Neutral Citation Number: [2008] EWHC 401 (Fam)

Case No: FD06D03721

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/03/2008

Before :

THE HONOURABLE MR JUSTICE BENNETT

- -

Between :

James Paul McCartney	**Petitioner/ Respondent**
- and -	
Heather Anne Mills McCartney	**Respondent/ Applicant**

- -

The Respondent/Applicant in Person assisted by **McKenzie Friends – Ms. Fiona Mills, Mr David Rosen (Solicitor Advocate)** and **Mr Michael Shilub (American Attorney)**

Mr Nicholas Mostyn QC and Mr Timothy Bishop instructed by
Payne Hicks Beach Solicitors for the **Petitioner/Respondent**

Hearing dates: 11 February 2008 - 18 February 2008

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE BENNETT

This judgment is being handed down in private on 17 March 2008. It consists of 58 pages and has been signed and dated by the judge. It may not be reported unless the judge has given leave. It is a contempt of court for any person to publish the contents of this judgment without first obtaining a direction for permission to report from the judge.

Mr Justice Bennett :

1. This final hearing concerns the application by Ms Heather Mills/Lady McCartney ("the wife") for financial provision against Sir Paul McCartney ("the husband").

2. The hearing took place over six days between 11 and 18 February 2008. The wife represented herself assisted, with my permission, by three Mckenzie Friends, namely her sister, Fiona Mills, Mr David Rosen, a solicitor-advocate, and Mr Michael Shilub, an American attorney. The husband was represented by Mr Nicholas Mostyn QC and Mr Timothy Bishop, instructed by Payne Hicks Beach.

3. The battle lines are set out in the open offer made by each party prior to the start of the final hearing. In her letter of 31 January 2008 the wife computes her reasonable needs for herself and Beatrice at £3,250,000 p.a. which amounts on a Duxbury capitalised basis to £99,480,000. She seeks a property adjustment order in respect of a property in Beverley Hills called "Heather House" and of a property in New York State, 11 Pintail. She seeks between £8m and £12.5m for a home in London, £3m to purchase a property in New York, £500,000 to £750,000 to purchase an office in Brighton, a transfer to her of a mortgage in favour of the husband over her sister's (Fiona) Hove property, transfer of property order re a Southampton property owned by the husband in which Sonya Mills lives, and relief in respect of chattels. Further, the wife asks the court "to place a significant monetary value on compensation for loss of earnings, contribution and conduct". She would retain her own properties at Pean's Wood in Robertsbridge, Sussex and at Angel's Rest in Hove. Overall her claim amounts to about £125m. She also seeks an order for costs.

4. By letter of 6 February 2008 Messrs Payne Hicks Beach set out the husband's position. Overall the wife should exit the proceedings with total assets of £15m (after a deduction for conduct) made up as follows. Sonya Mills' home and the mortgage on Fiona's home should be transferred to the wife at a combined value of £683,000; Angel's Rest (which has now been valued at £2m); the net value of Pean's Wood; the value of funds that either the wife has or should have; and a balancing lump sum provided certain art is returned to the husband. Further, the husband would meet the reasonable cost of security for the wife and for their child, Beatrice, for 2 years not exceeding £150,000 p.a. For Beatrice, the husband would pay periodical payments at £35,000 p.a. and for a nanny not to exceed £25,000 p.a. Both these figures would be index-linked. The periodical payments would continue until Beatrice is 17 years old or completes secondary education, whichever is the later. Further, he will discharge the school fees, uniform and reasonable extras, and health insurance premiums. Proposals were made as to chattels. There would be no order as to costs.

5. Both parties made it clear that each wants a clean break both under the Matrimonial Causes Act 1973 (as amended) and under the Inheritance (Provision for Family and Defendants) Act 1975.

6. The barest outline of the background would be that the wife and the husband met in the spring of 1999, became engaged on 22 July 2001, married on 11 June 2002, separated on 29 April 2006 and ever since have been engaged in protracted matrimonial litigation. They have one child, Beatrice born on 28 October 2003 who is therefore now 4 years old.

7. No decree nisi has yet been pronounced, for the following reasons. On 17 July 2006 the husband filed a petition for divorce on the grounds of the wife's unreasonable behaviour. On 13 October 2006 the wife filed an Answer denying the husband's allegation of unreasonable behaviour and cross-praying for divorce on the grounds of the husband's unreasonable behaviour. On 28 February 2007 the suit, the ancillary relief proceedings and an application by the wife for maintenance pending suit came before me. I shall return to this hearing later in the judgment. Suffice it to say for the moment that at my prompting the parties agreed to stay their divorce proceedings and on or after 1 May 2008, by which time would have been separated for 2 years, to one party presenting a fresh petition for divorce based on the 2 years separation and to the other consenting to a divorce. So, at a hearing arranged for 12 May I hope to be able to pronounce a decree nisi of divorce.

8. The husband's case on financial provision for the wife is summarised at paragraph 9 of the opening note of Mr Mostyn QC as follows:

> "We submit that fundamentally this is a straightforward case. Because of H's enormous pre-marital wealth and because of the brief duration of this marriage W's claim should be determined by reference to the principle of need alone. This is not a case where the principle of sharing of the "marital acquest" is engaged at all. Nor is it a case where the principle of compensation will arise. W's needs fall to be fairly assessed, not predominantly by reference to the standard of living during the marriage. W's award should be reduced to reflect her post-separation misconduct. That misconduct is based on three distinct episodes as explained in our Conduct Note."

9. The wife's case cannot be so succinctly summarised. By the time of the parties' first meeting in May of 1999 the wife says that she was wealthy and independent with, as she told me in evidence, properties and cash totalling between £2m and £3m. She earned her living as a TV presenter, a model and public speaker. She began to cohabit with the husband from March 2000 which led seamlessly into marriage and thus the relationship lasted 6 years. This is denied by the husband. The wife says that the husband's attitude towards her career was one of constriction such that the opportunities for the development of her career fell away during their relationship. He dictated what she could or could not do. She thus seeks compensation for the loss of her career opportunity in that during their cohabitation and subsequent marriage she forewent a lucrative and successful career. She seeks an award commensurate with being the wife of, and the mother of the child of, an icon. She places great weight on the contributions she says she has made to counselling the husband's children by his former marriage and to the husband's professional career. She asserts that his assets are worth in excess of £800m and that she is entitled to share in the "marital acquest". Finally, she asserts that throughout their marriage and after their separation the husband behaved in such a way that it would be inequitable to disregard and that his conduct should be reflected in the award.

10. During the course of this judgment I shall have to determine certain matters of fact.

11. The major factual issues as to the history of their relationship that I must determine are these. First, at the time the parties met, was the wife a wealthy and independent

person? This is linked to the third issue. Second, did the parties cohabit from March 2000 or from the date of the marriage? The relevance of this issue is to the length of their relationship and to the further issue of "marital acquest". Third, did the husband constrict the wife's career after cohabitation (whether at March 2000 or June 2002)? This is relevant to the issue of "compensation" for an allegedly lost or restricted career of the wife.

12. I shall also have to determine issues of fact concerning the husband's and the wife's assets, the wife's proposed income needs, the wife's expenditure between October 2006 and December 2007, and the wife's earning capacity.

13. Many of the issues of fact involve a head on conflict between the evidence of the wife and the husband, in which I shall also have to examine the relevant and important documents. It is therefore appropriate that I should briefly say something at this stage about the evidence of each of the parties.

14. The wife is a strong willed and determined personality. She has shown great fortitude in the face of, and overcoming, her disability. I refer to the loss of her left leg below the knee. As I shall show she is a kindly person and is devoted to her charitable causes. She has conducted her own case before me with a steely, yet courteous, determination.

15. The husband's evidence was, in my judgment, balanced. He expressed himself moderately though at times with justifiable irritation, if not anger. He was consistent, accurate and honest.

16. But I regret to have to say I cannot say the same about the wife's evidence. Having watched and listened to her give evidence, having studied the documents, and having given in her favour every allowance for the enormous strain she must have been under (and in conducting her own case) I am driven to the conclusion that much of her evidence, both written and oral, was not just inconsistent and inaccurate but also less than candid. Overall she was a less than impressive witness.

17. The husband's background needs little exposition. He is, and has been for many years, a world famous musician, composer and singer. He is an icon to millions of people. He married Linda, who had a daughter from her first marriage, whom the husband subsequently adopted. He and Linda had 3 children, Mary, Stella and James. In 1998 Linda died of cancer. I have no doubt that he was deeply upset by her death. He is now 65 years old.

18. The wife, who is now 40 years old, spent much of her childhood in Northumberland. She seems to have had a rather troubled childhood. When she was 14 years old she had to move to live with her mother in London. She left her mother's home aged 15. She took a number of jobs.

19. When she was 17 years old she started modelling. After a modelling competition she got a job presenting a TV series. More modelling jobs followed. When she was 20 years old (1988) she went to live and work in Paris.

20. In 1989 she married. The union was childless. She and her former husband ultimately divorced. She learned to ski and became an instructor. She learned to ski in Slovenia.

21. During the crisis that affected the old Yugoslavia the wife became appalled by the fighting and the terrible injuries suffered particularly by the civilian population. She became heavily involved in charitable works joining convoys of trucks taking food and clothing to Croatia. She became very conscious of the terrible injuries inflicted by landmines. She saw a number of people who had lost limbs, particularly legs.

22. In 1993 her trips to Croatia diminished as her modelling career in the UK began to prosper. At paragraph 26 of her affidavit of 30 January 2008 she says:

> "In early 1993 my trips to Croatia became less and less frequent, as my modelling career in the UK began to take off. I got work modelling all over the world including in the Bahamas, Malaysia, America and the Middle East. I won lucrative contracts with Marks and Spencers, River Island and Slix, the swimwear company …. I believe I was earning at that time in the region of £200,000 per annum. I do not have my tax returns although I did request the same from the Inland Revenue who informed me by letter that they are not available…."

23. On 8 August 1993 she was on a zebra crossing in London and was unfortunately hit by a police motorcyclist. Her left foot was severed above the ankle. She suffered head injuries, cracked ribs, a punctured long and multiple fractures of the pelvis. Her left leg was amputated 6 inches below the knee. In October 1993 she underwent another operation which shortened her leg still further but still below the knee.

24. The wife says that, following media enquiries, she gave interviews and earned about £180,000 in 10 days. She wrote a book "Out on a limb", the proceeds of which were donated to transport artificial limbs to Croatia. She says that thereafter she did much public speaking and her earnings were in the range of £300,000 per annum.

25. She became involved in fundraising for a number of charities – see in particular her description at paragraph 32 of her affidavit. She continued to do an enormous amount of charitable work in particular being involved in transporting artificial limbs to Croatia. She was by now, she says, an established public speaker.

26. At paragraph 45-47 of her affidavit she says:

> "After my accident in 1993, I raised money through public speaking in aid of charities. I became one of the top 10 female speakers in Europe. Between 1993 and 1999 when I met Paul my income spiralled for example in 1997 I had a modelling contract for £750,000; I wrote, with a ghost writer, a best selling autobiography called Out on a Limb and in the year prior to marrying Paul I earned $1,000,000 for 14 days work. In order to support myself and to help with my charity work, I did a lot of television presenting, for example, Good Morning

with Anne & Nick, Keanu Reeves interview, BBC TVAM, Chill Out With Heather series (where I interviewed a number of well known people), The Holiday programme, Wish You Were Here, Travelogue, First Say (after Panorama show), radio hosting, The General hospital, Richard and Judy, etc etc the list is endless. I also continued modelling. I would contribute a lot of my earnings to charity….

Before I met Paul in 1999, examples of my work included:

a. That's Esther Show with Esther Ranzten – I was a co-presenter, making and presenting reports. I did approximately 25 programmes focusing on the struggles of amputees, and the quality of services available to them, as well as other issues such as chip pan fires, police sirens, male nannies, safe children's playgrounds, waste pickers in Cambodia;

b. Panorama – I worked as a senior producer making programmes called 'First Say' concerning issues such as Clinton's impeachment, European working time directive and Prince Charles 50th birthday; This was the flagship's commission for the digital channel 'Choice' on the BBC. My role involved producing, researching scripting, directing and presenting.

c. Travel programmes – I was a presenter on Summer Holiday, Wish You Were Here and Travelog;

d. The General – I was a presenter on this programme based in Southampton General Hospital which was broadcast live five days a week;

e. Pebblemill – Chill Out with Heather series and Croatian documentary

As mentioned previously, before I met Paul, I was speaking all over Europe and was considered one of the top ten female public speakers in Europe. I would speak on the same bill with eminent individuals such as Mark McCormack, Neil Armstrong and others. I commanded a fee ranging from £10,000 to £25,000 for a one hour speech …."

27. She thus asserted at paragraph 48:

"The assets I held at the time that I met Paul included the following:

a. A penthouse flat in Piccadilly worth approximately £500,000;

> b. A property on Cross Street in Brighton, worth £250,000.
>
> c. I rented a 5 bedroom barn in Hampshire, at a cost of £750.00 per month. I had maintained a London apartment and a country property since 1992. An example of this is attached….
>
> d. I also owned a Green Mercedes, a Saab, and then a Rover as, I was sponsored by Saab and Rover. I also had my own driver, Trevor, and a free Saab limousine ….
>
> e. I often lent money to friends, as I could afford to do so. An example of such loans is shown in my Form E.
>
> I was wealthy and financially independent in my own right prior to our marriage."

28. I have to say I cannot accept the wife's case that she was wealthy and independent by the time she met the husband in the middle of 1999. Her problem stems from the lack of any documentary evidence to support her case as to the level of her earnings. I do not doubt her commitment to charitable causes. She is passionate about them, particularly those that involve working for, and with, amputees. The DVDs shown to me in court amply bear that out. I do not doubt that she modelled successfully and was a public speaker. But the investigation in this case of her assets and earnings as at 1999 when the parties met do not bear out her case.

29. The penthouse flat in Denman Street was not worth £500,000 in 1999. She sold it on 20 March 2001 for £385,000 after the London property market had risen substantially since 1999. She did not in 1999 own the property in Cross Street in Brighton. That was not bought until March 2000 when she gave up her property near King's Somborne in Hampshire.

30. During her cross-examination she asserted for the first time that in addition to property assets she had £2m-£3m in the bank. No mention of such assets was made in her affidavit. There is no documentary evidence to support that assertion. During the hearing she was asked repeatedly to produce bank statements, which she said she thought she had in Brighton, to verify this claim. No bank statements were ever produced.

31. The first tax return that the wife has been able to produce is for the year ending 5 April 1999. The Revenue has not been able to supply any prior tax return. However her tax returns for the years ending 5 April 1999 and thereafter to 2006 are in the papers. Her gross turnover and net profit declared for "acting, modelling and public speaking" for the tax years 1999 to 2002 are, respectively (to the nearest £500) £62,000 and £11,500; £42,000 and £6000; £112,000 and £58,000; and £78,000 and £49,500. Thus her tax returns for 1999 and 2000 do not support the wife's case of very significant earnings as set out in her affidavit.

32. The wife's riposte is that much of her earnings, which are not included in the tax returns, were sent direct to charities of her nomination. In her evidence she told me that as much as 80% or 90% of her earnings went direct to charities. However, the

wife had to accept in her cross-examination that there was no documentary evidence, for example letters from the relevant charities, that her fees were sent direct to charities. In her Answers to a Questionnaire of 6 February 2007 the wife, having been asked to set out in a schedule the income earned by her and sent direct to charities for the years 1997 and 2000 inclusive, replied that she did not have the records requested to enable her to complete a schedule. Furthermore, her assertion that she gave away to charity 80% to 90% of her earned income is inconsistent with having £2m-£3m in the bank in 1999.

33. The wife accepted that had she had £2m to £3m in the bank in 1999 she is most likely to have put such a sum into an account earning interest. But the tax returns do not disclose any bank interest earned or only very small sums which are not consistent with holding £2m-£3m in a bank or banks. Moreover her tax returns disclose no charitable giving at all.

34. In March 2000 the wife bought a property in Cross Street in Brighton for about £250,000, using £200,000 paid to her as compensation for the injuries arising out of her accident in 1993. There was no need therefore for her to touch the £2m-£3m in her bank account if such existed. However in May 2001 the wife purchased in her own name 7, Western Esplanade in Hove i.e. Angel's Rest for £750,000. On 18 May 2001 MPL Household, the husband's company, and the wife entered into a formal legal charge whereby it lent the wife £800,000, interest free, secured on Angel's Rest in order for the wife to be able to buy it. The wife agreed to repay the loan at £1000 per month from 1 July 2001 for a period of 25 years. The excess of £50,000 was to be used to improve the property. In September 2001 the husband advanced the wife another £150,000 to carry out refurbishments. The inevitable question was asked of the wife – why the need for such a loan and advances if she had £2m-£3m in the bank? Even allowing for some depletion in the bank balances over an 18 month period from mid 1999 to early 2001, if she was as wealthy as she made out there would have been no need for this loan or for a loan of such magnitude.

35. By May 2002 the loan was "discharged". She paid the monthly £1000, and sold Cross Street and according to the husband paid off about £348,000 of the loan from a combination of the net proceeds of sale of Cross Street and monies from a modelling contract.

36. I find that the wife's case as to her wealth in 1999 to be wholly exaggerated. The assertion that she was a wealthy person in 1999 is, of course, the first step in her overall case that her career, which in 1999 she says was one producing rich financial rewards, was thereafter blighted by the husband during their relationship. It is therefore connected to the issue of "compensation".

37. The next matter to be decided is whether the wife and the husband began cohabitating in March 2000 or, as the husband asserts, their committed relationship began upon marriage. It is common ground they met in May 1999 at the Pride of Britain Awards. He accepts he was immediately attracted to her. He later telephoned her and they began meeting. He made a donation to her charity of £150,000 in July. It is at that point the wife says they began dating. There is no dispute about that.

38. In August the husband took the wife to New York and showed her his holiday house at 11, Pintail, on Long Island which he had purchased in December 1998. The wife

says that after that thereafter things started to get serious and they saw more and more of each other. By September 1999 they were spending 5 nights a week together, at hotels and thereafter at the husband's property called "The Forecastle" but usually referred to as "Lizzie", in Rye, which is a 3 bedroom cottage. In November 1999 the wife met the husband's children by Linda. Later he introduced her to his adopted daughter, who was Linda's daughter from her first marriage.

39. In January 2000 he took her on holiday to the Turks and Caicos Islands. On their return they continued to spend up to 5 nights a week at Lizzie.

40. In early March 2000 the wife gave up her property in Hampshire and moved to a property in Cross Street, Brighton to be nearer the husband. "This was around the time that Paul and I decided to move in together" (paragraph 20 of her affidavit of 7 February 2007 in relation to the parties' pre-marital relationship). It is said that the husband suggested trying to live together. From that point on the husband and she were only apart if one of them was abroad. They lived by then mostly in "Lizzie", a property of the husband in Rye or in the husband's property at 7, Cavendish Avenue in London.

41. The Christmas of 2000 was spent at Lizzie. In January 2001 they went for a whole month to India and whilst in Jaipur the husband "secretly" bought a sapphire and diamond engagement ring for the wife.

42. During 2000 and 2001 the husband was making his album "Driving Rain" and much of the recording was done in Los Angeles. The husband's travel agent, Mike Whalley found a property to rent at 9536 Heather Road in Beverley Hills.

43. In March 2001 the husband purchased that property and transferred it into Mr Whalley's name "temporarily for tax purposes, but that it would soon be transferred to me" (paragraph 32). It was never transferred into her name.

44. In February 2001 the wife sold her flat in Denman Street and in May 2001 purchased Angel's Rest. Cross Street was sold. But the wife says that she and the husband continued to live in Lizzie and visited Angel's Rest "only on occasion (sic)" (paragraph 33).

45. On 22 July 2001 the parties became engaged. The wife was given the ring that the husband had bought in India. In November 2001 the husband gave her a joint Coutts credit card.

46. On 14 June 2002 they were married. Their living arrangements remained the same. But in 2002 they began building "The Cabin" – a Norwegian style log cabin near the lake on the husband's estate of about 1500 acres at Peasmarsh in East Sussex.

47. The husband's evidence is contained in his affidavit of 25 January 2007. His case, broadly, is that they dated during 1999, 2000, 2001, became engaged in July 2001 and married in June 2002, whereupon the nature of their relationship changed.

48. The husband says that the wife did not give up her Hampshire property to live with him, because in March 2000, she bought Cross Street in Brighton. Furthermore

having purchased Angel's Rest in May 2001 she decorated, furnished and insured it. He asserts that Angel's Rest was the wife's primary home.

49. After their engagement their relationship did "become more formal and settled, but the living arrangements did not change very significantly". They did not live as husband and wife.

50. After the marriage the nature of their relationship changed. At paragraph 17 of his January 2007 affidavit he said:

> "After our marriage, the nature of our relationship to my mind, changed significantly. I was and remain fairly old-fashioned about marriage. We decided upon a proper wedding for that reason – I did not want any suggestion that we were in any way furtive or ashamed about our marriage. I believed it was for life and that it put everything on a very different footing. I drew up a Will to include Heather which I executed on 5 June 2002. We stopped using contraception the night we were married. There was never any question of us doing so before the wedding. Heather had one miscarriage before Beatrice was conceived in the first year of our marriage. Neither of us contemplated children without marriage."

51. Then they both set their minds to building the Cabin as their home.

52. In my judgment, in assessing this issue, the background is of importance. The husband's wife, Linda, had died in 1998. Their marriage endured for some 30 years. Repeatedly in his evidence the husband described how even during his relationship with the wife in 1999 to 2002 he was grieving for Linda. I have no doubt the husband found the wife very attractive. But equally I have no doubt that he was still very emotionally tied to Linda.

53. It is not without significance that until the husband married the wife he wore the wedding ring given to him by Linda. Upon being married to the wife he removed it and it was replaced by a ring given to him by the wife.

54. The wife for her part must have felt rather swept off her feet by a man as famous as the husband. I think this may well have warped her perception leading her to indulge in make-belief. The objective facts simply do not support her case.

55. Cohabitation, moving seamlessly into and beyond marriage, normally involves in my judgment, a mutual commitment by two parties to make their lives together both in emotional and practical terms. Cohabitation is normally but not necessarily in one location. There is often a pooling of resources, both in money and property terms. Loans between cohabitants may be forgiven.

56. Thus one might have expected that had the parties begun cohabitation in March 2000 the wife, having disposed of the Hampshire property, would not then have acquired another one, i.e. Cross Street. Furthermore, one would not expect a cohabitant having sold one property to buy another (Angel's Rest), refurbish, decorate and insure it. But what, to my mind, is so compelling is that in order to purchase Angel's Rest the wife

entered into a formal, written, loan agreement in May 2001 under which she borrowed from the husband's Company, MPL, £800,000, agreed to repay the loan at £1000 per month, and did in fact pay MPL £1000 per month. In my judgment such a financial arrangement is hardly consistent with a mutual commitment to make their lives together. Moreover, it must be remembered that, as the husband said in evidence, there was a considerable volatility in their relationship. There were good times, there were bad times, and the relationship always left in the husband's mind a question whether he and the wife were going to be ultimately right for each other.

57. I do not accept the wife's case that the property in Heather Road in Beverly Hills was purchased for her. The husband's explanation for putting it into Mr Whalley's name is the more credible, namely to disguise the fact that the husband had bought it. He told me that when a star buys a house in Beverley Hills it goes onto a map showing where the stars live. The husband did not want unwelcome and unwanted visits. The husband and wife, the husband accepted, did call it "Heather House" because it was in Heather Road just as they called Cavendish Avenue "Cavendish". I saw a DVD in which the wife could be seen in the property saying that "Heather House" was "my house" in rather a jocular way (apparently without contradiction by the husband) but that was, I find, wishful thinking on her part. I find that the husband never said to her that it was her house or that he would put it in her name. He accepted that later on in the marriage that the wife said to him that she wanted it (and other of the husband's properties) to be transferred into her name but that was at a stage when the marriage was not good.

58. Furthermore, it is to be noted that, as I have said, in May 2001 the husband lent the wife £800,000 to buy Angel's Rest. A loan of £800,000 to the wife in May 2001 does not support the concept of a gift to the wife of a property in March 2001 worth about $4m.

59. On 11 May 2007 in proceedings before the Senior District Judge involving Beatrice the wife made a statement. The wife wanted Beatrice to live and be based in Brighton, and be educated at a Brighton preparatory school. At paragraph 3.3 of her statement she said:

> "Beatrice has a family history in Brighton …. I often visited the area as a child and as an adult lived here before I married Beatrice's father …." (emphasis supplied)

60. This statement, adopted by her in her evidence to the Senior District Judge in June 2007, accords with what she wrote in her book "A Single Step" published in 2002:

> "Living on my own in a great big echoing barn, I started to get quite scared … Perhaps, I thought, I could find a new, secret address, where I could go to ground. I found a small house quite quickly. It was near the coast, a lot closer to Paul's home, and in a part of the world I loved."

61. Finally, I find that there was no intermingling of finances save that in November 2001 the wife became a card holder in the husband's bank account. The husband did not give to the wife any allowance until marriage.

62. I am prepared to accept that the wife and the husband from 1999 to the date of their marriage spent many, many nights together, holidayed together and became engaged. They had a very close relationship. But that does not, in my judgment, in the circumstances of this case, equate with a settled, committed relationship moving seamlessly into marriage.

63. Upon marriage their relationship did indeed change and became a committed relationship, as described by the husband in evidence and in his letter to the wife of 5 June 2002. They drew up plans for and constructed their matrimonial home at the Cabin. They had a child. The loan was discharged. From April 2003 the wife received an annual allowance of £360,000 payable quarterly. He made cash gifts to her of £250,000 in December 2002 and again in December 2003. The husband made a will to include the wife. To my mind all this illustrates a very different kind of relationship after marriage compared to before it.

64. Accordingly, I reject the wife's case on this issue. Thus, their true and settled relationship lasted from marriage (June 2002) and not from March 2000.

65. The nub of the wife's case as to compensation is contained in paragraphs 49 and 50 of her affidavit of 30 January 2008:

> "Even after we were married I continued to use my own money to live. Paul repeatedly told me that he would make sure that I was financially secure, should my money run out. My income stream and my savings did start to run out drastically. I was no longer able to support my standard of living as I had substantially reduced my workload in order to spend time with Paul and to support him and his children emotionally. My ability to earn the same level of income I had been earning diminished once my relationship with Paul became serious.
>
> Countless lucrative business opportunities were made to me once Paul and I married. Sadly, Paul advised against 99% of all of them. He stated that they were only interested in me because of his name and that I should just stick to charity work and he would take car of me. When I was asked to design clothes, create a food line, write books, make a video, write music or do photography, Paul would almost always state something like "Oh no you can't do that, Stella does that or Mary does that or Heather (his adopted daughter) used to do that or Linda did that." even though I had been involved with fashion and modelling for years. If I had been free to pursue my TV career, especially in the US, then I believe, and have been told by other professionals, I would have made millions. Paul would not allow me to work in the US. For example he would not allow me to work on the Larry King show. He would tell me "we won't be living there and you would be a bad mother if you worked." Therefore, Paul made it impossible for me to pursue a career in the U.S. Shortly after telling me I would be a "bad mother" if I worked, Paul booked a 3 month US tour dragging Beatrice and me around America. If we had

> been able to base ourselves in one place I would have been able to accept the hosting of some of the Larry King shows or to do something to further my career. I believe now that Paul's reason for refusing to support me in doing something career wise was his fear of losing my undivided attention. He also needed to be the centre of attention at all times."

66. I have already referred to the wife's tax return for the tax years 1999 – 2002. I shall now set out the gross turnover and net profit for the tax years ending on 5 April 2003 – 2006 inclusive. The figures are respectively, £658,000 and £541,500; £41,266 and £6,340; £53,657 and £21,669; and £128,000 and £92,500. By way of explanation the substantial figures for the year ending 5 April 2003 are in respect of a modelling contract with INC in respect of clothes from which earned the wife about $1m. The figures for 2004 must take account of the wife's pregnancy and Beatrice's birth.

67. The wife was therefore constrained to accept that, if the overall period 1999 to 2006 is considered solely looking at her tax returns, her income improved during the relationship with the husband.

68. The wife complains that in April 2001 or thereabouts she was offered a contract by Marks and Spencers to model bras over a 12 month period for £1m but that the husband would not allow her to undertake to do it. Her evidence was that he forbade her. The only document produced by the wife in connection with this offer is an e-mail from Jaime Brent, a creative director from Beckenham. There is nothing in it about any remuneration. The husband's evidence was that even if such a contract for that sum was in the offing (which he doubted), nevertheless he and the wife discussed it and decided together that as they were in a relationship it was not appropriate for her to be seen modelling bras. She agreed. He also told me that if she had insisted he would not have opposed her. In my judgment the husband's evidence is much more likely to be true.

69. In 2002 the wife published a book "A Single Step" in which at page 313 is a reference to 2001 when she wrote of her charity and public speaking work expanding "to such an extent that it has left little time for anything else".

70. A further illustration of the expansion rather than contraction of her career is her appearances on the Larry King Show. The wife accepted in her cross-examination that prior to her relationship with the husband she had never appeared on his show. Her appearances were, as set out by the husband in his affidavit of 8 January 2008, on 29 July 2001 with the husband after their engagement to talk about Adopt A Minefield charity, on 30 July 2002 to promote her book "A Single Step", on 22 September 2003 to discuss her pregnancy, on 17 August 2004 to discuss land mines, and with the husband in March 2006 in relation to their trip to Canada for an appeal against seal clubbing. Furthermore, I accept the husband's evidence that in April 2004 he found a big name, Paul Newman, for her to interview on the Larry King Show as guest presenter.

71. At paragraph 52 of her affidavit of 30 January 2008 the wife says that Larry King intended her to host more shows but the husband "put a stop to my dream of hosting the biggest TV show in the world and what would have been a huge and lucrative career move for me". The wife says that the husband allowed her to do one show but

no more as otherwise she would be a "bad" mother. She told me in evidence that in April 2004 she had been offered a verbal contract to guest present the shows 2 or 3 days per week.

72. The husband's evidence to me was that he had never said that the wife was/would be a bad mother. He told me that she has always been a good mother. The wife told him she had been offered a more permanent job co-hosting the Larry King Show. The husband was sceptical because the wife had received bad reviews for her interview of Paul Newman. However he agreed to go to the US for 3 months to see how things went. He says he believed he owed it to the wife as she had accompanied him on his last US tour. But they were both of the same mind that they, for Beatrice's sake, did not wish to relocate to Los Angeles. Thereafter the wife did not mention the subject again. The wife in her cross-examination did not accept this account.

73. I am prepared to assume in the wife's favour that Larry King did float the idea of the wife doing further interviews on his show. But I doubt it got any further than that. I do not accept the wife's evidence that she was actually offered a contract. The idea was discussed between the wife and the husband. Beatrice was then about 6 months old. This was the wife's first and only child. Her birth must have brought about a change in the outlook of the wife and husband, for the welfare of Beatrice to both of them was, and still is, of the very greatest importance. I think the husband was, very understandably, reluctant about what would have been a relocation to Los Angeles and the likelihood is that he proposed a sort of temporary solution. Thereafter the wife, having no doubt considered it all carefully with Beatrice's welfare in mind, dropped the subject.

74. There are other examples, in my judgment, which, contrary to the wife's case, show that the husband was supportive of, or furthered, the wife's career. In 2005, at a time when the marriage may have been faltering, the wife took part in a mini tour in the USA of public speaking with Smart Talk Women's Lecture Series. Mr Benia, the owner or controlling influence in that organisation, speaks in his statement of 24 November 2006 (which was admitted into evidence on behalf of the wife unchallenged) of the wife's tour being an "outstanding success". However Smart Talk was unable to offer the wife more dates for the 2006 season as Mr Benia found that the wife "was unable to commit in advance to future Smart Talk dates". Mr Benia says that the wife lost a lot of business not just with his, but other, organisations, basically because she was not accessible. He could not get a commitment from the wife for dates nor speedy responses he needed.

75. The wife blames the husband for her failure to commit. He was restrictive and discouraged her. The husband's evidence is that the wife's unreliability was not caused by him. He was unable to explain why the wife did not commit herself when offered dates by Mr Benia. The husband, in my judgment, gave compelling evidence that no-one tells the wife what to do. This accords with his written evidence that the wife is very strong willed. Indeed watching the wife give evidence and present her case she came across to me as strong willed and very determined. I have no doubt that had the wife really wanted to contract for dates through Mr Benia she would have done it and the husband would not have stood in her way.

76. The evidence in relation to McDonald's illustrates much the same story as Smart Talk. The wife and representatives from McDonald's met in late November 2005 and

early 2006 to discuss McDonald's selling vegetarian dishes. McDonald's approached her because of her association with "select animal welfare organisations" (according to the November 2006 statement of Michael Donahue, who at that time was responsible for McDonald's USA external relations as a Vice-President). The wife was being reviewed as a potential partner with McDonald's in this matter. Mr Donahue found her to be "an ideal candidate". However, after several meetings Mr Donahue found that, although the wife illustrated a personal commitment to the project, he and his colleagues often experienced problems due to her "personal inability to be as accessible as was necessary". Arranging meetings became difficult. The whole project then stalled.

77. The husband told me that the wife's association with animal welfare organisations came about because he had long been concerned with animal welfare and had introduced the wife to several such organisations including to VIVA in 2005, which became the wife's main, animal charitable cause. Thus his introductions of the wife to these organisations were, I find, instrumental in McDonald's engaging in serious, business discussions with the wife in late 2005 and early 2006.

78. Again there is a conflict between wife and husband over who is to blame for the stalling of this project. As with Smart Talk, I find that, had the wife really intended to carry the McDonald's project through, she would have done so and would not have taken "no" from the husband for an answer.

79. The wife says that the husband "turned down many opportunities to help my charities" (paragraph 55 of her affidavit of 30 January 2008) and that his "refusal to commit" made any of his appearances on behalf of a charity much less effective. Furthermore (paragraph 56) the husband often promised to make financial contributions to charities but later refused to follow it through.

80. I have to say that the facts as I find them to be do not support the wife's case. Within two months of the parties meeting in May 1999 the husband donated £150,000 to the wife's charity (the Heather Mills Health Trust). In December 2002 and again in December 2003 the husband made a gift of £250,000 outright to the wife, thus plainly giving her the opportunity to make donations to charity. In April 2000 the husband's sister-in-law effectively introduced her to "Adopt a Minefield" ("AAM"). This charity became one of the wife's principle charitable concerns. The wife accepted in her cross-examination that in respect of the husband's direct and indirect contribution to AAM between January 2001 and late 2005 the husband contributed approximately £3,425,000.

81. During his "Back in the World" Tour in 2002 the husband wore T shirts with "No more landmines" on them which raised a further £100,000 for AAM.

82. In February 2003 the husband performed at the 50th birthday party of the husband of the producer of the Larry King Show in return for a donation of $1m from that person to AAM.

83. In the summer of 2005 the husband introduced the wife to VIVA, to where the wife donated her earning from Dancing with the Stars in the spring of 2007.

84. I find that, far from the husband dictating to and restricting the wife's career and charitable activities, he did the exact opposite, as he says. He encouraged it and lent his support, name and reputation to her business and charitable activities. The facts as I find them do not in any way support her claim. "Compensation" therefore does not arise.

85. I now turn to the wife's case of contribution.

86. The husband told me that the wife was a good mother to Beatrice. So far as the future is concerned I find that both parties will look after Beatrice under the shared care arrangements agreed by them last June before the Senior District Judge. i.e. Beatrice's time with each parent is, and will be, split equally. However, Beatrice is now 4. In 10 years time she will be 14 years old, the wife will be 50 years old and the husband 75 years old. When Beatrice achieves adulthood the wife will be 54 years old and the husband 79 years old. In my judgment it is likely that Beatrice, a bright and intelligent child, will go through tertiary education. When she finishes university say at the age of 22, the mother will be 58 years old and the father 83 years old. What I think this means is that, as Beatrice grows up, it is likely that the contribution made by the wife to Beatrice's welfare is likely to become more demanding. The husband will by then be growing older and may look more to the wife to bear the brunt of the emotional and psychological development of Beatrice. The husband, if I may put it like this, may well wish to take things rather more quietly, although I have absolutely no doubt that his love and devotion for Beatrice will be as strong, if not stronger, as it is now.

87. As to the contributions in the past the wife seeks to paint the following picture. She was a good mother, which the husband readily concedes. However, the wife's case is that her contribution throughout the marriage was "exceptional".

88. She undertook the arrangements for furnishing, renovating and maintaining 7 Cavendish Avenue, 41 West 54th Street in New York, 11 Pintail and "Heather House". In respect of the Cabin the construction began in 2002 and was completed in February 2004. The works which the wife says that she arranged are set out in paragraph 90 of her affidavit of 30 January 2008. It was a two bedroom property. In particular it was she who suggested that it should be built in the style of a Norwegian log cabin.

89. It is a central part of her case that she helped the husband to communicate better with his children, particularly Heather. She "counselled" him through his grieving over Linda. She gave him confidence after Linda's death to restart touring. She says she helped him write songs. She suggested that he should have an acrylic finger nail because he had worn down his finger nail of his left hand to the point that it bled. She helped, it is said, with the set design and lighting on his tours. She went on every tour; indeed, she says, he insisted on her coming.

90. The husband went on tour as follows. Between April and May 2002 he undertook 27 concerts in the USA. The wife came to them all. Between September 2002 and October 2002 he undertook 23 concerts in the USA at all of which the wife was present. In November 2002 he undertook 5 concerts at all of which the wife was present. Between March 2003 and 1 June 2003 he undertook 33 concerts i.e. 22 in the USA and 11 in the UK. She attended about 7 in the USA and 10 in the UK. Between

25 May and 26 June he performed 24 concerts in Europe at which the wife was present at the majority. Between September and November 2005 he undertook 39 events at which the wife was present at 15.

91. The wife summed up her contribution at paragraph 145 in this way: "I was his full time wife, mother, lover, confidante, business partner and psychologist".

92. The husband, in my judgment, met this issue, as with the other issues, candidly and honestly. He agreed that the wife together with his family and friends had helped him through his grieving for Linda. He said that for about a year after Linda's death he was in a sad state and that the wife exhibited the normal reactions of any kindly person. He denied he had lost his confidence. Her case that in some way she single-handedly saved him was exaggerated.

93. As to the property renovations the husband said they both made the necessary arrangements and jointly discussed the projects.

94. He denied that she had encouraged him to return to touring. He firmly said that she contributed nothing on the tours. She did not design sets or assist with the lighting. He had a team of specialists for all technical matters. He was shown a DVD where the wife appeared in the credits under "artistic coordination". He said that that was a favour to the wife, a romantic gesture.

95. He agreed she attended many of his concerts because the wife enjoyed being there and loved him.

96. Another DVD was shown in which the wife can be seen photographing the husband and his team on their private plane. She asserted that this was part of her work for the husband. The husband, I thought, in a telling comment, said that the wife liked to be the centre of attention and she enjoyed wielding a camera. He gave her full credit for the idea of the acrylic finger nail which, he told me, was a brilliant idea.

97. In my judgment the picture painted by the husband of the wife's part in his emotional and professional life is much closer to reality than the wife's account. The wife, as the husband said, enjoys being the centre of attention. Her presence on his tours came about because she loved the husband, enjoyed being there and because she thoroughly enjoyed the media and public attention. I am prepared to accept that her presence was emotionally supportive to him but to suggest that in some way she was his "business partner" is, I am sorry to have to say, make-belief.

98. The wife, I find, was fully involved in the planning and construction of the Cabin, which was their matrimonial home. But the picture she describes of being the sole, or virtually the sole, organiser or arranger of renovating etc in the husband's other properties is, I find, exaggerated. I am sure she played a significant part, but it was very much in conjunction with the husband.

99. I have to say that the wife's evidence that in some way she was the husband's "psychologist", even allowing for hyperbole, is typical of her make-belief. I reject her evidence that she, vis-à-vis the husband, was anything more than a kind and loving person who was deeply in love with him, helped him through his grieving and like any new wife tried to integrate into their relationship the children of his former

marriage. I wholly reject her account that she rekindled the husband's professional flame and gave him back his confidence.

100. In any event, in my judgment, what Lord Nicholls of Birkenhead said at paras 66 and 67 of Miller v Miller [2006] UKHL 24, [2006] 2 AC 618 is highly pertinent to this aspect of the case. He said:

> "Contribution
>
> A point of a similar nature concerns the approach to be adopted when evaluating the contributions each party made to the welfare of the family. Apparently, in this post-*White* era there is a growing tendency for parties and their advisers to enter into the minute detail of the parties' married life, with a view to lauding their own contribution and denigrating that of the other party. In the words of Thorpe LJ, the excesses formerly seen in the litigation concerning the claimant's reasonable requirements have now been "transposed into disputed, and often futile, evaluations of the contributions of both of the parties": *Lambert v Lambert* [2003] Fam 103, 117, para 27.
>
> On this I echo the powerful observations of Coleridge J in *G v G (Financial Provision: Equal Division*) [2002] 2 FLR 1143, 1154-1155, paras 33-34. Parties should not seek to promote a case of "special contribution" unless the contribution is so marked that to disregard it would be inequitable. A good reason for departing from equality is not to be found in the minutiae of married life."

101. In her final submissions the wife described her contribution as "exceptional". I reject her case. I am afraid I have to say her case on this issue is devoid of reality. The husband's evidence is far more persuasive.

Assets of the husband

102. I have already set out the husband's background. He is now 65 years old. He is, musically speaking, extraordinarily talented. He composes, sings, and plays musical instruments. He is and has been for many years famous throughout the world.

103. He and Linda based themselves in Peasmarsh in East Sussex. They lived at Blossom Wood Farm house on the estate of 1500 acres. I have seen pictures of it. It is a very modest property. The husband is now based there or at Cavendish Avenue.

104. During his marriage to Linda the husband's wealth was accumulated. By the time he met the wife in 1999 he was fabulously wealthy by even the standards of the very rich. He had accumulated valuable paintings and artwork, and properties in England and the USA. His business enterprises were extensive.

105. In the mid 1960s the husband purchased 7 Cavendish Avenue in London NW8. In 1984 he bought 41 West 54th Street in New York. In December 1998 he purchased the Pintail property on Long Island. He also by 1999 owned properties in Rye,

Somerset, Icklesham, Essex and Merseyside. He also owned extensive Scottish estates. He owned other properties in New York and elsewhere in the USA.

106. After the wife and the husband separated, the husband instructed Ernst and Young LLP to value his business assets at two dates, namely at the date of marriage and at the date of separation. Mr Alan Wallis, a director of Ernst and Young prepared a report of 14 September 2006. This report was exhibited to the husband's Form E of 27 September 2006. The husband's business assets comprise the share capital of MPL Communications Ltd, the share capital of MPL Communications Inc together with their subsidiaries, the equity share capital of MacSolo Ltd, shares in Apple Corps Ltd and other related companies, and certain income streams received by the husband directly. Having conducted an exhaustive enquiry Mr Wallis valued the husband's business interests as at 11 June 2002 and 28 April 2006 at £242,900,000 and £240,900,000 respectively. At paragraph 1.26 of his report he said that between 2002 and 2006 the overall value of his total business assets had increased by £1.9m and, had the dollar not weakened between the valuation dates the overall value of the assets would have increased by £24.5m.

107. I now turn to the husband's Form E which lists his assets, liabilities and income.

108. His real property holdings were put at £33,979,000 according to professional valuations. He held £15,159,000 in bank accounts in the UK and USA. His investments were valued at £34,319,000. He was owed a total of £3,687,000. He held £6000 in cash. Paintings which he had painted, works of art, musical instruments, jewellery, furniture, house contents, motor vehicles and horses were valued professionally at £32,269,000.

109. He disclosed tax liabilities of £9,615,000. He put in as the value of his business interests Mr Wallis' valuation of £240,920,000. His pension assets were valued at £36,288,000. Accordingly he disclosed total net assets of £387,012,000. He disclosed his total net income for the next 12 months at £5,357,000.

110. At paragraph 4:3 he said, inter alia:

> "I made an unmatched and enormous contribution of the great wealth which I brought into this marriage. The very great majority of my assets were owned by me prior to my marriage. The only properties purchased by either of us during the marriage were Thames Reach and Pandora's Barn (albeit for completeness, I made other purchases of parts of property from my late wife's estate). The Cabin was also built during this time. The vast majority of my wealth has been acquired over the last 45 years. Moreover, I did not merge my assets with Heather's upon our marriage nor did I convey them into joint names. I kept them separate throughout.
>
> During the marriage I was the financial provider. I managed to generate a substantial profit from touring, although the great majority of those concerts was the music created during my time with The Beatles and with Wings. More recent income from touring, promotional fees and the like, earned during the

> marriage, is for the most part directly referable to the music I wrote over the previous 45 years. I have also created new work during the marriage which though critically acclaimed, has not been profitable.
>
> I am advised that the court will be interested in the wealth which has been generated during the marriage. To that end I have asked my advisors to prepare a schedule (appended at File A, tab 4) which gives the balances as at June 2002 (our marriage) equivalent to the balances provided within this Form E. I believe the 2002 figures to be accurate although I have not extended an already long Form E with supporting documentation. This, of course, can be made available.
>
> It will be seen that there has been an overall increase in my wealth of £39.6 million. The reasons for this increase are: (a) the money made by my tours and to a lesser extent other projects; and (b) passive growth in the value of my properties, investments and business interests by operation of market forces.
>
> This latter factor accounts for a good part of the increase (say £12 million). It is in no way referable to my endeavours. For instance, in relation to the MPL Group I do not have a day to day executive role in the management of the business; that is left to a professional staff. Of course, I am consulted in key decisions. The Ernst & Young Report makes clear that the revenue of these businesses is largely comprised of collecting copyright income. Indeed, the passive growth in relation to my business would have been greater but for the weakening dollar. This factor has also affected the value of my US properties and investments.
>
> Thus it is my case that the wealth built up during our marriage is approximately £39.6 million. This was the result of market growth in the value of the pre-marital assets, and from tours, where I was mainly performing works created prior to my marriage. As it happens, this analysis is in line with a letter written by me to Heather shortly before our marriage which reflected our belief as to what would be fair were the marriage to fail. A copy of the letter is appended in File VII, tab 4.3"

111. Further, he asserted (and there is no dispute) that he made substantial capital payments to the wife over and above an annual allowance of £360,000 per annum. He lent her monies in respect of his purchase and renovation of Angel's Rest. In 2002 and 2003 he gave her cash totalling £500,000. He lent Fiona Mills £421,000 to buy a property and purchased a house for Sonya Mills for £193,000. In 2005 he purchased jewellery for the wife worth £264,000.

112. He estimated his total expenditure for 2005 at £4,266,173 which is made up of property maintenance and running expenses of £1,786,864, household expenditure of

£271,068, travel expenditure of £284,373, gifts and allowances of £787,884, legal and professional fees of £654,052, donations of £92,463, and personal expenditure of £389,469.

113. On 19 October 2006 the wife's forensic accountants, Lee and Allen, made their preliminary report concerning the husband's business assets. Their report requested the production of further information so that they could check, comment on, differ from, or agree with Ernst and Young's valuations. They further requested a valuation of the husband's business assets as at March 2000, that being the date at which the wife asserted that she and the husband had begun to cohabit.

114. On 2 November 2007 the Senior District Judge disallowed a substantial number of the requests made by Lee and Allen.

115. Ernst and Young's response to the requests for information came in a further report of 31 January 2007.

116. On 22 December 2006 Mishcon de Reya (the wife's former solicitors) put forward the wife's open offer that she would accept £50m. In his open offer of 25 January 2007 the husband offered to pay the wife a lump sum of £16.5m which, together with the wife's assets, would mean her exiting the marriage with about £20m worth of assets.

117. At a hearing on 28 February 2007 Mr Pointer QC, her counsel, sought to persuade me to permit further investigations into the husband's business assets, his personal expenditure, and to obtain further valuations of certain properties. He also submitted that a valuation of the husband's business assets as at March 2000 should be carried out, which Mr Mostyn opposed.

118. In giving judgment I said:

> "Rule 2.6(1) (d) of the Ancillary Relief Rules require the first appointment to be conducted with the object of defining the issues and saving costs. This is so for a number of sensible reasons, including in big money cases. There has been in some cases a marked tendency for the costs to run out of control. The assets in this case are enormous and probably at the very top end of big money cases to come before the Family Division. The wife, in the context of the size of the assets, is asking for a sum which represents approximately 12.5% of them. In my judgment she appears to have had no difficulty in formulating her claim on the basis of the discovery and reports given so far. This, most emphatically, is not a case where the wife can legitimately say, "I cannot formulate my case or make an open offer because the husband has not given sufficient discovery and information". Mr Pointer told me that the husband told the wife in the course of the marriage that he was worth £800 million. I am in no position to judge the accuracy of whether the husband did or did not say that to the wife. But I have seen no evidence to suggest that the husband may be worth more than (very roughly) £400 million, nor that Ernst and Young's assessment of the value of his assets is not very

broadly correct. Mr Pointer beguilingly put it to me that all Lee and Allen were doing – and indeed all that the wife was doing – was seeking a meeting between Lee and Allen and Ernst and Young to see if Ernst and Young were in the right area of £389 million; could there not just be a meeting between the accountants?

The problem to my mind with that approach is that accountants operate on the instructions of their clients, perfectly properly. One party's accountant may make demands which are quite unreasonable, and the other may refuse demands which are quite reasonable. I suspect that any further investigation would lead to confusion, not clarity, and I have no reason to suppose that the broad picture of the husband's vast – I repeat vast – wealth is substantially inaccurate.

The husband can satisfy the award the wife is seeking without any difficulty at all. Mr Mostyn says it is wholly a needs case. Again I cannot now, for obvious reasons, make a finding about that. But there is some truth in what he says. The wife's needs are likely to be the dominating issue at the final hearing. The amount of the assets in this case are so vast that the husband will be able to pay the lump sum awarded to the wife without there having to be a detailed inquiry into the extend of his assets.

I must have regard to proportionality. I am mindful of what Coleridge J said at paragraph 128 of J v V [2004] 1 FLR 1042. In my judgment nothing is going to be gained by permitting any further investigation that Mr Pointer asserted should be done subject to paragraphs 23 to 25 below. As to the properties, what possible difference would it make even if it is demonstrated that the properties the wife wants valued are shown to be by further valuation, say, 20% more valuable than what the husband's valuers have opined?

Mr Pointer very properly sent late yesterday evening to my clerk, with copies to the other counsel, an e-mail that he had omitted to make an important point in relation to the valuation of Peasmarsh. As I understand it, he is saying that it is not a valuation of the whole. What has been done is to parcel up the estate into small lots and value them separately. Accordingly, the wife believes that the estate may have a much greater value were it to be sold as a whole. That may be so; it may not be so. But I am afraid, with all due respect to Mr Pointer's point, it does not affect my judgment.

However, I am of the view that the wife is entitled to investigate the asset position as at March 2000. I cannot just dismiss out of hand the wife's sworn evidence by way of affidavit. It seems that the parties met in mid-June 1999. The

> wife's case is that they were dating from about July 1999 and a sexual relationship rapidly developed. She says that in early March 2000 she gave up her Hampshire property and moved to a property in Sussex to be nearer the husband. They then, according to her, decided to move in together and the relationship developed seamlessly into marriage. That is, broadly speaking, her case.
>
> The husband's case is very different. I have read with care his affidavit. He controverts many of the wife's essential allegations.
>
> I am in no position at the moment to judge which is right. Mr Mostyn asks: "What is the relevance anyway in the context of a short marriage?" I am not prepared at this stage to say it has no relevance. At the end of the final hearing it may turn out to have no impact on the case at all. But, on the other hand, it might significantly affect the amount of the matrimonial acquest. If it does not, or if the exercise of valuing the husband's assets as at March 2000 turns out to have been unnecessary, then, as Mr Pointer put it in paragraph 16 of his skeleton argument, it will be open to the court to say that the husband has been put to unnecessary expense and that the wife should reimburse him. I agree that the wife at this stage is not to be debarred from pursuing her enquiries in respect of what I broadly call March 2000. I will hear counsel in a moment on the form of the order that is necessary to put that decision on the point of principle into practice."

119. Accordingly I ordered that Ernst and Young and Lee and Allen were to produce an agreed report of the value of the husband's business assets as at 1 March 2000, by 14 June 2007, or if agreement could not be reached, a joint report setting out the extent of their agreement or disagreement.

120. The parties must have accepted my rulings because neither, in particular the wife, sought to appeal them.

121. Mr Wallis and Mr Timothy Allen duly completed their joint report. Mr Wallis valued the husband's business interests as at 1 March 2000 at £251,705,000, Mr Allen at £232,077,000, the difference being £19,628,000. Although the value of the husband's business assets as at March 2000 is no longer strictly relevant – given my finding of fact at paragraph 64 above – I shall nevertheless decide this particular issue for the sake of completeness.

122. Both accountants were called to give evidence but only in relation to the valuations of the husband's business interests as at 1 March 2000. Mr Wallis gave evidence first. Mr Allen then gave evidence and was cross-examined by Mr Mostyn.

123. The reason for the difference between the accountants is explained in their joint report and in their evidence by their difference over multiples. Paragraph 2:2 of the joint report says:

> "Mr Wallis has valued the majority of the Petitioner's business assets at 1 March 2000 by the application of a multiple to a five year average of the earnings from the relevant income stream. Different measures of earnings have been used in the valuations, two examples being "Net Publisher's Share" (as defined in Mr Wallis' second report) and royalty income. While Mr Allen agrees the overall valuation methodology used by Mr Wallis, he is unable to agree certain of the multiples used by Mr Wallis in his valuation at 1 March 2000. This is the only area of disagreement between Mr Wallis and Mr Allen. Mr Allen's position in relation to the multiples is explained further in section 3 below."

Paragraphs 3.14 and 3.15 state:

> "Lack of evidence. In Mr Allen's opinion, in order to support the use of higher multiples at the earliest valuation date there is a requirement to demonstrate a significant change in sentiment in relation to music industry related assets over the period to 2002/2006. The later valuations in 2002 and 2006 both use, with one exception, identical multiples. In Mr Allen's opinion, the relevant change in sentiment is not evidenced by the transaction multiples referred to by Mr Wallis in the second report (which, as noted above, all took place after the valuation date). In Mr Allen's opinion, as Mr Wallis has not produced evidence of a consistent downward trend in multiples in the 2000 to 2002/2006 period, the use of higher multiples in the 2000 valuation is not justified.
>
> Conclusion. In Mr Allen's opinion, unless and until further evidence is produced to support the use of higher multiples in the 2000 valuation (when compared with those used in the 2002/2006 valuations), the multiples used in the 2002 valuation should be adopted when valuing the Petitioner's business assets."

124. Having listened to both accountants giving evidence I unhesitatingly accept that of Mr Wallis. I am grateful to Mr Allen for his assistance but on this issue Mr Wallis is in a different league of expertise to Mr Allen. Mr Wallis told me he has 25 years experience in musical and media work. In stark contrast Mr Allen, a forensic accountant mainly concerned with claims for damages and with share valuations, candidly admitted that he had never valued a catalogue.

125. Mr Allen criticised Mr Wallis' lack of research. Mr Wallis had valued on known market transactions after March 2000 and not before in determining his multiples.

126. Mr Wallis in my judgment convincingly answered those points. When he researched the sale of catalogues he looked at transactions around 2002 to 2006. It was clear to him that in March 2000 (the very top of the stock market boom) market sentiment was much stronger. Major music companies shares e.g. EMI, Universal and Sony were trading at 60% higher then than in 2002. The prospects for a digital boom were

thought to be good. But by 2002 and 2006 the sale of CDs were declining, piracy was a real problem, and the rosy prospect of a digital boom had not materialised. He took the same multiples for 2002 and 2006 because the market had recovered somewhat to its 2002 level. He did research for 1999 but could find no relevant market transactions in the public domain.

127. Mr Allen, too, could find no relevant market transactions for 1999. Mr Mostyn took Mr Allen through parts of Mr Wallis' report of September 2006. Mr Allen accepted that he himself had produced nothing to gainsay Mr Wallis' analysis in his (not the joint) report of 14 June 2007. He agreed there had been a change in market sentiment after March 2000. He had done no research into the market situation as at March 2000. Finally, he accepted Mr Wallis' "multiples applied to the business assets at 1 March 2000" as set out in paragraph 3.43, 3.44 and following of Mr Wallis' report of 14 June 2007.

128. During the wife's cross-examination of the husband, she pressed him about the value of his paintings and his collection of paintings and artwork. He accepted that he owned paintings by Picasso, Renoir and other well known painters. He told me he wanted to keep all of his collection as it was very largely acquired before he met the wife.

129. The wife sought to put to the husband in cross-examination a valuation of the husband's art collection dated 6 February 2008 which she had obtained. Mr Mostyn objected, and in my judgment, rightly. No prior permission had been given for the wife to have her own valuation and in any event the valuation was far too late. Nevertheless the wife, no doubt using that report as a basis, sought to suggest to the husband that the total value of the husband's collection of art, including his own paintings, was £70m as opposed to some £25m. The husband disagreed.

130. Furthermore, the wife asserted in her cross-examination of the husband that some 30 paintings done by the husband, which are hanging in Angel's Rest, were given to her by the husband. The husband strongly disagreed. The husband told me that when the wife bought Angel's Rest she had nothing to hang on the walls and so he lent her 30 of his own paintings. He told me they were his, that he may leave them in trust for Beatrice and his other children, and that he wants them back save for the flower photographs and the Isle of Man stamp design, both given to the wife by the husband. The husband, I find, was generous towards the wife but his generosity did not extend to giving her 30 valuable paintings (of his own creation). I accept the husband's evidence. In my judgment he is entitled to have them back.

131. The total value of the husband's assets will of course fluctuate. In particular the value of his business assets will fluctuate according to market sentiment. Although I am told the husband will continue to tour in the future, it is likely that as he gets older he will tour less and less and the income stream from this source will diminish albeit his future earnings will be substantial.

132. It is unnecessary in the instant case to arrive at a precise figure for the total wealth of the husband, given its enormous size. As he has always accepted, he can pay any sum which the court considers appropriate as for financial provision for the wife. Nevertheless I find that the husband's total wealth amounts to approximately £400m.

I reject the wife's case that he is worth £800m. There is absolutely no evidence at all to support that figure or any figure anywhere near it.

Wife's Assets

133. In my judgment, before I come to determine the nature and extent of the wife's assets, it is important to note that their source is very largely as a result of the husband's generosity towards her. Let me explain.

134. In her Form E of 28 September 2006 the wife sets out all her assets and liabilities. She had two properties, Pandora's Barn (net equity of £533,500) and Angel's Rest (net equity put at £1,067,000), bank balances at £1,198,679, monies owed to her of £22,400 and cash of £4,902. She had pension assets of £30,965. Her liabilities were said to be £4,842 on credit cards. Her net assets were thus put at £2,852,604.

135. As to Angel's Rest, the wife obtained a loan from the husband, as I have set out, in order to buy it. She later discharged part of the loan by the sale of Cross Street, and her monthly payments. MPL (at the husband's instigation) waived the balance of roughly 50% of the total loan.

136. As to Pandora's Barn, it is first necessary to look at the purchase on 17 May 2004 by the wife of a property at Thames Reach for £450,000.

137. That (office) property was purchased using funds from the NatWest savings account of the wife into which had been fed the husband's gifts to the wife of £250,000 in December 2002 and again in December 2003.

138. In about May 2006 the wife sold that property to the husband for £560,000 and purchased Pandora's Barn for £550,000.

139. On 2 November 2005 the wife e-mailed Mr Paul Winn, MPL's finance director, in respect of the property at Thames Reach that "the amount outstanding on the mortgage is £480,000" and "please pay it in the following account and I will deal with the closure of it". The account was a NatWest bank account in the name of the wife. On 5 November the wife e-mailed Mr Winn that "there are 4 loans with different companies on the property totalling £480,000 …". Mr Winn pressed for full details on each loan. In February 2006 the wife again e-mailed Mr Winn about the loans and on 28 February instructed him to pay £450,000 into her account "so that I can settle this situation". On 1 March Mr Winn told the wife in an e-mail that he would not pay any sum "without proof that the loans exist or some protection secured on the property at Thames Reach".

140. In her Replies to Questionnaire dated 6 February 2007, in response to a question to annotate the wife's bank accounts showing discharge of the 4 loans and indicating the recipient of each payment, it was said "the wife did not have any loans".

141. The wife in her cross-examination accepted that Thames Reach was bought mortgage free and never had a mortgage on it. But she said that at the time of the e-mails referred to above she believed that there were loans secured on the property.

142. Mr Mostyn put to her that that was a fraudulent attempt to extract money from the husband.

143. In my judgment it is unnecessary to go so far as to characterise what the wife attempted as fraudulent. However, it is not an episode that does her any credit whatsoever. Either she knew or must have known that there were no loans on Thames Reach, yet she tried to suggest that there were and thereby obtain monies by underhand means.

144. Her attempts when cross-examined to suggest that she may have got in a muddle and confused this property with others, to my mind, had a hollow ring. In the light of the husband's generosity towards her, as I have set out, I find the wife's behaviour distinctly distasteful. In any event, as Mr Mostyn rightly submitted, it damages her overall credibility.

145. Between the filing of her Form E and the final hearing in February 2008 the wife's assets changed and increased. The wife received a total allowance of £180,000 in March 2007. On 1 March 2007 the husband agreed to pay to the wife £2.5m as an interim lump sum. In June 2007 the husband paid £3m towards the cost of the purchase of the wife's home at Pean's Wood near Robertsbridge.

146. The preamble to the order of 1 March 2007 made it clear that the sum for £2.5m was "on account of the wife's claims" and was made "without prejudice to each party's contentions as to the reasonable level of the wife's expenditure pending trial of her claims for ancillary relief." It was further agreed that upon payment of the £2.5m (in fact paid by 1 April 2007) the husband would cease paying the wife the allowance of £360,000 p.a. and any other expenses. The husband was to continue to pay Beatrice's school fees. There was thus no order on the wife's claim for maintenance pending suit.

147. As to the purchase of Pean's Wood, on 14 June 2007 Mishcon de Reya wrote to Payne Hicks Beach that the wife had found a suitable property near Vinehall Preparatory School, to which Beatrice was to return. The wife's solicitors wrote:

> "The property is suitable for the following reasons:
>
> a) It is 10 minutes from Vinehall school;
>
> b) It is in a village in which our client has a friend, which makes the prospect of our client moving to this area significantly more attractive to her, for obvious reasons;
>
> c) It is 5 minutes from a railway station, providing easy access to London;
>
> d) It is contained within 14 acres and can provide vital privacy and security for Beatrice. Unless one is lucky enough to live on a private estate running to hundred of acres, such as your client, this kind of privacy can be extremely difficult to achieve;

> e) It is available almost immediately. Our client estimates she would be able to move in prior to the start of the Autumn term, having done some work to it over the Summer; and
>
> f) Finally, and most importantly, this is a house which our client feels confident she could make into a warm and comfortable home for Beatrice."

148. The agents' property particulars state that it is a property built in the early 20th century standing in 14 acres. It is a 7 bedroom property with a playroom, gymnasium, laundry and self contained staff cottage.

149. On 15 June 2007 the husband's solicitors replied as follows:

> "We can also confirm that our client is willing to make the sum of up to £3 million immediately available for the purchase of Pean's Wood, (to be paid directly to the solicitors instructed by your client in relation to the purchase) if that is your client's chosen property.
>
> As to this, we would make the following points:
>
> i) Our client appreciates your client's willingness to move to the area.
>
> ii) The payment is a further payment on account of your client's ultimate financial award. There is no question of it being 'in addition' to any overall financial settlement.
>
> iii) Our client is willing to make such an advance for any reasonable property within range of Vinehall, but it goes without saying that such an advance would only be made in relation to a property that met those criteria.
>
> iv) In making a payment of this size our client is prioritising the benefits of agreement for Beatrice. He is not to be taken as accepting that a property on the scale of Pean's Wood with its associated outgoings, is necessary or desirable. He produced examples of properties that are available for under £2 million which are more in line with the sort of places that Beatrice is used to. Your client should not be surprised that it will be argued in the financial proceedings that a property of the scale of Pean's Wood will constitute your client's main home. Whilst of course your client cannot be compelled to sell her Brighton property, it will be treated as her capital resource and not form part of her housing requirements or income needs in terms of its running costs; further the running costs of "Pean's Wood" in so far (by way of example) as its extensive grounds, equestrian facilities and out buildings are concerned will similarly not be accepted as forming part of your client's needs going forward.
>
> v) With that in mind, the sum he will provide covers most but not all of the costs of purchase and associated expenses of this particular property. If your client wishes to purchase a property in this bracket, she has the wherewithal to make up the balance."

150. Accordingly the husband made £3m available to the wife who purchased Pean's Wood.

151. On 20 December 2007 Coleridge J ordered the wife to provide by 10 January 2008 documentation and information necessary for an analysis to be made of the change in her bank balances and the use to which she had put her interim lump sum.

152. The husband's legal advisers have subjected that documentation and information to rigorous scrutiny, which scrutiny, I am satisfied, is accurate. In her Form E the wife disclosed £1,198,682 in bank accounts. Her receipts from October 2006 to December 2007 were £4,735,581, which included £2,500,000 interim lump sum, £180,000 allowance for March 2007, and the sale of Pandora's Barn at £620,000 and deposit interest of £56,318. It is also included US dollar receipts (which have been converted into sterling), i.e. her fees from "Dancing with the Stars" of £109,322, Warner Bros expenses £14,330 and deposit interest of £47,366. Her receipts do not include the £3m made available by the husband for the purchase of Pean's Wood.

153. Her expenditure from October 2006 to December 2007 totalled £3,715,683 made up as to £2,996,159 personal expenditure, £682,425 business expenditure, and £37,099 cash expenditure. Within the figure for personal expenditure is the payment of her legal fees of £1.003m as annotated by her on her bank statements and by the information she provided.

154. Taking into account an estimated exchange rate adjustment the wife's bank balances as at December 2007 should have stood at £968,880. In fact they stood at £913,596, an unexplained difference of £55,284.

155. Thus, it can be seen that the wife's actual assets are now Pean's Wood £3,675,000 (the wife has spent £675,000 on refurbishment; the vendor's mortgage of £250,000 has been deducted), Angel's Rest £2m (professionally valued in January 2008), bank balances of £913,596, £683,000 represented by the agreed transfer to be made to the wife by the husband of Sonya Mills' house and the mortgage on Fiona Mills' house, and the wife's pension assets of £30,965. The total is £7,302,561.

156. On 11 October 2007 the wife's solicitors estimated that her ancillary relief costs to that date totalled £822,741 of which she had paid £565,000. On 11 October 2007 the wife's solicitors stated that in relation to the divorce suit her total bill was £327,406, of which she had paid £220,947. Thus upon that information it could be said that the wife is indebted to her former solicitors in the sum of £364,200.

157. However in her January 2008 affidavit she deposed that her former solicitors had overcharged her by £250,000. She has disputed the final invoice of £117,548 which is being reviewed by a costs draughtsman.

158. It is, I am afraid, unclear, whether the wife owes Mishcon de Reya or they owe her as a result of overcharging.

159. Mr Mostyn submits that a figure of £1,666,059 should be added back into the wife's assets as representing reckless expenditure during the ancillary relief proceedings. For the principle of adding back he relies upon what I said at paragraph 77 of my judgment in Norris v Norris [2003] 1 FLR 1142:

> "The overspend, i.e. the expenditure over income of £350,000 in a little over 2 years, at a time when he was about to and then did enter into protracted litigation with the wife, can only be classified as reckless, and particularly as a time later on when the dot.com and the stock market collapsed. A modest overspend in the context of a rich man would be understandable and could not be classified as reckless. But in the circumstances of this case, as I have set them out, in my judgment, the scale and extent of the overspend was reckless. I do not think it appropriate to add back the entire overspend, but I do not consider it unfair to add back into the husband's assets the figure of £250,000. In my judgement, there is no answer that the husband can sensibly give to the question, 'Why should the wife be disadvantaged in the split of the assets by the husband's reckless expenditure?' A spouse can, of course, spend his or her money as he or she chooses, but it is only fair to add back into that spouse's assets the amount by which he or she recklessly depletes the assets and thus potentially disadvantages the other spouse within ancillary relief proceedings."

160. What I said in Norris should now be read in the light of what Wilson LJ said at paragraph 14 of his judgment in Vaughan v Vaughan [2007] EWCA Civ 1085, a case which involved dissipation:

> "Such was a rare legal error on the part of the district judge. Miss Ward tells us that it was curious that he should refer to an absence of legal principles in that she and counsel for the husband had referred him to a recent example of such re-attribution, namely Norris v Norris [2003] 1 FLR 1142. Although such a decision was at first instance, it is the last in a line of authority which stretches back to the decision of this court in Martin v Martin [1976] Fam 335 that, in the words of Cairns LJ at 342H,
>
> > "a spouse cannot be allowed to fritter away the assets by extravagant living or reckless expenditure and then to claim as great a share of what was left as he would have been entitled to if he had behaved reasonably"
>
> The only obvious caveats are that a notional re-attribution has to be conducted very cautiously, by reference only to clear evidence of dissipation (in which there is a wanton element) and that the figure does not extend to treatment of the sums re-attributed to a spouse as cash which he can deploy in meeting his needs, for example in the purchase of accommodation….."

161. Mr Mostyn submitted that a reasonable rate of expenditure by the wife in the 15 months period October 2006 to December 2007 would be at an annual rate of £470,000 plus £150,000 for security. i.e. a total annual rate of £620,000 which corresponds to £775,000 for the actual 15 month period.

162. The wife's total expenditure in the 15 month period was £3,715,683. If legal and forensic accountancy fees of £1,003,313 and £675,000 of property refurbishment are stripped out then the wife has spent in the 15 months period £2,037,376 on herself. Then if £775,000 is deducted from that, it is submitted that the wife has overspent by £1,262,376 in that period.

163. It is further submitted that of the wife's divorce costs £250,000 should be added back on the basis that it was quite unnecessary expenditure and, if not added back, would in effect mean that the husband was paying part of the wife's costs.

164. As to that particular submission, I reject it. It is unjustifiable for me to start to determine who did or did not behave "reasonably" at any time during the divorce suit. The fact is that the wife enjoyed the services of a top ranking London firm, as did the husband. In my judgment this item does not fall within the heading of reckless expenditure.

165. It is also submitted that the costs of Mr Wallis (£133,683) and of Mr Allen (estimated at £20,000) in carrying out the work necessary to value the husband's business assets as at March 2000 should be added back into the wife's assets as they have been shown to be "futile" expenditure. This, to my mind, is a matter of costs to be determined after this judgment has been handed down. I therefore at this stage decline to add back into the wife's assets any of these figures.

166. That then leaves me to determine whether to add back into the wife's assets £1,262,376, or a lesser figure, or no figure at all.

167. In my judgment the wife's attitude in her Form E, her open offers, her oral and written evidence, and her submissions is that she is entitled for the indefinite future, if not for the whole of her life, to live at the same "rate" as the husband and to be kept in the style to which she perceives she was accustomed during the marriage. Although she strongly denied it her case boils down to the syndrome of "me, too" or "if he has it, I want it too". I shall say more about this when I consider what are the wife's needs.

168. It must have been absolutely plain to the wife after separation that it was wholly unrealistic to expect to go on living at the rate at which she perceived she was living.

169. The wife points to the husband's vast wealth including a very diverse portfolio of valuable properties, and to his expenditure in 2005, set out in the husband's Form E. I shall return to that when I consider needs. But none of this, in my judgment, in the circumstances of this case can found a reasonable expectation that the lifestyle the wife perceived she enjoyed during the marriage could or should continue after its breakdown in April 2006.

170. It is appropriate that at this stage in the judgment I should assess the parties' **standard of living** during the marriage.

171. The words of Baroness Hale of Richmond in Miller v Miller [2006] UKHL 24, [2006] 2 AC 618, at paragraph 158 are very appropriate:

> "Even without the former statutory objective, the court has to take some account of the standard of living enjoyed during the

> marriage – see section 25(2) (c). The provision should enable a gentle transition from that standard to the standard that she could expect as a self-sufficient woman."

The House of Lords' decision in that case was handed down on 24 May 2006.

172. For 10 months of the near 4 year marriage the husband was touring. This entailed first class international travel, first class hotels, and internal private flights. The husband and wife went on expensive and sometimes exotic holidays. They lived well. They often flew by private jet and /or helicopter. They always flew first class if flying with a commercial airline. The wife had an allowance of £360,000 p.a. The husband paid all the major bills. But that said, their lifestyle in their homes, particularly in England, was comparatively simple. The Cabin was a very modest property. They largely stayed in and did not eat out. They enjoyed riding and yoga. There was no round the clock security. The security in Sussex was provided by the farm workers. There was no live-in staff. The parties did not spend their time on yachts or, in the memorable phrase of the celebrated economist, Prof. J.K.Galbraith, on "conspicuous consumption". They spent time in New York and at 11, Pintail, a modest holiday home. They never visited the Scottish properties.

173. I am satisfied that the wife has expected, and unreasonably, that such a lifestyle would not only continue but was her entitlement. She did not moderate her spending after separation. I entirely accept that when a marriage breaks down, the maelstrom of a broken relationship may well envelop both spouses and make it very difficult for them to re-order their lives, particularly financial. But I have no doubt that in the wife's mindset, there was an element that she was going to spend (in the 15 month period) in order thereby to hope to prove that a budget in excess of £3m p.a. put forward in her Form E in September 2006 was justifiable.

174. The figure of £1,221,672 is broken down as follows:

	£
Security	162,362
[Note – the rate in excess of £150,000 p.a. which the husband asserts is reasonable]	
Charter planes	184,463
Charitable donations	101,281
London property rental	56,141
[Note – this was separately provided by the husband]	
Loans	20,000
Cash gifts	15,000
All business expenses	682,425

175. The "business" expenses generated, so far as I can see, no income other than the £110,000 fee for Dancing with the Stars. Within the business expenses is £427,590 paid as salaries and fees to various people including Fiona Mills and the wife's personal trainer.

176. The personal expenditure included £349,862 allegedly paid on security. No invoices were ever produced, despite repeated request of the wife during the final hearing and despite promises by her to bring them. The wife explained in her cross-examination that she was paying for her security in cash "so Paul can't find out who they are". However she said that she would allow me to see the invoices. She told me that she was afraid that if the husband saw the invoices he would leak details of the security arrangements for her and Beatrice. Nevertheless she told me she would produce the invoices to me. She never did. Thus, although she has annotated her bank statements identifying the items which she says are payments for security, not one single invoice or receipt has been produced to verify those payments.

177. The wife is very concerned about security. In December 2006 the police were concerned about death threats against her. Furthermore, it is apparent from DVDs shown to me by the wife that she loathes the paparazzi and engaged security men to try to protect her from them. I accept that the wife has spent sums on security but I am not satisfied that she has in fact spent nearly £350,000 in security in the 15 months period. I consider her reason for her unwillingness for the husband to see any invoices is a smokescreen to seek to try and explain away her failure to produce them. I reject completely the suggestion that the husband would in some way jeopardise the security of the wife and Beatrice.

178. I also detect symptoms of other, unreasonable expenditure to some extent in chartering planes which include helicopters.

179. I decline to add back the full figure put forward by Mr Mostyn. As I have said, financial adjustment consequent on the breakdown of a marriage is difficult even traumatic. Doing the best I can, I consider that I should add back into the wife's assets a figure of £500,000 to represent completely unreasonable expenditure over the 15 month period.

180. Thus the wife's total assets are £7,802,561.

Wife's Capital Needs

181. The wife's aspiration, as per her open offer, is to own, in addition to Pean's Wood and Angel's Reach, the properties at "Heather House" in Los Angeles, 11 Pintail on Long Island, and to be given funds between £8m and £12.5m to purchase a home in London, about £3m to purchase a New York City property, and funds of between £500,000 to £750,000 to purchase an office in London or Brighton.

182. Her case is that there should not be such a disparity between her lifestyle and that of the husband such as could or might impact upon Beatrice. She seeks to contrast her, reasonable she would say, demands with the large and diverse property holdings of the husband. She is deeply involved in charitable work and needs an office from which to conduct her charitable, as well as business, activities.

183. In my judgment, her case overlooks the fact that all of the husband's properties were acquired before their marriage, in some cases long before, with the exception of "Heather House". If the wife was being truthful in her evidence to the Senior District Judge in June 2007 (which I assume she was) – see paragraph 192 below - she will not be working in Los Angeles (or indeed the USA) and thus has no need of a home there. So far as an office is concerned, there is plenty of room for one in the spacious property at Pean's Wood. I see no justification whatever for homes on Long Island or in New York City.

184. The wife and Beatrice are well housed at Pean's Wood; indeed the husband would say over housed compared to his home, Blossom Wood, on his Peasmarsh estate, or the Cabin (which was demolished because no planning permission had been obtained). But Mr Mostyn made clear that Pean's Wood is not to be taken as an excessive purchase. I am satisfied that the wife chose that house freely and in the knowledge that that was to be her and, when Beatrice was with her, Beatrice's home for the foreseeable future. The wife now says she feels a prisoner there, as she put it, in the middle of nowhere. I find that inconsistent with her having already spent on it £675,000 and wanting another £400,000 to put in a swimming-pool.

185. The wife wishes to have funds to acquire a London property, indeed a substantial London property of in excess of £8m. Mr Mostyn submitted that whether the wife was entitled to a "second property" was a "matter for debate". However, if contrary to his submission, she should, nevertheless he submitted that any London property should be conservative and manageable, that any such property will be "particularly susceptible to the argument that it may be folded into the wife's income fund in years to come, per Flick, as being beyond the wife's strict need", and that such an acquisition carries with it an implication as to her earning capacity i.e. that it will be used to further her career opportunities.

186. In my judgment, it is important for the wife that she is assisted to recover and thereafter develop her earning capacity. I doubt that that will happen solely from Pean's Wood. It is much more likely to happen if the wife has a property in London. But, in my judgment, it is reasonable for that to be in the nature of a spacious flat with a minimum of 3 bedrooms. I have seen agents' particulars of properties put forward by the husband for properties of £2m or less. The wife did not like them because they are not on a par with Cavendish. I agree they are not. But a flat costing £2.5m inclusive of stamp duty and legal fees and furnishing seems to me to be reasonable. If, of course, the wife wishes to purchase something more expensive then she can sell Angel's Rest which would raise another £2m. Alternatively, Pean's Wood and/or Angel's Rest would provide sufficient security to raise further monies to buy a more expensive London property.

187. Thus I conclude she needs £2.5m to buy a London property. If the wife's aspiration is limited to a London property costing £2.5m in my judgment she should be able to keep Angel's Rest and not, as Mr Mostyn, submitted, have it treated as part of her "Duxbury" fund. Such a submission gives every suggestion that the husband wishes to be mean-minded, which, having seen the husband in the witness-box, I do not believe him to be. I am satisfied that Angel's Rest does mean much to the wife and she and Beatrice can enjoy time there together as they have in the past.

Disability of the wife

188. As I have said, in 1993 the wife suffered severe injuries to her left leg and other injuries. I am satisfied that periodically the wife may need to undergo revision amputations. But there is no evidence before me to support that such revisions will involve amputating her left leg above her knee. Her injuries have not affected her modelling or public speaking. She is able to ride, ski, and dance. In 2007 she entered in the USA "Dancing with the Stars" (the equivalent of "Strictly Come Dancing") and earned $200,000 before being eliminated. Her disability will not affect her capacity to care for Beatrice or her earning capacity in the future.

Wife's Earning Capacity

189. The wife's case is that her earning capacity is now zero. The wife, as I have said, blames the husband for his attitude towards her working during the marriage. That I have found to be a false case. As to her earning capacity in the future the wife seeks to explain her position in paragraph 70 of her January 2008 affidavit. Her career has been ruined, she says, by bad publicity. She has received no offers of work in the UK and worked only once in the USA in 2007 (Dancing with the Stars). She is unable to accept offers of work in the USA due to her commitments to Beatrice. She says that she does not believe that she will be able to revive her career at any time in the foreseeable future.

190. In her evidence the wife told me she had looked for other work since April 2006. She has tried to do speeches but had been vilified and she cannot get work.

191. I accept that since April 2006 the wife has had a bad press. She is entitled to feel that she has been ridiculed even vilified. To some extent she is her own worst enemy. She has an explosive and volatile character. She cannot have done herself any good in the eyes of potential purchasers of her services as a TV presenter, public speaker and a model, by her outbursts in her TV interviews in October and November 2007. Nevertheless the fact is that at present she is at a disadvantage.

192. The wife would say she is at a severe disadvantage. I think she overplays her hand. First, she was able to secure in the spring of 2007 a valuable contract, Dancing with the Stars, from which she received £110,000 for 2 months work. Second, in June 2007 she gave the following evidence to the Senior District Judge when being cross examined by Mr Peter Jackson QC for the husband.

> "Q: Let me take it then that you are not going to be thinking of moving to Slovenia with Beatrice? A: I am not thinking of moving anywhere and there are 20 statements live on TV shows to promote Dancing with the Stars - - -
>
> Q: It will help us - - - A: - - saying I will never move abroad, I will never live abroad, because I want to keep my daughter near her father. I am renowned for saying that, and to suggest anything else is just speculation on what Paul or the press have put together. Live, I have been asked it a million times and I have said I will never move abroad. I want Beatrice to be near her father - - - -

> Q: So we can ignore any thought that you might want to take Beatrice to Los Angeles or any other part of the United States or anywhere - - - A: 100%. 100%. I have turned down huge amounts of work. This Dancing with the Stars was a one-off short thing that Judge Waller knew everything about in the last case and is not a tour, is not anything. It had cleared my name- - -"

193. Her evidence there that she had turned down huge amounts of work is quite inconsistent with her assertion that her earning capacity is zero.

194. Third, during the hearing before me the wife was asked and agreed to produce a schedule of all offers of work from the US since separation. She produced no schedule or list.

195. However, she did produce some documents which however did not lead me really anywhere. She produced her contract in relation to Dancing with the Stars. She donated £50,000 of her receipts to VIVA. She produced a document from 44 Blue Productions of the William Morris Agency re possible project opportunities. She also produced a letter of 2 November 2006 from Ed Hardy of Nervous Tattoo of an unsigned contract to model for a period of 10 months at a monthly fee of US $10,000. The evidence is unclear whether she ever in fact contracted and worked for Ed Hardy.

196. I have no doubt that, despite the very adverse publicity in the last 2 years or a little under, the wife does have an earning capacity. She has earned her living since the age of 17. I have found that her association with the husband advanced, not stultified, her career. If in the future she is circumspect about engaging with the media and/or adopts an emollient and less confrontational attitude to it, I think that the negative interest shown towards her will indeed subside. She has the ability and experience in TV production and film making, other than as a role as a presenter. She can in time continue as a model. It may be that interest in her as a public speaker has very much waned and is unlikely to be revived. Her opportunity to market a book about herself is probably at an end other than as a "kiss and tell all" book, which she told me she has no wish to do and in any event might well place her in breach of the confidentiality of these proceedings and of those concerning Beatrice. She is currently undertaking a part-time course at UCL in nutrition.

197. She will take a little time to recover to a full earning capacity. Mr Mostyn has suggested a year. I consider that to be optimistic. Two years is more likely.

198. Mr Mostyn has suggested that I should take a figure of £110,000 p.a. gross which is not far off the mid point between her gross and net earnings of the tax year ended 5 April 2006. But that, of course, was when she was still in a relationship with the husband and thus earned at a time when she was benefiting from being his wife.

199. I think the right figure is £75,000 p.a. gross to be taken into account two years from now.

Wife's Income Needs

200. The wife's claimed budget of income needs is set out within a report dated 28 September 2006 of Lee and Allen which is annexed to the wife's Form E. However the fact the report comes from a chartered accountant does not, as indeed the wife recognised, cloak her budget with any real legitimacy. As I understand it, Mr Allen was merely assisting the wife in constructing a budget based upon her instructions and assumptions. The wife did not call Mr Allen to give evidence in relation to her budget.

201. The husband called a chartered accountant, Mr Hobbs to give evidence about the wife's income needs. He made a report of 4 October 2007. Coleridge J on 20 December 2007 gave leave for this evidence to be given.

202. I am not going to go through his report or his evidence in any detail. It was of limited assistance. As the wife, with the assistance of Mr Allen sitting beside her, made clear to Mr Hobbs' in his cross-examination, his evidence was based on 6 (unidentified, except one) cases in which he had seen "aspirational" budgets. The assets in each of the 6 cases exceeded £100m.

203. Mr Hobbs accepted that in 12 years of practice he had never had to undertake an exercise into what constituted reasonable income needs. He had never before been asked to construct a budget.

204. That said, there are elements in his evidence and report which were of assistance, e.g. housing costs, airfares, rental of holiday homes and other similar information.

205. Mr Mostyn, basing himself on Mr Hobbs, submits that a fair budget for the wife would be £430,000 p.a. exclusive of security, of Beatrice's periodical payments and of the nanny.

206. The wife's budget is in the total figure of £3.25m p.a. The wife has stuck to that in her Form E, her open offers, her oral and written evidence and in her submissions to me. In her open offers she agreed to accept a lump sum of £50m. But this "concession" (as it was expressed to me) graphically illustrates the sheer unreasonableness of the demand for £3.25m p.a. From the very first open offer on behalf of the wife on 22 December 2006 the needs of the wife and Beatrice have been put at £3.25m p.a. which after the application of capitalisation through a Duxbury calculation would entail a payment of £99,480,000. To that is to be added (I quote from the wife's former solicitors' letter of 22 December 2006) "a significant monetary value on the compensation, contribution and conduct elements of our client's claim (running into millions of pounds)." The letter continued: "… However, in the interests of bringing matters to an expedient close, and avoiding the escalating costs being incurred by both parties, our client will accept a lump sum of £50 million, in full and final settlement of all her claims".

207. The claim and the offer are to be found repeated in Mr Pointer's note for the First Appointment in late February 2007, in his note for the FDR in October 2007, and in the wife's own, open letter of 31 January 2008 (but without any reference to accepting £50m.) It should be said that Mr Pointer's note for the FDR contains nothing of a "without prejudice" nature and was included in the bundles before me with the

express agreement of the wife and husband to assist me to see how Mr Pointer might have formulated the wife's case, had the wife been legally represented at the final hearing.

208. Thus the totality of the wife's claim is of the order of £125m i.e. including the capitalised income fund together with properties and/or funds to acquire properties.

209. Nevertheless, as I have said, the wife is (or at least was) prepared to accept £50m in lieu of a claim for £125m. That, in my judgment, can mean only one of two things; either the claim by the wife for £125m is a reasonable claim, in which case the enormous drop of £75m to £50m is inexplicable, or, the claim for £125m is and was unreasonable, indeed exorbitant.

210. If, broadly speaking, within the offer of £50m is a Duxbury capitalisation of £44.5m (i.e. a straight, amortised capitalisation with no Flick steps), then such a capitalised figure could produce for the wife an annual income of £1,500,000. Thus it can be seen that the wife, in her own, open offers was prepared to forego £1.75m of annual income, no doubt in the belief that she would thereby have secured a fair deal which would provide her with a very comfortable, indeed very affluent, lifestyle. To continue to seek for £3.25m p.a. would suggest that the wife continues to press an exorbitant claim.

211. I shall now analyse the wife's budget.

212. It is based on a number of matters. She claims for seven fully staffed properties with full-time housekeepers in the annual sum of £645,000. She claims holiday expenditure of £499,000 p.a. (including private and helicopter flights of £185,000), £125,000 p.a. for her clothes, £30,000 p.a. for equestrian activities (she no longer rides), £39,000 p.a. for wine (she does not drink alcohol), £43,000 p.a. for a driver, £20,000 p.a. for a carer, and professional fees of £190,000 p.a. All these items Mr Mostyn submits are theoretically recognised heads of expenditure but "extraordinarily exaggerated".

213. He, next, submits that the following items are not only hugely exaggerated but also impermissible in principle. They are £542,000 p.a. for security, £627,000 p.a. for charitable donations, £73,000 p.a. for the cost of business staff and £39,000 p.a. for helicopter hospital flights.

214. Mr Mostyn submits that the wife seeks not merely to replicate the marital standard of living for life but also to enhance it. He submits that in a short marriage case it is legitimate to look at the claimant's needs more conservatively than in a long marriage, because the standard of living which has a bearing on the assessment of need will have been enjoyed for a shorter period. After a marriage lasting just under 4 years Mr Mostyn submits that it is unreasonable for the wife to assert that the marital standard of living should be reproduced for her lifetime. Mr Mostyn draws comfort from a similar observation by Coleridge J in the directions hearing on 20 December 2007.

215. The wife, as I understand her case, says that far from replicating the marital standard of living, she is taking a reduction. The wife would contrast her budget with the very high standard of living they enjoyed during the marriage. As the wife states in her final submissions:

> "I have based my claim on reasonable needs that I was accustomed to, before and during the marriage"

216. In the husband's Form E an analysis and breakdown of the husband's expenditure in 2005 was carried out. It totalled £4,266,173. It is apparent that £1,786,864 went on maintaining his properties in the UK and the USA, all of which (save for "Heather House" and the Cabin) were purchased before the parties' relationship began, indeed well before. A distinction is also sought to be drawn between what is said to be "infrastructural" and "discretionary" expenditure (see paragraph 3.1.1 of the Form E), as the properties were acquired during his marriage to Linda, and since he has not and will not dispose of them. Thus the cost of running these properties was in place before, indeed well before either the beginning of the relationship in 1999 or the marriage. Infrastructural costs overall are put at £3.7m and the discretionary spend was £549,000. It is submitted that it is neither fair nor necessary for the husband to have to dismantle the infrastructure within the context of the breakdown of the marriage. The cost of running the husband's properties and meeting other obligations is a guide of limited value to the computation of the wife's needs.

217. I consider there is some foundation for this submission, in particular that the properties were acquired before the relationship. Although I agree that the husband's expenditure in 2005 is of limited value when assessing the wife's needs, his expenditure cannot just be ignored, whether infrastructural or discretionary. I have to look at the broad picture.

218. One of the largest items in the wife's budget is security in the sum of £367,000 for the wife and £175,000 for Beatrice i.e. a total of £542,000.

219. The wife professes extreme concern for the safety and well-being of herself and Beatrice. She wants round the clock security including bodyguards for herself and Beatrice. She showed me a DVD of at least one paparazzi following her car in Brighton. It is correct that in December 2006 death threats were made against her but there is no evidence that there have been any such threats since. The wife told me in evidence that she has received abuse and nasty messages on her website. She says she is concerned by "crazy fans". She told me she wants security "until she is an old lady".

220. However her evidence on this contentious issue is at variance with the evidence she put before the Senior District Judge in March 2007. On 6 March in her evidence to the Senior District Judge she said:

> "Our life in Brighton is really beginning to shape in Brighton …. I am so much happier now with life since the tabloid press have slowly begun to lay off me. Yes, there are a few stories here and there; and yes, a few paparazzi still follow me around, but I expect this to pass and I am feeling very positive about our future"

221. Of course, a year has passed since then. She unwisely gave interviews in October and November 2007 which may have produced intrusion into her life by the media. But that was very largely self-inflicted.

222. The husband's evidence on security generally was to this effect. In 2005 he spent £125,908 and £36,264 on security in the UK and the USA respectively. The wife's claim re security is predominantly bound up with her relationship with the paparazzi. At paragraph 16 and 17 of his affidavit of 22 February 2007 (sworn for the maintenance pending suit hearing) he said:

> "Before Heather and I were married I had a fairly limited and low key security presence (unless I was on tour, which creates a very different set of circumstances). There were never any bodyguards at Peasmarsh. The general farm employees kept a look-out for anything suspicious. There was virtually no security at Cavendish Avenue. At the office complex in New York there would be one guard on the door given the location of the office in mid-town Manhattan. There was an off duty police officer who provided night cover when I was at Long island, and on trips to and from the airport. There was no permanent close protection during this period unless I was on tour or attending high profile events. This was how I had lived with my first wife and our four children.
>
> There were no real changes after Heather and I married until Beatrice was born. However Heather then began demanding, increasingly stridently, far more "security" to protect her from what she viewed as Press intrusion. She did not suggest that she needed security for her or Beatrice's personal safety. Rather her aim was to erect a barrier between her and the photographers. Accordingly, whilst there was no security at the Cabin over and above the presence of farm hands, security was increased when we were at Cavendish Avenue, and was increased when we went to my American properties. I must stress that I believe there was no need for this increase other than Heather's insistence. Indeed, I have reverted to my former pattern of security in recent months."

223. At paragraphs 20 and 21 he said:

> "Since the summer, I have, to my great relief been able to revert to the security arrangements which were in force for most of my "celebrity" life before late 2003, when Beatrice was born and when Heather began her campaign to increase security. I now only have semi-permanent security cover at my Peasmarsh Estate. Basically the farm staff working on my land keep a look out for anything suspicious. There are no bodyguards. The only person with me on a permanent basis is my PA, John Hammel who has been with me for thirty years. The court will be aware that Heather now maintains several members of staff including a driver and a personal trainer. Mr Hammel is only with me during the day or when I am working in the evenings. I am alone at night (apart from when Beatrice is with me). Mr Hammel has no security background or training in protection skills and cannot therefore be classified as

> a bodyguard. When I am at Cavendish Avenue I have no level of close protection, save for the electronic systems already in place. Obviously, when I go on tour, I have specifically assigned security.
>
> My real concern with Heather's demands for bodyguards 24 hours a day is our daughter. Unless on tour, my older children had very little security. They all attended local state schools. It is not healthy for a child to have security 24/7. It sets them apart from their peers and makes them an object of curiosity and, at times, ridicule. Such children live in gilded cages. I do not want this for Beatrice. I am rarely photographed with Beatrice. She needs as normal an upbringing as possible, and surrounding her with round the clock security is not the way to achieve this."

224. Furthermore, he said in that affidavit that he found the wife's approach to the press contradictory. On the one hand she loved and courted their attention. On the other hand she is obsessed with her portrayal in the media. He further explained that the more the security the greater the interest shown by the paparazzi who enjoy the chase. In his oral evidence he expressed much the same views. He agreed that during the marriage there was a heightened level of security because that was what the wife wanted and he went along with it. There was no need for such a level now.

225. The husband in his open offer has stated that he will undertake to the court to meet the reasonable cost of security for the wife and Beatrice for 2 years from the date of the order not exceeding £150,000 p.a. to be discharged by him directly upon presentation by the wife of invoices to her from the security provider.

226. In my judgment that is very fair and will meet the need of the wife and Beatrice for security. I accept his evidence and viewpoint. The husband is entitled to insist on invoices being produced. Accordingly the item for security in the budget must come out in its entirety.

227. Running costs for proposed properties of the wife in New York, Long Island, and Los Angeles to the total sum of £332,000 must be excluded since I have found that the purchase/transfer of such properties is unwarranted.

228. Charity expenditure at an annual rate of £627,000 includes airfares of £180,000 for commercial flights, £120,000 for helicopter flights, and £192,000 for private flights. I accept that the wife is very committed to charities and their causes but the degree of such proposed expenditure is, I am sorry to have to say, ridiculous. However I do propose to allow in what I shall assess as her income needs (generously interpreted) a modest sum for carrying out her charitable activities and making donations to charity. If she wishes to make further donations over and above that sum then she can do that from her earnings.

229. Holidays are put into her budget at £499,000 which is made up of accommodation at £242,000, helicopter flights at £35,000, commercial flights at £72,000 and private flights at £150,000. I accept the wife's evidence that she has always since the age of 25 flown first class and that when she and Beatrice fly they should go first class. The

husband accepted this in his evidence. But the figures given are much, much too high in every respect.

230. These items in her budget which I have touched upon above, illustrate generally speaking, how unreasonable (even generously interpreted) are the claimed needs of the wife. In the absence of any sensible proposal by the wife as to her income needs I must do the best I can on the material I have. If the wife feels aggrieved about what I propose she only has herself to blame. If, as she has done, a litigant flagrantly over-eggs the pudding and thus deprives the court of any sensible assistance, then he or she is likely to find that the court takes a robust view and drastically prunes the proposed budget.

231. In my judgment a sum of £150,000 for not only holidays but also when in the UK (not on holiday) dining out, entertaining, and other interests, is appropriate.

232. As to the costs of maintaining Pean's Wood, a London property (£2.5m), and Angel's Rest I propose to allow £100,000. Mr Hobbs estimated that the cost of running Pean's Wood was £50,100 p.a. and a London property at £23,250. I propose to allow the wife £100,000 for all 3 properties.

233. As for staff costs (housekeepers/gardener and nanny) Mr Hobbs came to a figure of £78,832. I shall allow £60,000 because Mr Hobbs has included a nanny for Beatrice at £20,308 which the husband will pay separately.

234. As to personal expenses the husband (through Mr Hobbs) has proposed £104,040 p.a. which includes a figure of £38,520 for health costs (chiropractor, surgery etc). It does not include any amount for a personal trainer which, given the wife's emphasis on healthy living, fitness, and her disability, in my judgment, ought to be included. However I do not consider she needs a full time personal trainer. Doing the best I can, under personal expenses, I consider it fair to allow £120,000.

235. As to transport, the wife owns two cars, a Porsche Carrera convertible and a Mercedes 4x4. The running costs of both cars I put at £25,000 p.a.

236. It has been suggested, through Mr Hobbs, that food, wine and flowers should be put in at £20,280. In this connection the wife made much of the very large bills for flowers that were run up during the marriage. That may be. But, in my judgment, that is and unsure guide. In any event she in her evidence recognised that the bill for flowers during the marriage was much too high as to what is needed in the future. I shall allow £30,000 p.a. for food, wine and flowers.

237. I shall also allow £50,000 p.a. for professional fees.

238. I shall, exceptionally, include a figure of £50,000 p.a. to enable the wife to carry out charitable activities and to make charitable donations. In my judgment this is warranted in the particular circumstances of this case. Whatever else may be said about the wife, her devotion to her charities is very impressive. Over many years, and in particular during the marriage, the wife was very generous in her charitable giving and did much work on behalf of her selected charities. She very much wants to continue along this path. The husband, too, was, and continues to be, generous to

charities. I do not think therefore that he can legitimately complain if the wife's budget includes such a sum.

239. The total of that expenditure is £585,000 p.a. which I propose to round up to £600,000 p.a.

240. In my judgment this will allow the wife to adapt to a standard of living that she could expect as a self-sufficient woman. In my judgment after a short marriage to a very wealthy man it is unfair to expect that she should continue to live at the same "rate" as during the marriage. Such an expectation is completely unrealistic. I accept Mr Mostyn's submissions set out at paragraph 214 above.

Beatrice's Needs

241. The husband has offered to pay periodical payments for Beatrice at the rate of £35,000 p.a. plus the cost of a nanny not to exceed £25,000 p.a. both sums to be index-linked. Nannies are expensive; good nannies do not come cheap. I consider that Beatrice, a child of 4 with a father as wealthy as the husband, is entitled to a generous rate of periodical payments. I consider £35,000 p.a. to be the right figure. However I consider that the nanny limit should be £30,000 p.a. Beatrice is entitled to a good nanny. However, I wish to make it clear that this does not give the wife a licence to automatically engage a new nanny or pay an existing nanny at the rate of £30,000 p.a. willy nilly. It is a maximum figure. The husband will also pay Beatrice's school fees etc as per his open offer. The husband will also put in place security to cover his obligations to Beatrice in the event of his death prior to Beatrice attaining 17 years or completing secondary education whichever is the later.

The husband's capital and income needs

242. These can be assessed in a sentence. He has more than enough assets and income to cater for his needs. I should add that the husband has an outstanding liability for legal costs in respect of these proceedings of about £200,000 (i.e. taking into account what he has already paid on account). He has discharged the fees of Ernst and Young directly.

Conduct

243. Lastly, in respect of the matters set out in S.25 (2) I turn to conduct. On the first day of the hearing before me oral submissions were made as to the relevance of conduct. Having heard the wife and Mr Mostyn I ruled that neither party would be permitted to introduce allegations of either marital or post separation conduct. I refused to accede to Mr Mostyn's fall back position. I told the parties I would give my reasons in my judgment; and this I now do.

244. Both the wife and the husband wished to introduce the conduct of the other. In an email on 22 January 2008 sent to both parties I wrote:-

> "On 11.2.08, having heard oral submissions from Ms Mills (i.e. Heather) and Mr Mostyn, I shall rule whether or not any (and if so, which) allegations of conduct raised by either you and/or Sir Paul in affidavits pursuant to para 6 of the draft order of

> Coleridge J on 20.12.07 are relevant to these financial proceedings. You and Mr Mostyn must therefore come prepared to make submissions to me on 11 February as to why the conduct raised in those affidavits is relevant in these financial proceedings – see in particular section 25 (2) (g) of the Matrimonial Causes Act, 1973."

245. I, of course, had not then seen any of those affidavits subsequently filed pursuant to the order of Coleridge J of 20 December 2.2007.

246. Section 25(1) of the Matrimonial Causes Act, 1973 provides that in determining applications for financial provision the court must have regard to all the circumstances of the case, the first consideration being given to the welfare of a child of the family under 18 years old. S.25(2) mandates the court to have regard to particular matters set out in sub paragraphs (a) to (h) inclusive.

247. Section 25(2)(g) is one of the particular matters, namely:-

> "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".

248. The conduct allegations are largely contained, first, in the wife's affidavit of 30 January 2008 between paragraphs 167 and 300 and, second, in the husband's affidavit of 8 January 2008 between paragraphs 130 and 188.

249. The conduct complained of by the wife can be summarised as follows. Prior to their separation at the end of April 2006 the husband treated the wife abusively and/or violently culminating in the unhappy events of 25 April 2006 upon which, in her oral submissions, she placed great reliance. He abused alcohol and drugs. He was possessive and jealous. He failed to protect the wife from the attention of the media. He was insensitive to her disability. Furthermore, it is alleged that post separation the husband manipulated and colluded with the press against the wife and has failed to enforce confidentiality by his friends and associates. The wife blames the husband for the leaking to the media of her Answer and Cross-Petition which alleges in strong terms unreasonable behaviour by the husband against her. The husband has failed to provide her with a sufficient degree of security from the media and generally he has behaved badly.

250. The husband did not seek to introduce any pre-separation conduct. However, he did seek to persuade the court that it would be inequitable to disregard the wife's post separation conduct. Paragraph 106 of the opening note of Mr Mostyn and Mr Bishop reads:

> "In our Conduct Note we identify the three discrete episodes of post-marital behaviour by W which we submit pass the s25(2)(g) threshold. The evidence in support of H's allegations is extensively laid out in his s25 affidavit at Paragraphs 146-176 [X3/B13/58-74]. The court will also be invited to take into account other informative context namely W's unreasonable defence of the divorce (see the affidavit of Mrs Shackleton

> [X1/A/63] and pursuit of the libel/privacy proceedings [X3/B13/74-77]).”

251. Mr Mostyn distilled the wife’s conduct into three episodes. First, it is said on 25 June 2006 the wife illegally bugged the husband’s telephone, in particular a call between him and his daughter Stella in which Stella made very unflattering comments about the wife. It is further said the wife subsequently leaked the intercepted material to the press so as to discredit him. Second, on 17 October 2006 the wife, or someone acting on her behalf, leaked to the media some or all of the contents of her Answer and Cross-Petition which contained untrue and distorted allegations against the husband in orders to discredit him. Third, the wife has failed to abide by court orders re confidentiality. On 31 October 2007 and 1 November 2007 the wife gave several interviews to UK and US television stations in which she made many false statements about the husband and these proceedings in order to discredit him. Individually and collectively these actions, it is said, represent a deliberate attempt by the wife to ruin the husband’s reputation.

252. I shall now briefly sketch in the background to this issue. In late April 2006 the wife and husband separated. The wife instructed Messrs Coyle White Devine and from early August 2006 Mishcon de Reya. The Husband instructed Messrs Sheridans and then from the end of June 2006 Payne Hicks Beach.

253. There were discussions as to how the parties were to be divorced, which seem to have broken down.

254. On 17 July 2006 the husband filed a petition for divorce on the grounds of unreasonable behaviour. The particulars of unreasonable behaviour were extremely mild. On 26 July 2006 the wife filed an Acknowledgement of Service saying that she intended to defend. On 11 August 2006 Payne Hicks Beach wrote offering a divorce upon the basis of cross-decrees. This was rejected by the wife and a draft Answer and Cross-Petition was sent. It was drafted in very strong terms indeed. Further negotiations took place which were unfruitful.

255. On 13 October 2007 the Answer and Cross-Petition was filed in the Principal Registry. The Answer denied the husband’s allegations. The Cross-Petition alleged, with particulars, the conduct of the husband which I have set out above as pre-separation conduct, which the wife seeks now to litigate in this ancillary relief final hearing.

256. I should now go back a month. On 16 September 2006 the husband filed his Form E. At paragraph 4.4 the husband said that the wife’s solicitors had intimated that she would raise conduct in the Ancillary Relief proceedings and if she did so he would counter any allegations. For his part he asserted that since separation the wife was guilty of intercepting his telephone calls and leaking such information to the media.

257. On 28 September 2006 the wife filed her Form E. She too, raised conduct as an issue which was largely a reiteration of the allegations in the draft Cross-Petition.

258. There is no doubt that in some way the wife’s Answer and Cross-Petition and/or part of it was leaked by someone to the media. Both the wife and the husband accuse each other of doing it. The wife says that the husband did it in order to capitalise on his

good press and to blacken the wife's name for making such unfounded allegations. The husband says the wife did it in order to blacken his reputation.

259. On 18 October 2006 articles appeared in the Evening Standard and the Daily Mail which are said by the wife to be defamatory of her and/or a misuse of private information. On 19 October an article appeared in The Sun which is said by the wife to be defamatory of her and a misuse of private information.

260. On 20 October 2006 the wife issued proceedings for defamation and/or misuse of private information against the Evening Standard and the Daily Mail. On 25 October 2006 the wife issued proceedings against The Sun for defamation and misuse of private information. At the heart of her complaints are that a) it is alleged untruthfully that the wife or her agent leaked her Answer and Cross-Petition and b) the articles alleged untruthfully that her allegations in the Cross-Petition against the husband were in themselves untruthful and that she was willing to perjure herself in court. Of course, the husband was not and is not a party to those proceedings.

261. The defences filed on behalf of the newspapers differ to some extent but, so far as the instant proceedings, are concerned, insignificantly. Broadly they are that the wife, by herself or by her agent leaking the Answer and Cross-Petition, consented to the publication, that the wife leaked the Answer and Cross-Petition in order to damage the husband's reputation without regard for Beatrice's well-being and that her allegations against the husband of unreasonable behaviour are lies.

262. The wife's action against the Evening Standard and Daily Mail is set down for trial by a Judge and jury on 14 April 2008, with a time estimate 17 days. At the time of the final hearing before me I was told that the parties to those proceedings had agreed to adjourn the libel trial. I thereupon made enquiries. I was told by the Queens Bench Listing Office that although it understood that to be the position, nevertheless no formal application to adjourn had yet been made.

263. On 25 October 2006 the husband in the ancillary relief proceedings issued an application for the case to be listed before a High Court Judge for directions as to the future disposal of the suit. If the cause was to be defended, the husband sought leave to amend his Petition and to file a Supplemental Petition. The proposed Amended Petition alleged a number of matters against the wife of verbal abuse, extreme jealousy, false accusations of violence, and that throughout the marriage the wife had shown a consistent inability to tell the truth. The Supplemental Petition alleged, inter alia, leaking the husband's private phone calls include one with Stella, leaking of the husband's Petition and that the wife had leaked the Answer and Cross-Petition.

264. On 15 December 2006 the matter, by order of the Senior District Judge, was transferred to me. Skeleton arguments were ordered to be filed setting out:-

> "why the matter cannot proceed undefended or by way of cross decrees based on the minimum requirements to prove each party's case."

265. On 28 February 2007 directions in respect of the suit, the first appointment re ancillary relief, and the wife's application for maintenance pending suit came before me. So far as the suit is concerned, at the very beginning of the directions hearing I

told Mr Pointer, for the wife, and Mr Mostyn, for the husband, that I had formed some provisional views about the development of proceedings for divorce having read their full and helpful skeleton arguments. I asked them whether they wished to hear them. Both kindly agreed to that course. I then told them what they were.

266. After discussions between the parties I then made a consent order based upon the parties' agreement (as recorded in the preamble of the order) that as far as practicable one of the parties was to file a petition for divorce based upon 2 years separation with consent to which the other party was to consent and the suit would then proceed on an undefended basis. Accordingly I stayed the Petition and Answer. I gave leave for either party to file a second petition i.e. based on 2 years' separation with consent.

267. As to the first appointment, by this time the wife had put in issue the length of the parties' relationship. She alleged seamless cohabitation from March 2000 through the marriage to separation at the end of April 2006, which the husband refuted. After submissions I made orders referred to in paragraph 7 above. The final hearing for ancillary relief was fixed for 11 February 2008 for 5 days. The reference in the order to 5 days in May was not to be a fall back if the ancillary relief hearing overran but to deal with the suit in the event that the parties fell out over the divorce suit. There was no appeal from any part of my order by either party.

268. It is to be noted that I made no order at all in relation to any aspect of conduct. Neither the wife nor the husband made any application for permission to adduce evidence in the ancillary relief proceedings, whether from themselves or from any witnesses, as to each other's conduct. Indeed Mr Pointer's note re the ancillary relief proceedings prepared for that hearing is completely silent on the issue of conduct.

269. However, Mr Mostyn did raise, first, the matter of the wife having tapes of the husband's conversations with a number of people. The wife agreed to answer questions raised by the husband's solicitors in their letter 18 December 2006. Second, as to the leaking of the Answer and Cross-Petition, Mr Mostyn described this as "central to the husband's conduct case".

270. There, so far as the conduct was concerned, the matter rested.

271. In June 2007 after a 3 day hearing before the Senior District Judge the husband and wife agreed to shared care arrangements for Beatrice. The wife moved into a new home Pean's Wood near Robertsbridge with £3m contributed by the husband.

272. On 11.10.2007 Coleridge J conducted a Financial Dispute Resolution hearing which did not prove fruitful.

273. In late October/early November 2007 the wife took part in several television interviews about which the husband makes complaint.

274. On 8 November 2007 Mishcon de Reya and the wife parted company. The wife thereafter has acted in person.

275. On 20 December 2007 there was a directions hearing following the Financial Dispute Resolution hearing before Coleridge J. So far as conduct is concerned, Coleridge J ordered that within 7 days the husband do indicate whether he intended to pursue

allegations of conduct, and that the parties do exchange affidavits (to include, if pursued, any conduct) and affidavits from witnesses by 11 January 2008.

276. What led to this order? During the hearing as to directions, Mr Mostyn explained to the judge what the husband's case was. The judge explained all that to the wife. Her position, as expressed to the judge, was that if the husband brought in conduct she would bring in "the whole thing". However at she said she was happy to leave conduct out completely if the husband too would leave it out. Thus the judge said at F383 at line 28:

> "Right. I shall make a direction that within 10 days you [I interpolate, this must mean the husband] reconsider this question, and if you decide that you are in the circumstances not going to raise any conduct on the basis that she does not raise any conduct, then you must communicate it straightaway."

Mr Mostyn indicated he wanted to make submissions after the wife had finished.

277. Mr Mostyn then returned to the matter of conduct. With reference to the wife's proposal to drop conduct if the husband too dropped conduct came this revealing submission from Mr Mostyn:-

> "it is a beguiling submission, is it not: "I will not raise the matrimonial conduct", which Mr. Justice Bennett has already said was unlikely to affect the result, "if he will drop his conduct", and then the Trojan horse of course, "We will leave his complaints to be sorted out in the open court 17 day libel proceedings", in which of course Lady McCartney does not have the disadvantage – the inconvenience of Sir Paul even being a party to it, and in which of course, to her satisfaction no doubt, it will be conducted in open court and reported in the world's press without even the protection of the 1926 Act. So, I mean, if Lady McCartney were to say: Of course they will not be in any libel case", then we would give serious consideration to the suggestion ----"

Again:

> "Mr Mostyn: That is the very – well, fair enough. That is the very issue that is going to be thrashed out in the libel. There are two points in the libel. One, are the contents of her answer in cross-petition true? The newspapers say it is not, it is completely untrue. She says: "No, no, that is a libel".
>
> Mr Justice Coleridge: I understand that.
>
> Mr Mostyn: And, secondly, did he or she leak it? Now, those are precisely the issues which form the husband's case in relation to matrimonial misconduct.

> Mr Justice Coleridge: I see that.
>
> Mr Mostyn: So what she cannot do is have a sort of proxy case conducted in open court before the world's press in which the husband is not even a party, whilst at the same time inviting your Lordship to say: "Oh, would it not be nice and peaceful if in the ancillary relief we do not mention it".
>
> Mr Justice Coleridge: It has got to be ----
>
> Mr Mostyn: We have got to be realistic. If she wants conduct off the table, then it is all off the table. But it is her decision. We are not making it a condition of any offer. She can do what she wants with it."

278. In his judgment Coleridge J said:-

> "So far as 4 is concerned, this is the section 25 affidavit in relation to conduct. There has been a great deal of discussion this morning about that. The husband's position is that he limits his case of conduct to those matters mentioned in his Form E, which might be loosely described as post-separation conduct. He will also answer any allegations that the wife has already made. The wife has indicated that her position is that if conduct in any shape or form is raised and pursued, then she will find it necessary to deal with the whole question of conduct during and after the marriage.
>
> I have listened to both sides and I am as sure as I can be in relation to these matters (about which of course I only have a preliminary view) that it is not in anybody's interests for these conduct allegations to be pursued in detail at the hearing. So I have directed that the husband is to re-consider his position in relation to conduct, setting our very clearly what he is prepared to do in relation to that and what conditions he attaches to the dropping of conduct. Mr. Mostyn has made it clear this morning, but I think it would be very helpful for the judge to have an open document setting out exactly what his position is. He has said to me that if all conduct allegations were not pursued, that is to say in these proceedings and in the libel proceedings, then he would quite possibly take the matter no further and the whole matter could be dealt with in that way. But of course he feels vulnerable that if he drops the allegations, they will be raised again in another court in this building. So it is not entirely straightforward and needs to be thought about. So that is the direction I shall make in relation to para.4.
>
> The position in relation to conduct is to be revealed within seven days. If conduct is to go ahead, then both sides have to produce what are called section 25 affidavits. These are simply

> statements – one statement each – setting out in as much detail as they want those matters upon which they rely. It may be that in Lady McCartney's case, she will simply make reference to, for instance, other court documents, the answer, or whatever, but the court must be entirely clear which allegations she is pursuing and which she is not, because the husband must know so that he knows what case he has to meet. More importantly, his lawyers know what case he has to meet and can prepare for it. It is not necessary for this to be a minor novel, but in clear terms the allegations that are going to be pursued must be set out in an affidavit. The husband says he can do it by 11th January. I should have thought the wife can do the same. "

279. On 21 December 2007 the husband's solicitors wrote to the wife:

> "Pursuant to the direction of Mr Justice Coleridge made today we write to set out our client's position in relation to the question of conduct.
>
> 1. For as long as your libel/privacy proceedings remain alive our client will pursue his allegations of post-marital conduct against you in the ancillary relief proceedings (as you know this includes the leaking of the Answer and Cross-Petition, bugging of his private calls and the breaching of undertakings and Court orders). He will also seek to rebut your allegations of conduct in that forum. He is not going to countenance a situation where he does not pursue his allegations against you (and meet allegations you have made against him) in proceedings to which he is a party and which are protected by confidentiality, when those same or very similar allegations are then going to be ventilated in open court in proceedings (before a jury) to which he is not a party. The Judge accepted this.
>
> 2. If you discontinue, settle or otherwise get rid of the libel/privacy proceedings, our client will give consideration to not pursuing his conduct allegations in the ancillary relief proceedings, provided that you do likewise. But we emphasise that our client will not even get to that position while the spectre of the libel/privacy proceedings being fought out in any way remains"

280. In her oral submissions to me on 11 February 2008 the wife adopted her skeleton argument on conduct which I have carefully read. She submitted it was unjust/inequitable to disregard the husband's conduct. She dwelt at great length on the allegations in her Cross-Petition, in particular the alleged assault by the husband on her on 25 April 2006. From June 2006 the husband had plotted against her. He had demolished The Cabin and locked her out of his homes. She made an allegation of bad behaviour by the husband when he collected Beatrice on one occasion. There were other allegations of misconduct put forward by the wife to illustrate her case that

the husband had made her an object of a hate campaign in the media. She confirmed to me that if the husband dropped his conduct allegations, she would drop hers.

281. Mr Mostyn adopted the arguments in his skeleton argument on conduct, which I have read with care. He submitted that the statutory criterion (in S.25(2)(g)) was satisfied. If the husband's allegations of conduct against the wife were not considered there was a significant possibility of the outcome being unfair.

282. The wife, it was submitted, had violently assaulted the husband's character, a person with a very high profile. It was as damaging to this husband as a serious physical assault upon him. He was being branded by the wife as a hypocrite and a monster.

283. Mr Mostyn then made short submissions on each of the three issues of alleged conduct. To bug and then leak the tape was inequitable conduct. As to the leaking of the Answer and Cross-Petition Mr Mostyn seemed to retreat, after being pressed by me, from the clear assertion in his skeleton argument that this issue of conduct involved not only leaking of a document but also of a document containing untruthful allegations. He said the "untruthfulness" of the allegations against the husband "aggravated" the conduct of leaking the pleading. He made a similar point about the interviews in October and November 2007. The "breach" of confidentiality was "aggravated" by what the deliberate untruth of what she said. His fall back position was that, if I was against his submissions, nevertheless he should be permitted to cross-examine the wife on those three issues as to her credibility on two other issues in the case namely that the wife should be compensated for her alleged loss of career and that the wife had cohabited with the husband from March 2000.

284. He briefly but firmly refuted the wife's case that any of her allegations could amount to conduct which it would be inequitable to disregard.

285. The court is obliged under Rule 2.51D of the Family Proceeding Rules 1991 (as amended) to deal with cases justly. Dealing justly with a case includes, as far as practicable, a number of matters including saving expense, dealing with the case in ways which are proportionate, and ensuring that the case is dealt with expeditiously and fairly, allotting to it an appropriate share of the court's resources, while taking into account the need of other cases.

286. I am satisfied that the wife's attempt to introduce the alleged conduct of the husband prior to the end of April 2006 should be disallowed. It would take many days, if not weeks, to hear and decide. It can make no difference to the result. It plainly is not conduct which it would be inequitable to disregard. The allegation of 25 April 2006 is a sad incident in the marital strife. Even if proved it is in my judgment part of the sad history of the breakdown of the marriage. As Baroness Hale of Richmond said at paragraph 145 of Miller:

> "..once the assets are seen as a pool, and the couple as equal partners, then it is only equitable to take their conduct into account if one has been very much more to blame that the other: in the famous words of Ormrod J in *Wachtel v Wachtel* [1973] 1 All ER 829 at 119, [1973] Fam 72 at 80, the conduct had been 'both obvious and gross'. This approach is not only just, it is also the only practicable one. It is simply not possible

> for any outsider to pick over the events of a marriage and decide who was the more to blame for what went wrong, save in the most obvious and gross cases."

287. In FS v JS [2007] 1 FLR 1496 Burton J conducted a useful review of many, if not all, of the conduct cases. Those authorities undoubtedly show that the conduct must be truly exceptional before it passes the statutory criteria. The allegation as to the husband stultifying the wife's career is scarcely an issue of conduct and is capable of being dealt with under the heading of compensation and/or her earning capacity.

288. I also propose to exclude all the wife's post separation allegations of the husband's conduct. Again, they can have no impact on her award. It is not conduct which comes within (g). Again it would take many days, if not weeks, to decide.

289. So far as the husband's allegations are concerned it is instructive to look at the husband's affidavit of 8 January 2008. Although Mr Mostyn seeks to try to compartmentalise the wife's conduct into three distinct episodes, they are in reality examples of what the husband at paragraph 141 says is the wife's campaign since separation of trying to cause him harm, by portraying herself as the victim and he as the monster. At paragraph 176 he returns to the theme of her "concerted campaign" as follows:

> "I do believe that Heather's misconduct since our separation, her concerted campaign to destroy my reputation through leaks, lies and breaches of confidentiality, should be taken into account by the Court to reduce the award she could otherwise have expected to receive. It will be for my legal representatives to explain this further."

290. The reality is that the husband's case is no more than the other side of the coin. On one side is the wife's case of the husband running a media campaign to smear her; on the other is the husband's case that it is the wife who is running a media campaign to smear him.

291. The husband seeks to establish not only that the Answer and Cross-Petition was leaked by or on behalf of the wife with her full knowledge but also that the contents of the Cross-Petition are untrue – see paragraph 64, 65, 66 of Mr Mostyn's note on conduct. The husband has gone to great lengths in his affidavit to show they are untrue. Thus it seems to me that it is an essential part of the husband's case that not only did the wife leak her pleading but also that the allegations therein are untrue. Surely, then, if I were to permit the husband to run this issue of conduct, the wife would be entitled to say that her allegations are not false but true. Thus, as I have accepted the husband's submissions excluding the wife's case on conduct, it would be wholly wrong to allow the husband to raise conduct.

292. Mr Mostyn's submission that the "untruth" of the wife's allegations only seek to "aggravate" the leaking of her pleading seems to me to get him nowhere other than back into the arena of pre-separation conduct which he submits (correctly) should be excluded anyway.

293. As to the telephone bugging episode in June 2006, the wife denies bugging the husband's telephone line in June 2006. In the conversation, as reported in the Sunday Mirror article of 9 July 2006, it is allegedly Stella, not the husband, who castigates the wife. I reject the notion that simply because the wife may have committed a serious criminal offence of bugging, that alone amounts to conduct relevant under (g). Furthermore, and centrally to my mind, this episode is part of the husband's overall complaint that this illustrates, and is part of, the wife's campaign to discredit him. Both the wife and the husband accuse each other of conducting a campaign of harassment and vilification. The reality is that if I let the husband deploy a case about bugging telephones together with subsequent release of them to the press, this will open up a can of worms and the litigation may inevitably snowball with claim and counter claim.

294. Breach of confidentiality - I, too, would exclude this. In relation to the interviews of 31 October and 1 November I have read the husband's account at paragraph 73 of his affidavit. I assume for the purpose of this judgment only that in those interviews the wife lost her cool completely, went right over the top, and behaved in an erratic, out of control, and vengeful manner. But I have got to be robust about these matters. This allegation again is to be seen as part and parcel of the alleged campaign of harassment and vilification. I do not think that the alleged behaviour of the wife is going to assist me to arrive at a fair judgment for an award of financial provision.

295. In any event, what is the scale of the reduction in the amount of the award that the husband seeks in order to reflect the conduct of the wife, even if proved? The short answer, is indeed, a mere token. The husband's proposals are (see paragraphs 79-82 of Mr Mostyn's opening note) that the wife should have net exit funds of £15.8m less £809,000 to reflect the wife's conduct. It is submitted that such a deduction is "a fair and not token expression of the impact of the wife's conduct".

296. It is obvious to me that £809,000 is simply a convenient, arithmetical figure to bring the figure down to £15m representing the wife's net exit funds. There is no logical principle to underpin £809,000 or any lesser sum. In any event whilst to the man and woman in the street, £809,000 is a lot of money, in the instant case it is not so significant that I should permit the husband to deploy a case of conduct. It must be put in context. As a percentage of the husband's wealth (which is roughly £400,000,000) £809,000 represents 0.2%. Of £15,809,000, £809,000 represents 5.1%.

297. I regret to say that I strongly suspect that the motives of both wife and husband in trying to introduce the conduct of each other into these financial relief proceedings has got far more to do with the impending libel trials than the instant proceedings. I accept that conduct was raised by each of the parties in their Forms E which predated the commencement of libel proceedings. But matters have moved on a long way since then.

298. For the wife, findings in her favour particularly on the leaking of her Answer and Cross-Petition and on the substance of her allegations therein, may, in her perception, immeasurably improve her chances of success in the libel proceedings. For the husband, precisely because he is not a party to the libel proceedings he seeks findings from me as to the wife's conduct (in particular that the wife leaked her Answer and Cross-Petition and that the allegations therein against him are untrue), which, in his

perception, may stymie the wife's libel proceedings in which his alleged behaviour towards the wife are at the core. Mr Mostyn's exchanges with Coleridge J on 20 December 2007 to which I have referred amply support that view. In my judgment it is not appropriate for this court to hear the husband's conduct allegations merely because he is not a party to the libel proceedings.

General Assessment

299. Having gone through each of the matters in section 25(2) of the 1973 Act which the court is required to take into account I should now step back and look at the matter broadly and in the light of the relevant authorities.

300. I have been referred to the speeches in the House of Lords in the leading authority of Miller (to which I have already referred), in particular to what Baroness Hale of Richmond said between paragraphs 147 and 153 in relation to the source of the assets and the length of the marriage. I would also draw attention to what Lord Mance said at paragraph 169.

301. The exercise to be undertaken by the court as propounded in Miller has been summarised in the judgment of the Court of Appeal in Charman v Charman [2007] EWCA Civ 503, [2007] 1 FLR 1246 between paragraphs 63 and 73 inclusive. I will not set out verbatim in this judgment what the Court of Appeal there said. I have read Charman and these paragraphs in particular. I would highlight paragraph 70 where the Court of Appeal said:

> "Thus the principle of need requires consideration of the financial needs, obligations and responsibilities of the parties …; of the standard of living enjoyed by the family before the breakdown of the marriage …; of the age of each party …; and of any physical or mental disability of either of them …"

302. I would also wish to refer to one sentence from paragraph 73, namely:

> "It is clear that, when the result supported by the needs principle is an award of property greater that the result suggested by the sharing principle, the former result should in principle prevail: per Baroness Hale of Richmond in Miller paragraphs [142] and [144]."

303. Mr Mostyn encapsulates the husband's case at paragraph 40 of his closing submissions:

> "In a short marriage where the assets were all in place prior to that marriage and where the assets have not increased by reference to "partnership" activity the wife should get a needs-based award. The principle of sharing is simply not engaged. This, of course, is the guidance of those passages of *White* and *Miller* that deal with inherited or pre-marital resources. Pre-marital wealth is a very important factor and can act so as to displace the sharing principle altogether. Put another way,

> there can be a departure from sharing to need in a case where virtually all the assets are pre-marital or derive therefrom."

304. He thus contrasts such a case with a case of a short marriage where there has been a very substantial increase in the asset base e.g. Mr Miller's New Star shares, in which the sharing principle may be engaged.

305. In my judgment, the compensation principle set out in Miller is simply not engaged in the instant case given my findings of fact. I say no more about it.

306. But is the sharing principle engaged? In order to try to assess this matter it is important to see how Mr Pointer put the wife's case in his note of October 2007. The wife would wish me to refer to it. He broadly reiterates of the wife's case set out in her open letters from December 2006 onwards, though perhaps rather toned down. He reiterates many of the points which I rejected in my judgment of 1 March 2007. The only reference to a "marital acquest" is at paragraphs 22 et seq culminating in an assertion at paragraph 28 that the marital acquest is to be put at £60m. In paragraph 44 it is said that the wife seeks provision of £50m which is a significant discount from her needs as computed in her Form E. But there is no assistance to be gained from that note as to how £50m is arrived at. As with the open offers of the wife set out in her former solicitors' letters, it does seem rather to be a figure plucked from the air.

307. I have searched, too, through the wife's skeleton argument of 6 February 2008 and her closing submissions for assistance. But I have to say I found very little. This may seem rather harsh upon a litigant in person, until it is remembered that the wife has had the benefit of assistance and advice from 2 lawyers, one of them an English lawyer, as her Mackenzie friends, in addition to the assistance and advice from her former solicitors and counsel from August 2006 until early November 2007.

308. Is there, in truth, a marital acquest? The husband has sought to meet this point in his Form E. I have already set out the relevant passage in paragraph 110 above.

309. The total value of the husband's assets as at 2002 and 2006 are £347.5m and £387m respectively. The value of his business assets decreased by £20m. The non-business assets increased by £41.5m of which £20.1m represents "passive" increase. Thus any "active" increase is £21.4m.

310. I do not propose to enter into any debate whether this active acquest can be deemed to be a special or exceptional contribution of the husband. I take Mr Mostyn's point at paragraph 147.5 of his closing submissions that if a fair sharing of marital acquest has any legitimate role to play in this case, it must be as a cross-check against the court's provisional assessment of the wife's needs.

311. In my judgment, in this case the needs of the wife (generously interpreted) are not simply one of the factors in the case but are a factor of magnetic importance. In a case where the vast bulk of the husband's enormous fortune was made not only before their marriage but also indeed before the wife and husband even met; where the "marital acquest" (if such there has been) is of a very small amount compared to the total assets; where the compensation principle is not in any way engaged; where the marriage is short and where the standard of living lasted only so long as the marriage; where the wife is now and will be very comfortably housed; and where Beatrice's

needs are fully assured, surely fairness requires that the wife's needs (generously interpreted) are the dominant factor in the S.25 exercise. Any other radically different way of looking at this case would, in my judgment, be manifestly unfair.

312. I now turn to seek to capitalise the wife's income needs of £600,000 p.a.

313. It must always be remembered that the models of capitalisation referred to in the authorities, to which I shall now refer, are guides to reaching a fair capitalised figure. They are not to be taken as rigid formulae. They are useful tools in the search for fairness.

314. At paragraph 105 of his submissions Mr Mostyn submits that the wife's budget should be, at least at first, capitalised on the basis adopted by Thorpe J (as he then was) in Flick v Flick [1995] 2 FLR 45, where he said at p67:

> "I think that Mr Lawrence of Coopers & Lybrand has right principle and good sense on his side when he distinguishes between the years of maternal responsibility and the potential years of dower beyond. He has in his computations drawn a distinction after 17 years to reflect the youngest child attaining the age of 21. At that stage his models postulate the introduction of £1m of capital. I think that there is in this case a particularly sound basis for that postulation. It is not simply the possibility that at that stage of life the wife would choose to occupy a smaller home. It is very precisely that the capital cost of her primary home is inflated by the confines of the geography of the children's present schooling. But when that phase of the children's life is complete there will no longer be the geographical confines expressed by the circle around the Berkshire house, and the expert evidence on both sides shows that the cost of a comparable property which is not so confined geographically is approximately £1m less than one that is. So I find secure rational foundation for Mr Lawrence's assumption of a capital introduction at that stage of the contemplated future landscape. I also find substance for his second assumption that the income requirements would at that stage reduce to 60% of the initial level. Of course, I accept the force of Mr Pointer's submission that superficially there is an element of double deduction. The child expenses have been combed out and provided for by periodical payments. That provision will cease not at a stroke but by stages. However, it is quite unrealistic not to recognise that future expenditure, like past expenditure, is never uniform but always evolving. At different ages of the human span the character of individual expenditure is very variable. The wife, in her middle 30s, is at a stage of life when her expenditure is on the flood. She has established social relationships with very rich cosmopolitan people. She has no doubt a position to maintain in that world which justifies an annual budget as high as it stands even after pruning. But as she ages so will her tastes, her recreations, and her values change. I accept the worldly wisdom with which Mr Drew

> emphasises that, save in the area of medical expense, the graph of expenditure is a declining graph as age progresses."

315. Mr Mostyn submits that the capitalisation should take account not only of the basis propounded in Flick but he does not exclude taking account of a straight, amortised Duxbury capitalisation. The Flick capitalisation would, he submits, be based upon the following:

    i) Her budget of £430,000 falling to 60% of that figure in year 17 when Beatrice is 21.

    ii) The introduction of £1.75m capital in year 17 (her London property)

    iii) Earning capacity of £110,000 p.a. gross from age 41 to 60.

316. Of course these figures will now have to be substituted by £600,000, £2.5m and £75,000 p.a. gross respectively and after two years not one.

317. On Mr Mostyn's budget of £430,000 with his other figures the Flick capitalisation would be £7,609,889. The straight, amortised Duxbury capitalisation i.e. without any reduction to 60% re the income needs, with no introduction of capital in year 17 and with no earning capacity, is £12,508,169. The equivalent figures for a budget of £500,000 would be £9,288,005 (per Flick) and £14,610,909 (per Duxbury). For a budget of £1m the respective capitalised figures are £21,274,731 and £29,630,169.

318. It is fair to say that Mr Mostyn did seek to persuade me to adopt the approach in Fournier v Fournier [1988] 2 FLR 990. But it is not a submission that he advocated in any great depth or with very much persuasion. For, his proposal in his written submissions that the wife should exit the marriage with £15.8m is based on a capitalisation of her income needs at a mid-point between Flick and Duxbury, albeit with figures lower than mine. In my judgment for me to take such a middle course is fair.

319. Taking the Flick and Duxbury capitalisations at paragraph 317 above I estimate that on the basis of needs of £600,000 p.a. a Flick capitalisation would be of the order of about £11m and a Duxbury capitalisation of about £17m. Although slightly more for the London property (£2.5m as against Mr Mostyn's figure of £1.75m) must be folded in to the calculation, her earning capacity I have assessed at considerably less (£75,000 as against £110,000 and after two years not one). There is one other factor. As I have said, I have added back in to the wife's assets £500,000 for excessive expenditure. If she had had that sum then that would have been free money for her to put towards earning revenue. That factor, too, I believe, should be reflected here to some extent.

320. Within the wife's assets are some £913,000 of bank balances and £683,000 representing Fiona Mills' mortgage and Sonya Mills' house. The remainder of the wife's assets are in real property which I have found it is reasonable for her to keep. I do not consider it fair to require the wife to put either of these two sums towards a capitalisation of her income needs. First, the wife is most unlikely to be able to turn into cash either Fiona's mortgage or Sonya's house at least for some considerable time to come, if ever. In my judgment it would be quite unfair to expect her to

demand repayment of the mortgage to Fiona (even assuming that she was legally entitled to do) and/or to sell the house in which Sonya lives. Second, in any event I do not consider it unreasonable in a case such as this for the wife to have a contingency fund which is represented by her bank balances.

321. Thus reflecting all the factors and looking at the matter broadly it seems to me to be appropriate to take a figure mid way between £11m and £17m. All in all, in my judgment the fair capitalisation figure for the wife's income needs is the figure of £14m. In addition she needs £2.5m to buy a London property.

322. Accordingly, I shall order that the husband will pay to the wife on or after decree nisi a lump sum of £16.5m. This then means that she will exit the marriage with property and funds of £24.3m. Thus, in my judgment, the sharing principle, on the assumption that such may arguably be applicable here, is subsumed within her needs and indeed in the total figure with which she exits the marriage.

323. I consider this result to be fair in all the circumstances for the reasons I have sought to give. If the wife considers that my adjudication to be unfairly low, then I would say this. In the end it is for the applicant in ancillary relief proceedings to make a rational and logical case for the award that is sought. If an applicant puts forward an excessive, indeed exorbitant, "claim" which then she (or he) attempts to moderate by way of open offers, but which offers still fail to be supported by rational and logical bases, then the applicant has only herself (or himself) to blame if the court awards much less than what the applicant expects. This case is a paradigm example of an applicant failing to put a rational and logical case and thus failing to assist the court in its quasi-inquisitorial role to reach a fair result.

324. During the course of the wife's evidence Mr Mostyn asked her if she would consent to an order, subject to any leave to report being granted by the judge, prohibiting both the husband and herself and any persons acting on their behalf from publishing, disclosing, or in any way revealing without the consent of the other, the evidence, correspondence, transcripts or judgments in this case, the terms of the financial award and any marital confidences; and if consent was not forthcoming then the party seeking publication should be able to seek the permission of a Family Division Judge.

325. The wife agreed to a consent order being made in those terms.

326. I agree to make such an order. Both parties want it and in the exceptional circumstances of this case it is just and fair to make such an order. I shall also attach a penal notice to this part of my order. But I should warn each of the parties that if either of them personally or through their associates transgresses, then the consequences for committing a contempt of court may be dire. The penal notice will make that clear.

327. Mr Mostyn also suggested that I should issue a warning to the media not to publish matters covered by my order and that to do so would amount to a contempt of court. I am confident that the media realise that both the Children Act and the ancillary relief proceedings have been conducted in private in accordance with the relevant rules of court and are confidential. I am also confident that the media will respect the privacy and confidentiality of both sets of proceedings. Beyond that nothing more needs to be said.