or at all) for several years.

18. It is common ground that in 2014 the husband transferred monies (possibly £125,000, possibly a little more) from X to England which were used to refurbish the husband's property at 2 London Apartment and that, for tax reasons, this money was presented as a loan from X to the wife (although this presentation seems to have been largely fictional). It is common ground that the loan was never repaid to X and, in theory, it could be pursued if X was restored to the company register, though this would require the husband to take active steps in this regard. To deal with this issue the husband has told me that he is prepared to give an undertaking to the court not to activate any steps in this regard and to indemnify the wife against any liabilities she may have to X. In my view, providing the undertaking is formally given in due course, this effectively neutralises this issue and I should not regard it as creating a real debt in the wife's name which needs to be recorded in my asset schedule.

19. I accept the husband's evidence that he has borrowed £25,000 from various friends of his to assist him with his legal costs. It has been suggested that he will not need to repay these debts at any time so they should be regarded as soft debts and not included on the asset schedule. I accept that these are relatively soft debts and there is no great hurry to repay them, but I take the view that they remain liabilities which he will one day need to meet and that they should stay on the asset schedule. I note, however, that they should not be treated as impeding the implementation of such order as I propose to make.

20. The wife has a number of modest defined contribution pension schemes resulting from savings she has made. She should also in due course be able to qualify for a UK state pension, although she may not make enough NI contributions to make it a full entitlement.

21. The husband has an energy company pension which is in payment, which accrued when he worked for an energy company for a few years in the 1980s. For some reason the husband did not manage to produce a CE figure for this pension, but it is common ground that he receives £2,456 per annum from this pension and in the end it has been agreed that we should estimate the CE using the Galbraith tables in At a Glance, which suggest a multiplier of 12.361 for a 75 year old male, producing a CE value of £30,358. In the context of this case (and where no pension sharing order is sought) using the Galbraith tables was the sensible and proportionate way of ascertaining the likely CE.

22. Having made these determinations, I am now able to set out my assessment of the assets and debts for distribution in this case, the computational part of my task.

23. The situation can be summarised as follows.

REALISABLE ASSETS/DEBTS

Wife

Bank accounts in sole name	2,078
Investments in sole name	0
Land in a South American country	0
Halifax credit card	-17
Halifax personal loan	-3,524
American Express credit card debt	-399
M&S card debt	-3,134
Theoretical debt to X (covered by indemnity)	0
Outstanding Legal Costs [1]	-47,096
TOTAL	**-52092**

Husband

1 London Apartment[2]	497,583
2 London Apartment[3]	1,021,206
Country Cottage[4]	391,369
Property in a European Country[5]	49,114
Other land in a European Country	0
Bank accounts in sole name	26,551
Investments in sole name	947
Business interests in X (or otherwise)	0
Monies owed to friends for loans to meet legal costs	-25,000
Outstanding Legal Costs in FR proceedings [6]	-54,727
Outstanding Legal Costs in FLA & CA proceedings	-17,339
TOTAL	**370915**

PENSION ASSETS

Wife

People's Pension CE	943
NEST pension CE	1,093
Abellio Pension CE	325
Alpha Pension CE	1,404
TOTAL	**3765**

Husband

Energy company Pension CE[7]	30,358
TOTAL	**30,358**

[1] This figure is based on a total of incurred fees of £61,345 less a total of fees paid of £14,249 = £47,096

[2] This figure represents the agreed value of £725,000 less 3% notional sale costs less the outstanding Lloyds Bank mortgage of £123,229 less estimated CGT of £82,438 = £497,583

[3] This figure represents the agreed value of £1,175,000 less 3% notional sale costs less estimated CGT of £118,544 = £1,021,206

[4] This figure represents the agreed value of £425,000 less 3% notional sale costs less estimated CGT of £20,881 = £391,369

[5] This figure represents the agreed value of £50,633 less 3% notional sale costs = £49,114

[6] This figure is based on a total of incurred fees of £77,727 less a total of fees paid of £23,000 = £54,727

[7] This figure is based on the Galbraith tables multiplier (see At a Glance) for a 75 year old male of 12.361 x £2,456 = £30,358

24. In relation to "**the income, earning capacity…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**" and "**whether it would be appropriate to require periodical payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party**" I have the following comments:-

(i) The **husband** is aged 75 and has (I accept) not worked remuneratively for several years. Although it has been suggested that I should attribute to him an earning capacity, my view is that it would not be appropriate to do this in relation to a person aged 75. He is significantly past state pension age and he is entitled not to engage in remunerative work, although he could of course do so if he so wished. I shall proceed on the basis that it is likely that his years of earning an income are over.

(ii) The husband does, however, have various sources of unearned income. He receives or should receive:-
(a) £2,456 per annum from the energy company pension;
(b) £8,390 per annum from the UK State Pension;
(c) £1,331 per annum from UK Child Benefit;
(d) £2,828 per annum from UK Pension Credit; and
(e) £4,212 per annum from the wife in CMS payments.
This is a total of £19,217 per annum gross, upon which there should be very little or no income tax. This produces a monthly disposable income of £1,601.

(iii) He may in addition receive some de minimis share dividend / bank interest income. Depending on what property he is left with after the implementation of my order he may also receive some rental income.

(iv) The **wife** is aged 52. Since commencing work in England she has worked in hotel hospitality and as a bus driver; but in the last few months has commenced work as an Associate Delivery Manager in the Civil Service in Central London. She earns £37,174 per annum gross or £2,441 pcm net. She has a two-year probation period in this employment so there is a slight question mark over the future, but she seems hard working and intelligent and it is reasonable to hope that she will do this or its equivalent for the foreseeable future, possibly for the years until she reaches State Pension Age.

(v) She has received a CMS assessment requiring her to pay £81 per week or £351 pcm or £4,212 per annum to the husband. Her monthly disposable income will therefore be £2,090.

(vi) It is common ground that this is a clean break case and so the section 25A issues do not arise.

25. In relation to the "**financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future**" I have the following observations:-

(i) Both parties have the need for reasonable housing and this issue has been a key part of the case before me.

(ii) In the husband's oral evidence he declined to engage with Counsel very much on the normal inspection of property particulars representing theoretical future homes for himself. Instead, he has articulated his need as being to continue to live with A at 2 London Apartment whilst A completes his secondary education and then to sell that property, buy A his own flat in Cambridge (assuming he gets into University there), and then he will himself spend his 'twilight years' at the country cottage (his 'spiritual home'), utilising what is left of the sale proceeds of 2 London Apartment to subsidise his pension income. He has acknowledged that the wife has a housing need which should be met by him, and he was prepared to contemplate selling (or borrowing against) 1 London Apartment and the property in a European country to fund such a settlement for the wife in the sum of £365,300 (per his open offer dated 24th June 2024); but otherwise he declined to contemplate any plan different from his own proposal.

(iii) Whether or not the husband's plans are feasible really depend on the view I take of the wife's case. If I adopted her view on her entitlements and outcome then his own housing plans do not work mathematically. If I prefer the husband's view on the wife's entitlements and outcome then it may be that his own housing plans are feasible. Overall, however, I accept Ms Staunton's observation that the husband's plans really fall into the category of 'wants' rather than 'needs'. There is no 'need', for example, to think about buying a flat for A, however attractive a plan that may be. However much he regards the country cottage as his 'spiritual home', it cannot be regarded as a 'need' for him to keep this and 2 London Apartment.

(iv) I therefore turn to the key question of the wife's reasonable housing needs. In assessing these needs I should have in my mind the **standard of living** that the parties jointly enjoyed during the marriage, the **ages of the parties**, the **duration of the marriage,** the respective **contributions** of the parties. In this context it is right to record that the parties resided in various properties during the marriage, latterly in a property worth £1,175,000 at 2 London Apartment, that this was a fairly long marriage of 15 years (from cohabitation in 2005 to separation in 2020), that the parties are aged 75 and 52 respectively and that all of the capital assets were owned by the husband before the marriage begun. I record also that the wife has made contributions to the marriage in the form of home-making and child-care

over quite a number of years and the current difficult situation with A does not detract from that.

(v) The husband's case was that the wife could be suitably housed in a two-bedroom flat in East Dulwich or Forest Hill costing £450,000 to £500,000. The wife was unhappy about this geographical location and put forward a range of particulars of properties (also mostly two-bedroom flats) costing £800,000 to £850,000 in Notting Hill, Fulham, Maida Vale and Richmond. The difference between the two property selections mostly arises from their geographical area. As is often the case in these disputes, the property particulars produced to the court represent the poles of the argument, but it is possible to take judicial notice of the fact (manifest from a short period of Google searching) that there are a range of two-bedroom flats available in a range of places in London in the price space between the poles.

(vi) I have reached the conclusion, taking into account all the circumstances of the case, that a reasonable fund for a housing budget for the wife is £650,000 plus purchase, moving in and furnishing costs of £30,000, i.e. a total fund of £680,000. I do not propose to dictate to her where she should live, or in what sort of accommodation, but I am satisfied that a fund of this size would give a reasonable opportunity of buying a reasonably suitable property in a reasonably suitable area of London.

(vii) In assessing her needs it is reasonable (at age 52 and with an income of £37,174 pa) to expect the wife to fund some of this figure with mortgage finance. In assessing what would be reasonable here I must bear in mind that some of her income will be taken up with CMS payments for two years, that she has only recently started her present employment and mortgagees may be cautious about such a short track record and also, importantly, that she will need to make pension contributions to plan for her retirement, for which at the moment she has nothing but her state pension entitlement. In the circumstances I propose to assess her needs on the basis of a mortgage of £75,000.

(viii) In addition the wife has significant debts (£17 + £3,524 + £3,134 + £47,096 = £53,771), at least the majority of which will need to be paid before any mortgage is taken out.

(ix) In all the circumstances I assess the wife as having established a needs case for a lump sum from the husband of £680,000 less £75,000 plus £52,000 = £657,000.

(x) If I were to order the husband to pay a lump sum of £657,000, I would be leaving him (using my asset schedule above) with assets worth £1,889,704 less £657,000 = £1,232,704. I am satisfied that he could meet his needs for accommodation and living costs from this sum.

26. In addition to this sum, I have given careful thought to the mechanics of how this

family can move forward in the immediate future. At present the wife is living (for at least some of the time) in the flat immediately below the flat occupied by the husband and A – i.e. she occupies 1 London Apartment and the husband and A occupy 2 London Apartment, immediately above. It is clear from reading the judgment of DJ Jenkins from the FLA 1996 proceedings that this situation, which has subsisted to a greater or lesser extent since 2020, has produced a very undesirable tension between the parties and may well have contributed to the difficulties in the relationship between the wife and A. Whilst DJ Jenkins found that the wife often found somewhere else to stay to get away from this tense situation, he made no positive findings about an alternative full-time available home and I have not identified any other possibilities for her after hearing the evidence in the hearing before me. Further, the husband has expressly (sensibly and realistically) not sought a finding in the hearing before me that the wife has a cohabiting partner. My overall impression is that, until she has the means to secure alternative accommodation, the wife will need to occupy, and will occupy, 1 London Apartment for at least some of the time. Not only will this exacerbate the tension between the parties, it will also make it very much more difficult for the husband to make arrangements to fund a lump sum payment to the wife, as arranging the sale of 1 London Apartment, or an equity release in relation to it, will undoubtedly face real practical problems in the context of the acrimonious relationship which exists between the parties. I therefore propose to adopt the following solution to the problem. The husband will pay to the wife a lump sum of £17,500 (designed to fund rental accommodation at £2,500 for six months plus a deposit) on a date exactly 42 days after my order is approved on the basis that on payment of that sum the wife will simultaneously vacate 1 London Apartment (presumably to rental accommodation identified within that 42 days). This lump sum will be in addition to such other lump sum that I order him to pay. This additional order would not undermine my conclusions about the husband being able to meet his needs with what is left to him.

27. I want to say something at this stage about the **sharing principle**. As a starting point in the division of capital after a long marriage it is useful to observe that fairness and equality usually ride hand in hand and that matrimonial property will usually be divided equally. The court should be slow to go down the road of identifying and analysing and weighing different contributions made to the marriage.

28. In the words of Lord Nicholls in *White v White* [2000] UKHL 54:-

"…a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination".

and in *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24:-

"This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals…The parties commit themselves to sharing their lives. They live and work

together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule."

29. In the words of Mostyn J in JL v SL [2015] EWHC 360:-

    "Matrimonial property is the property which the parties have built up by their joint (but inevitably different) efforts during the span of their partnership. It should be divided equally. This principle is reflected in statutory systems in other jurisdictions. It resonates with moral and philosophical values. It promotes equality and banishes discrimination."

30. In the hearing before me the wife has argued that her award should not be limited to her needs entitlement, rather that all the real property assets should be regarded as matrimonial property and shared equally between the parties. It is trite law that a claimant should be awarded the higher of her needs entitlement and her sharing entitlement. On the basis of my schedule of assets this would increase her lump sum entitlement significantly above the £657,000 calculated above. The combined net equity of the four real properties is £1,959,272, made up as follows:-

1 London Apartment	497,583
2 London Apartment	1,021,206
Country Cottage	391,369
Property in a European Country	49,114
TOTAL	**440483**

A 50% share of all these properties would produce a lump sum of £979,636. This represented her open position at the final hearing. A lump sum of this size would give her more than £300,000 above what I have assessed as her needs.

31. A question immediately arises for consideration. Are these real properties properly described as matrimonial property? It is common ground that all of these properties were owned by the husband prior to the parties first meeting and that the legal title of all of them remains with the husband. In this sense nothing has changed during the relationship. There has been no mingling. The wife has contributed nothing to their value, which has simply accrued as passive growth (subject to the exception of the refurbishment works at 2 London Apartment, though this was funded from the husband's company X in the way described above).

32. The wife, however, argues that all four of the properties have been family homes at various points in the course of the marriage and all four of them have accordingly become 'matrimonialised' and are thus matrimonial property to which the sharing principle applies.

33. I have heard evidence of where the family lived at various times during the marriage, including evidence from GP records as to where the family were registered and school records as to where the children attended school. I have heard the parties tell me where they based themselves at different times and I have seen various documents. I have seen the information used in the CGT calculations. I have been told that the wife gained a spousal visa giving her a right to come to the UK for more than holidays in 2011, obtained permanent leave to remain in 2017 and obtained British citizenship in 2023. My conclusions on this are as follows. Between 2005 and 2011 the family home was predominantly in the Property in a European Country, though they did spend some holiday time in England, including at 2 London Apartment and the country cottage. Between 2011 and 2019 the family home was predominantly at the country cottage, though they did spend some time in the other properties. From Summer 2019 until the separation in Summer 2020 the family home was predominantly 2 London Apartment, although they did spend time at the other properties. Thus, I conclude:-

    (i) for the first 6 years of the marriage the family home was the Property in a European Country;

    (ii) for the next 8 years of the marriage the family home was the country cottage;

    (iii) for the final 1 year of the marriage the family home was 2 London Apartment; and

    (iv) I agree with the view of DJ Jenkins that 1 London Apartment was not at any time the family home, though it became the wife's on and off home after the separation in 2020.

34. On this basis, there were three family homes in this case, albeit consecutively rather than simultaneously. The combined net equity of the three real properties which have been family homes is £1,461,689, made up as follows:-

2 London Apartment	1,021,206
Country Cottage	391,369
Property in a European Country	49,114
TOTAL	**440483**

A 50% share of all these properties would produce a lump sum of £730,844. A lump sum of this size would still give the wife a little more than what I have assessed as her needs.

35. Ms Staunton argues on the wife's behalf that once a property has been a family home, even for a short period, it immediately becomes matrimonial property and remains in this category, even if the family move on to a different home. Once brushed with the characterisation, even briefly, of being a family home, whatever else then happens makes no difference. She says that a pre-existing home in one party's name at the time of the marriage, even when it remains in that party's name, does not need to be a

family home for very long to become matrimonial property and cites Lord Nicolls in *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24 in support of this proposition: *"The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been."* She says that there is no restriction on how many family homes can be so characterised, relying upon Roberts J in *WX v HX (Treatment of Matrimonial and Non-Matrimonial Property)* [2021] EWFC 14 where, it appears, a London home and a country home were both simultaneously occupied by the family as family homes and both were treated as being matrimonial property. There is no reason why the same principle should not apply to sequential family homes as well as simultaneous family homes. Ms Staunton argues: *"I have not come across any case law to suggest that it is not possible to have multiple FMHs, or that property once matrimonialised can then un-matrimonialise."* It follows, says Ms Staunton, that the wife should have her half share of the properties which have been family homes, even if the outcome exceeds her needs.

36. Ms Lucas has responded to Ms Staunton's arguments, in my view correctly and appropriately and I adopt the reasoning, by making the following points:-

    (i) The court should steer away from developing a new concept of 'un-matrimonialisation'.

    (ii) Instead, the court, in its search for fairness, should reflect on all the section 25 factors, and in circumstances such as this, should not disregard the unmatched contributions of one party and also the length of the occupation of a particular property as a family home. If the mathematical consequences of treating the sequential occupations of different properties as family homes, where they have all been contributed by one party, produces an unfair result then the court should steer away from it and not feel bound by the application of an unbending formulaic approach.

    (iii) It is well established that, in the right circumstances, a court can depart from an equal division of matrimonial property, of even a family home, where fairness requires it. As Moylan LJ said in *Standish v Standish* [2024] EWCA Civ 567: "…*the court will typically conclude that the former matrimonial home should be shared equally although this is not inevitable as shown by cases such as FB v PS [2015] EWHC 297...In its evaluation of all the relevant factors… it would be perverse if the court could not decide that the non-matrimonial source, in whole or in part, of an asset treated as matrimonial property could not justify an other than equal division*". In *S v AG (Financial Remedy: Lottery Prize)* [2011] EWHC 2637 Mostyn J said: "…*even the matrimonial home is not necessarily divided equally under the sharing principle; an unequal division may be justified if unequal contributions to its acquisition can be demonstrated*".

37. Taking into account all the circumstances of the case, my conclusion is that there is justification here for departing in the husband's direction from an equal division of the net equity in the three homes which have been family homes. My view is that the fair answer here is for the wife to be awarded the amount that meets her needs according to the above analysis.

38. Accordingly, I propose to make the following orders:-

    (i) The husband will pay to the wife a lump sum of £17,500 (designed to fund rental accommodation at £2,500 for six months plus a deposit) on a date exactly 42 days after my order is approved on the basis that on payment of that sum the wife will simultaneously vacate 1 London Apartment (presumably to rental accommodation identified within that 42 days). If the husband does not pay this sum then the wife will not be obliged to vacate 1 London Apartment. There will be interest in default of payment at the Court Judgment rate of 8%.

    (ii) The husband will, in addition, on a date no later than 4 months after the wife has vacated 1 London Apartment (or 4 months after the 42 days, whichever is later) pay to the wife a lump sum of £657,000. There will be interest in default of payment at the Court Judgment rate of 8%.

    (iii) There will otherwise be a clean break in both directions, which will take effect when the lump sum is paid in full.

    (iv) Subject to any further submissions, I want to give this provisional but strong steer on costs. Given that I have taken into account the wife's outstanding costs bill in calculating the lump sum, there should be no order for costs, save that the existing First Appointment costs order should now be enforceable.

39. This is my decision and I invite counsel to produce a draft order which matches these conclusions. I would like either an agreed draft order or an explanation of progress towards this by Friday 5th July 2024.

HHJ Edward Hess[8]
Central Family Court
28th June 2024

[8] This judgment is intended to fall within The Practice Direction on the Citation of Authorities published by the Lord Chief Justice on 9th April 2001 [2001] W.L.R. 1001, paragraphs 6.1 and 6.2.