Neutral Citation Number: [2020] EWHC 754 (Fam)

Case No: BV17D16308

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/03/2020

Before:

MR JUSTICE COHEN

- -

Between:

FRB	**Applicant**
- and -	
DCA [No.2]	**Respondent**

- -

Mr R Todd QC, Mr N Yates QC, Mr B Wooldridge (instructed by **Vardags**) for the **Applicant husband**
Mr S Leech QC, **Mr D Bentham, Ms A Kisser** (instructed by **Payne Hicks Beach**) for the **Respondent wife**

Hearing dates: 20 January – 14 February 2020

- -

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.

.....

THE HON. MR JUSTICE COHEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr Justice Cohen :

Introduction

1. I have been hearing over some 15 days cross-applications by the parties for financial remedy orders. As this judgment will make clear the scope of this case has encompassed almost every issue that can arise within a matrimonial finance case. In some ways that is hardly surprising. I know of no other case where the breakdown of a marriage has engendered litigation on the scale witnessed in this case.

2. The parties have had the benefit of the most expert representation by solicitors and counsel, but that of course comes at a price. The husband ("H") has issued proceedings against the wife ("W") in the Chancery Division, in the Queen's Bench Division for the tort of deceit, and in the Family Division in respect of the child of the family and financial proceedings. So far, he has spent some £6.5m on the litigation. As he lives abroad, he pays no VAT. W has spent some £3.8m inclusive of VAT but exclusive of the sum of £1.05m paid by her father for a forensic investigator.

3. The extent of the differences between the parties, in part reflecting the animosity that at least H feels towards W, is very clearly seen in their open proposals, which are poles apart.

4. It would be over-optimistic of me to think that this hearing will bring to an end the gladiatorial combat between the parties. There remain outstanding issues relating to the child, the parties' own art collection and a Norwich Pharmacal application issued by H in the Queen's Bench Division.

5. It would be impossible to keep this judgment to a reasonable length if I was to recite and resolve every argument that the parties have raised. I have taken into account everything that is material. I have omitted those matters that I consider irrelevant.

The parties

6. H was born in 1978 and is now aged 41. W is 3 years younger, aged 38. They are the children of extremely wealthy Indian families. Each says that the other family is worth £2 billion or more. Money has been made in various different areas including land, hotels, hospitality and the provision of health services.

7. H is the elder of two children of his parents. His brother is 4 years younger than him. H's family have become wealthy over several generations and I will come back to this later in the judgment. But it does give rise to one of the issues which I have to resolve, namely the extent to which the resources I find that he has available to him are the result of marital acquest or whether they are pre-marital or extra-marital.

8. H describes his father as "the patriarch". He says that his father controls most of the family resources and that much of what H holds is held to the order of his

father. Both of H's parents are still alive and H's mother is particularly involved with the family art collection which is of great value.

9. The impression that I have is that W's family only became significantly wealthy as a result of her father's business success rather than having built up money over the generations. W is the eldest of 3 children of her parents.

10. The parties met when teenagers and established a relationship some time before they married. The marriage took place in India in April 2003. Their married life was based in London. In 2008 a substantial house in Central London was purchased and that has been the main matrimonial home since that time.

11. The marriage eventually became unhappy and in early 2017 the parties separated, and H left the matrimonial home. W issued a petition for divorce in June 2017 and H responded with his Form A. A decree nisi was pronounced on 17 January 2018. In March 2018 H moved to Dubai, where he has lived since then, as I understand it for a combination of business and fiscal reasons. W remains in the former matrimonial home with the one child of the family whom I shall call "C".

12. C is 9 years old. After the marriage broke down H says that he heard rumours that W had had an affair and on 10 December 2018 a paternity test was carried out which revealed that H was not C's biological father. A second test in February 2019 confirmed the results of the first test.

13. W admits to a liaison at the relevant time with a man whom she names as C's father, but claims that she had no suspicion that C was anything other than the biological son of H. She says that she was shocked by the results of the tests. One of the issues that I have been called upon to determine is the state of W's knowledge or suspicion of the true paternity of C. H says that it is inconceivable that W did not know the truth of the paternity and that her non-disclosure of it to H amounts to conduct that it would be inequitable for me to disregard pursuant to s. 25(1)(g) of the Matrimonial Causes Act 1973. If he had known, he says that he would have ended the marriage in 2010.

14. Throughout the marriage the parties lived to an extraordinarily high standard.

Standard of living

15. The parties' home in Central London has an attached mews house. Despite its size the main house has "only" some 4-5 bedrooms. Staff were accommodated in both houses and a nearby flat. The house was run with the assistance of two housekeepers, a chef, a driver and nanny as well as security.

16. The parties have or had the use of other substantial properties around the world including:

    i) A property on the Riviera, France, worth €12m, fully serviced throughout the year by 7 or 8 members of staff (Property 7, France on Schedule A);

    ii) A substantial property in Surrey (Property 14, Surrey on Schedule A);

    iii) A property in India with 20 staff on rotation (Property 8, India on Schedule A);

iv) An apartment in New York (Property 9, New York on Schedule A);

v) An apartment in Switzerland (Property 10, Switzerland on Schedule A).

Most of these properties are also used by other members of H's family (in whose ownership they are) from time to time, particularly H's brother and, when they were younger, H's parents.

17. The parties flew by private jets around the world, except for trips to India or New York when they normally flew first class. In 2016 W took 44 flights by private jet. In just 3 months in 2017 W spent €150,000 in three visits to single shops buying fashion items. H spent at a similar level. Summer holidays would normally involve the rental of luxury villas and/or chartered yachts. Parties were thrown of unbelievable lavishness costing massive sums of money. The main family car was a Rolls Royce Ghost and W had a series of customised Ferraris.

18. H does not dispute that the parties wanted for nothing during the marriage and spent without any restriction whatsoever. He has provided minimal evidence as to the source of funds but says that much of the cost was put through various family companies, the details of which he is unable to specify. If the payment was not to be made by himself personally, he would simply contact the family office to make the necessary arrangements. He says that he had the use of his brother's credit card, just as his brother was able to charge items to H's credit cards. Sometimes bills were paid by proxies.

19. It is W's estimation that the parties spent at the rate of about £10m per year. H says that it was at nothing like that level. I doubt very much that the parties knew or gave any thought to how much was being spent. Judging by the standard of living I suspect that it was well in excess of £5m p.a. The level of H's disclosed income is no guide whatsoever to the level of funds available to be spent. All expenditure was funded by H.

20. The relevance of the standard of living is the light that it casts on the available resources and the assessment of W's needs.

The issues

21. I shall have to deal with the following issues:

i) The assessment of the assets, in terms of value, origin and ownership;

ii) Whether they are subject to a family arrangement, either general or specific;

iii) Whether they are subject to a clawback;

iv) Minority discounts;

v) The movement of resources;

vi) Tax;

vii) Pre-acquired wealth;

viii) The known unknowns: those assets the existence of which are established but which it is impossible for the court to value with accuracy because of inadequate information;

ix) Unknown unknowns: entities which I find to exist but of which there are no details.

22. As a separate but key issue in this case I have to assess whether W's behaviour amounts to conduct and, if so, what its impact is upon the outcome of this case.

23. I have heard evidence from H and W and from Mr Andrew Caldwell (SJE accountant) on financial matters. I have also read his report and a series of supplements, prepared by Mr Caldwell, necessitated as H's disclosure evolved. I heard from H and W and also a past and a current employee on the conduct issues.

24. Before H's claim that the assets are largely non-matrimonial can be examined, it is necessary to establish what H's resources are.

H's deficient disclosure

25. I do not under-estimate the difficulty which disclosure presents to some litigants. H is an international businessman. He has a very busy work life as a venture capitalist. He is active in many different spheres and there is a huge network of companies and trusts with which he is connected. It would not be at all surprising if initial disclosure had its inadequacies and that there were aspects that needed correction as time went on.

26. On the other hand, I do not ignore the fact that he has a small army of advisors to help him and that if H did not know the answer to a question, it is likely that he would know who could provide the answer. I set out in schedule form the disclosure that he has provided:

R1	H's initial replies to questionnaire, dated 9 May 2018
R2	H's further replies to questionnaire, dated 16 August 2018
R3	H's replies to W's schedule of deficiencies and further questions, dated 28 February 2019
R4	H's replies to questions re Trust D2, dated 3 June 2019
R5	H's further replies to W's schedule of deficiencies and further questions, dated 11 July 2019
WS/4	H's 4th statement, dealing with qu.7 of W's questionnaire, dated 12 July 2019

R6	H's additional further replies to W's schedule of deficiencies, dated 20 September 2019
R7	H's outstanding additional further replies to W's further schedule of deficiencies, dated 30 Oct 2019
WS/7	H's 6th statement, revising his financial presentation, dated 30 October 2019
R8	H's replies to W's further questionnaire, dated 14 January 2020 (late and incomplete)

27. I will deal with individual entities later in this judgment but there is one point of general import. In his Form E, H set out his financial details. It was broadly consistent with disclosure he had made when a post-nuptial agreement was being considered in 2016.

28. The shareholding that he had in various enterprises is contained in schedule A attached to this judgment. Only in respect of Company B, BVI and Company C, BVI did H say that the shareholding that he held did not accurately reflect his beneficial ownership of those shares. In respect of those two companies he said that his shareholding was held in equal (one-third) parts for himself, his brother and his parents.

29. Although there were some adjustments to his Form E disclosure in the replies to subsequent questionnaires, it was only on 31 October 2019, two years into this litigation, that H's case radically changed. He said in his statement of that date (names redacted):

9. My family is a typical Indian Hindu family, in which decision-making power and financial control rests with the older generation of the family, and ultimately with the patriarch, or matriarch, who is the head of the family. In our case, this is currently my father (who was preceded by his mother, and before that his father, and his father before him), though he often works in tandem with his cousin, S, who is the head of his own side of the family.

10. While at university, and during my early 20s, I was 'learning the ropes' of investment from my family, like an apprentice. I was entrusted (subject to family arrangements) with monies specifically for investment or co-investment alongside one of the more senior members of the family notably my uncle (S) or my father. I would be guided by them in my investments: I did not have the necessary knowledge to be left to my own devices.

11. During that period, my father had been seriously unwell and by 1999 he had to undergo a heart transplant. The family had to ensure that the businesses were not affected by any uncertainty caused by my father's health problems, making it publicly clear that there was a plan in place for succession and continuity, should

anything have happened to my father. Thus, I had to engage in some PR activity, far earlier than anticipated, while my uncle and my cousin D ran the businesses. Thankfully, my father made a full recovery, and we have all worked together in various capacities since then, with my brother joining in 2005.

12. The pattern of being entrusted by the older generation with funds to purchase assets continues to this day. This is the context behind the "general family arrangement" (described in my reply to question 3 of W's questionnaire) whereby there is a non-specific power of recall in relation to funds provided to me by the older generation. If my father or uncle were to require the funds provided to me for such an investment, I would be accountable to them for those monies.

13. At this point I need to mention "specific family arrangements" which are a sub-set of general family arrangements. Often, as a matter of convenience, funds subject to the general family arrangements are held as determined by the patriarch. These specific family arrangements are more fluid than a trust arrangement, but are essentially formal recognitions of others' specific rights over assets that I hold.

30. This is not quite the first mention of family arrangements, because on 28th February 2019, H had said in reply to a question about transfers of money between him and his brother or other family members:

3. What if any other transfers did the applicant make in or around February 2014, or at any time since, whether to his brother or any other family member or associate? Provide documentary evidence in support.

Reply: In answering this question it is necessary to understand that there is a great deal of fluidity in respect of the financial relations between everybody in my family. We have what is understood in India as a Family Arrangement. I understand that such Family Arrangements have not been defined statutorily under Indian laws (but Indian lawyers can confirm that). I also understand that Halsbury's Laws of England define it as an agreement among members of the same family, intended to be generally and reasonably for the benefit of the family, either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. It is a hybrid between a trust and contractual agreements.

It is a verbal arrangement by which the members of my family have settled their inter se ("among themselves"), rights in relation to a property to avoid disputes and to promote family harmony. The purpose of a family agreement is to secure mutual co-operation and to avert future disputes. It maintains peace and harmony in the family. I understand that a family arrangement is a valid, legally-binding and enforceable understanding. I am told that the Indian courts give great force to a family agreement. The Courts have upheld family arrangements that also include those who are not members of a joint family, or those whose entitlement to inheriting a property is doubtful. Courts lean in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds even if they suffer from a legal lacuna or a formal defect. The courts in the past have applied the rule of estoppel — a legal bar to alleging or denying a fact because of

one's own previous actions or words to the contrary — to prevent the unsettling of a family agreement.

I have given a description of the movements within my family in the bank statements' explanations provided later in this answer. To go back a full four years is unrealistic in the context of a Family Arrangement. My family and I make gifts to each other regularly; our family assets and finances are fluid. As such, it is simply not possible for me to detail every transfer I have made to family members or associates since February 2014.

Again I emphasise that this position is one of a Family Arrangement and so there is fluidity in the arrangements. What is critical here is that this is non-matrimonial money; the provenance of the money is entirely from my family. It should only be invaded in case of need. (I note that the Respondent is alive to this which is why she has recently embarked on an entirely litigation-driven spending spree aimed at giving credibility to what I suspect will be an absurd claimed income need).

Deficiency

The applicant's lengthy reply states inter alia that: "1 have given a description of the movements within my family in the bank statements' explanations provided later in due course. To go back a full four years is unrealistic in the context of a Family Arrangement. My family and 1 make gifts to each other regularly; our family assets and finances are fluid. As such, it is simply not possible for me to detail every transfer I have made to family members or associate since February 2014."

The applicant has not answered the question. As ordered, please now set out all transfers made by the applicant in or around February 2014, or at any time since, whether to his brother or any other family member or associate, with documentary evidence in support.

Reply: To follow.

Further reply: To follow.

Deficiency

The applicant has failed to answer the question. Please set out all transfers made by the applicant in or around February 2014, or at any time since, whether to his brother or any other family member or associated, together with documentary evidence in support.

Reply to further deficiency: To follow.

With regards to cash transactions, I have previously explained that there is a lot of fluidity between me and other members of my family in respect of cash, and there will have been many transactions between us during this period, particularly from the older generation as part of the family arrangement. Furthermore, many of the historical accounts have been closed, and therefore the information is simply no

longer available to me. The Respondent's request has therefore proved, as I initially stated, unrealistic, and logistically impossible.

31. It is clear that H's presentation of 31 October 2019 amounted to a sea change in his case. Assets which had until this time been resources available to him were suddenly described for the first time as being subject to clawback.

32. H's explanation of this change was utterly unconvincing. He accepted that he had answered five questionnaires by then but says that it was only in October 2019 that he sat down with family members and understood the details of the arrangements. He said it was then that he learnt, for the first time, of the specific family arrangements and clawbacks.

33. This was all the more remarkable because in June 2019 in reply to a question H had produced documents from his father and brother confirming that they did not hold anything for him, but, he says, neither of them during the course of their discussions which led to the production of these letters had suggested that H owned something which they were entitled to have back.

34. Arrangements of "one for all" between Hindu families are not uncommonly seen in this sort of litigation. They are akin to trusts held in equal shares for members of a family with benevolently inclined trustees who ensure fairness between the different family members. But there are aspects in H's case on this issue which are beyond belief:

    i) H is the elder son of the patriarch of the family and is 41 years old. He is his father's heir. At one stage H's father was very ill and unable to take his full part in business management which had to be assumed by others including H. H is himself a very able businessman. It is inconceivable that H was not aware of the family arrangement, if it exists, from the very outset of this litigation.

    ii) H says that as far as he is aware no other family member, in particular his father or his brother, own assets from which H can benefit. Thus it is, he says, that other family members can benefit from what H has in his own name but H is not able correspondingly to benefit from what they have. This is an inherently implausible proposition.

    iii) An intelligent man like H would inevitably have been alerted to the existence of the family arrangements both by the discussions that he had which led him to reply in the way that he did as set out at the end of February 2019 and when he approached his father and brother for the production of documents in June 2019. Yet it was only at the end of October 2019 that he chose to disclose that the assets that he held were not under his control.

    iv) H sought to rely also on the statement of Mr S in the Chancery Division proceedings. H's reliance was intended to show that W had much more knowledge of his business affairs than she admitted to. Mr S was not called and I decline to make the finding that H seeks. What is much more significant is that Mr S sets out that he has provided professional advisory financial services to H and his family from 2003 and deals with the family wealth that is outside Company U or its subsidiaries. He says that he knows H extremely

well and is the person in the family with whom he has the most dealings. He says that he normally speaks with H at least once a week about the family investments. On about a quarterly basis there would be a family council comprising H's parents, H and his brother and their spouses. It is inconceivable that a family arrangement would have remained concealed throughout these interactions.

35. The only other relevant witness on this issue was H's father who provided a statement dated 12 December 2019 accompanied by a Civil Evidence Act notice annexing a doctor's letter. That letter required amplification, but its conclusion was that H's father was not well enough to give evidence, even by way of videolink, from UAE where he lives.

36. He sets out in his statement the background to the family wealth and how, following the death of his father at an early age and his grandfather the family wealth was divided between his mother and two uncles and how he went on to inherit a share of that wealth. He states that he is the current patriarch of the family and works closely with other family members. He says that he felt responsibility to ensure dynastic wealth was preserved whilst teaching H the skills to forge his own business career. He descends to very little detail or particularisation in his statement. What he says is not accepted by W.

37. It is surprising in the circumstances that H has chosen not to adduce any evidence from his mother, and nor from his brother or his father's cousin (sometimes referred to as his uncle), both of whom are intimately involved in much of the business activity. The only person he puts forward is one who is unable to give any live evidence.

38. I attach little weight to his father's statement, not only because of its content, which is disputed, but also because H has chosen not to submit any evidence from those who could back it up.

39. I am therefore left with these alternatives:

    i) The family arrangement/clawback simply does not exist and is a ploy created by H in order to distance himself from the assets in his name so as to ensure that W receives a smaller award; or

    ii) The family arrangement does exist but it encompasses assets, probably held in the name of H's father or his brother or entities controlled by them, which H has chosen not to reveal.

    iii) As a separate point I have to consider whether H has assets of which he is the legal or beneficial owner but which he has not disclosed.

40. In general terms, I am confident that H is the beneficial owner of those assets which he set out in his Form E and in his subsequent disclosure. I am further satisfied that those assets in which he does not have a 100% interest have as their co-owners other close members of his family. I am also convinced that H has significant interests in assets which he has chosen not to disclose.

41. H's presentation of his wealth has changed substantially as time has gone on. This is graphically illustrated by the schedule to be seen in the opening note on behalf of W.

Draft post-nup (Oct 16)	First Appointment (Feb 18)	Second Appointment (Dec 18)	WS/6 (Oct 19)
£109,943,353	£60,356,801	£84,058,686	£45,931,163

42. As indicated above, I find that these presentations are significantly deficient. I shall deal with some of his failings when commenting on individual entities but his appearance as a witness was profoundly unsatisfactory when dealing with disclosure. I set out below some general comments:

i) There were very substantial elements of his answers which provide no information or documentation except the words "to follow" (see for example paragraph 30 above). Despite orders, information never came.

ii) Some assets were only disclosed, often very late, when a trail led to them and H was specifically asked questions of them by W. This applies to both company and trust interests.

iii) His whole presentation in the witness box became increasingly evasive. H repeatedly refused to answer questions until he was shown the documents, in my view so that he could see what he had previously said in an attempt to avoid inconsistency. This was notwithstanding the fact that many of the answers were plainly within his knowledge.

iv) His professed ignorance of why certain transfers, whether of funds or shares, or adjustments to family trusts took place was unbelievable.

v) Vast swathes of transactions remain unexplained and/or the necessary corroborative documents, for example in the form of trust deeds and accounts or bank statements, have not been provided.

43. This was all the more remarkable because there is no doubt that H is a highly successful and astute businessman. His ability is obvious. After school he went to university in America and did a 4-year degree in international business and marketing and then spent one year with a well-known American bank. He subsequently came to London and has been working in London since about 2001, until his move to Dubai in 2018.

44. He learnt the family business from childhood. He used to go to the office from age 12 so "I could sit and hear how business and the family empire was conducted". He said his father and uncle used to work together and he would hear how the family would all talk about the business that was conducted. It is against that background also that I find his assertion that he was unaware of the family arrangement incredible.

45. I turn now to the individual assets which make up the resources in this case.

46. A schedule has been prepared which I annex marked A to this judgment and which I have simplified somewhat. The various categories of assets are divided into those where there is no significant dispute and those that require findings of fact. The first eight items that follow (paragraphs 47-52) are either agreed or subject to relatively small difference. I have not been addressed on the differences. This is not a criticism. I have chosen to resolve these differences by simply taking the mid-point of the different figures, as I suggested to counsel.

47. Properties held in H's sole name:

    These comprise lines 4-14 of the final combined schedule. They have a net value of some £5.262m. I accept that by far the most valuable of these properties (Property 2, India) was purchased before the parties met and that it should be treated as non-matrimonial, to be invaded only if the needs of W and C require it. The other properties purchased during the marriage have a net value of just over £704,000.

48. Properties held in W's sole name:

    These have net value of £815,000. They were gifted to her by her father and are entirely non-matrimonial.

49. Bank accounts and cash:

    On mid-point figures H has some £634,000 and W has some £125,000.

50. Investments:

    Taking mid-point figures H has £910,000 and W has £63,000.

51. Liabilities:

    H has other liabilities of £7.192m and W liabilities of £66,000. So far as W's liabilities are concerned, I have taken her figure rather than a midpoint because she is the one who will know the precise amount of her litigation loan facility cost. So far as H's liabilities are concerned I draw particular attention to the inclusion of loans that he has received from Company K, Mauritius (£1.66m), in the light of the issue about its ownership, and the security deposit for H's pre-marital property Property 2, India (£130,000) which along with the asset must also be considered non-matrimonial.

52. Business interests, pensions, H's Grandparents' Trust:

    I regard these assets as being of such minor significance that it is unnecessary for me to refer to them beyond noting their appearance on the schedule.

53. I turn now to the items where there are significant issues to resolve.

The matrimonial home

54. The property along with the attached mews house has been valued at £15m. Together they comprise some 6,000 sq. ft. and apparently are in need of some refurbishment. More important for these purposes is that they are subject to two charges. The first is a mortgage of just over £12m. I accept W's figure rather than that of H because it is the more up-to-date. The mortgage was taken out by H through one of his companies and has apparently been used for commercial purposes (I know not what).

55. The issue relates to the second mortgage in a sum of about £2.19m which has been taken out for the benefit of H's brother and used by him for some commercial purpose. It is not interest-bearing. The arrangements within H's family for the conduct of financial affairs are very fluid. Assets and monies are transferred between family members at the drop of a hat and members of the family come in and out of companies and trusts whenever it is decided that it is useful. I have no doubt that H can cause his brother to remove that liability and that it will not fall upon H to satisfy it unless some other resource of equivalent value is transferred by his brother to H.

56. Further reasons for my disregarding the loan are that H makes no reference to it in his Form E, when he sets out his interest in the matrimonial home which he says is subject only to the commercial mortgage; and there is no reference to it in the document that he provided when the parties were considering a post-nuptial agreement ('PNA') in 2016.

The French property

57. This is a very substantial Riviera villa. It is valued at some €12m (£10.3m). It is held in the joint names of H and W but there are documented loans in a sum equivalent to its value as to some £10m from H's brother and a little over £1m from Mr. C. I am satisfied on the evidence that these were loans that were made for the purpose of the purchase of the property in November 2016. I think it highly unlikely that H will be required ever to pay £10m to his brother. The way that the family works is that there will be some adjustment of assets between the family members.

58. The property is used more by H than his brother. I have been given no explanation as to why the ownership of the property is not in H's brother's name as the main contributor of the finance. But, I have no reason to believe that the 'loan' was other than genuinely made. I do not find that the property is a resource that is available to H to dispose of as he wishes. It is part of the family arrangement, available for H to use whenever he wishes. It is entirely foreseeable that the loan from H's brother will be dealt with by an adjustment of assets between the brothers and that adjustment may well involve entities of which I am unaware. I accept that the purchase was funded from resources that were not part of H's wealth and were by way of loan, and I therefore conclude that the value of the property should not be treated as a resource available to H. H must indemnify W against any liability to the lenders.

59. As the value of the property is now more or less identical with the amount of the loan from H's brother it is unnecessary for me to consider the position of Mr. C. I think it highly unlikely that Mr. C has ever put forward his own money for the property. I have been given no explanation of what his role in it might be. He is not a family member. I do not regard the liability, if it exists, as a debt of H.

60. Properties which H denies are his:

i) Property 8, India. H says that he has a 25% interest in this property. However, it is his case that he has his share as part of the undivided HUF (Hindu Undivided Family) and that it is subject to his father's control or order. He says that under Hindu law a HUF comes into existence upon the marriage of a person and arises from status rather than contract. H describes himself as a "coparcener of [H's father's] HUF of which he holds a 25% undivided share". The unchallenged value ascribed to it on the schedule is the one that H himself gave in his 2016 draft PNA disclosure. I accept that he does indeed have a 25% share to the value of £3.266m but I also accept that H holds this interest subject to the HUF and that the value will only become available to him with the consent of his father. There has been no suggestion that H has put his own money into the property and I treat it as non-matrimonial.

ii) H has the use of an apartment in New York (Property 9). W says that H has always described it to her as his flat. I am satisfied on the evidence that it is not owned by H but is an apartment owned by a part of the family empire outside his control and that H has no current beneficial interest in it.

iii) There is no evidence put before me that H is beneficially interested in the skiing chalet in Switzerland (Property 10) in which he has enjoyed luxury holidays albeit, as with Property 9, New York, he has the use of it whenever he wishes.

Chattels

61. H asks that I include the valuable contents in the FMH in the sum £2.836m. I decline to do so. This is not a case where chattels need to or should be considered within the matrimonial division. There is so much other money in this case that it is unnecessary. As I have mentioned earlier, I recognise that there may be a dispute about who should retain the artwork that the parties have purchased and which remains in the ownership of H or W and also that which was purchased by one or both of them and put into Trust E. W's personal jewellery should not be the subject of debate between the parties any more than any personal jewellery or watches that H might have.

Clawback

62. Items 140-144 raise the issue of whether or not they are subject to a clawback and 150-152 as to both that issue and also quantum.

63. As I have made clear, I was wholly unconvinced by H's argument that there is indeed a clawback under which H can be commanded by his father to hand over monies or forgive the monies that are owed to H. The very late presentation as an

argument was a forensic device to seek to limit the extent of his assets available for distribution.

64. H's case is in fact somewhat more nuanced than the headline given in the schedule. On the one hand H says that these loans are recoverable by his father on behalf of the family at any time, which I reject. But, on the other hand he says that the monies that are owed to him emanate from or represent funds provided by his family and do not come from his own business endeavours. This is a more persuasive argument and one that I will consider later in the judgment when dealing with the origin of funds. For the avoidance of doubt, I make it clear that I accept that these are monies which are indeed owed to H by the entities set out in the schedule. There is no dispute as to the principle or quantum of the items at lines 140-144 and I do not accept that H's family can call for them to be paid to them.

65. Item 151 is somewhat curious. On 26 June 2019 the Isle of Man-based director of the company wrote to H's solicitors saying that the sum that W contends for (£4.815m) was owed to H. Two months later the same directors of the company wrote to say that the figure was that which H contends for, namely £4.184m. There is no proper explanation of how the figure came to be adjusted. I shall therefore take the mid-point.

66. Items 150 and 152 need far greater explanation. I start with item 150, Company U's Holding Company:

67. <u>Company U's Holding Company, BVI & Company U, England</u>

Company U's Holding Company is owned by two trusts, Trust D1 (whose sole beneficiary is H's brother) and Trust D2. H settled Trust D2 in February 2002 and he was the beneficiary of Trust D2 until he was excluded in February 2009. Despite orders to do so, H has failed to produce any trust documents other than the deed of exclusion. He says through his solicitors [2:387] that he was informed of his exclusion from the trust at a meeting with the trustees and that there are no notes of why the exclusion happened. H's blithe explanation was that it was a decision of the trustees and it caused him no anxiety.

68. Company U's Holding Company owns almost the entirety of Company U. I will return to that shortly.

69. W says that I should pay little regard to H's exclusion. There are various examples of occasions in the past when H has been excluded from entities, added back so that he can then receive benefits from them, and then when the benefit has been paid he is duly removed again. This is all part of the way that the family works.

70. Those shares in Company U not owned by Trusts D1 and D2 were owned by H but he transferred them to his brother within days of being arrested in connection with an investigation, the details of which are irrelevant for these purposes. H said that the reason for the transfer had nothing to do with the investigation but, logically, that is hard to follow and he provided no alternative explanation. It is undermined by his acceptance that he ceased to be a director of Company U at about the same time because of the investigation.

71. When he transferred his shareholding to his brother, $12m had been loaned by Company U to Company Q, Singapore, a company which on paper H owns entirely (via a nominee). H says that this was a decision by his uncle and brother to invest in Company Q. It would follow, on H's case, that the loan is a debt to Company U, but in the accounts of Company U the loan does not appear (thus understating Company U's assets) and in the Company Q accounts it appears as a loan to a shareholder in the 2017 accounts. H's case is that although nominally the loan is due to him as the sole shareholder it is in fact due to his family.

72. A further curious aspect of H's divesting of his interest is that in the accounts of Company U's Holding Company he is owed £14.267m. At the time he transferred the shares in Company U to his brother in March 2014, Company U's Holding Company owed H nothing. All the money that he has loaned has been since then. Why, one asks, should these loans be made by him in circumstances when he says that he was at the time not a beneficiary of the trust?

73. Although H denies he has any direct or indirect interest in Company U the fact remains that:

    i) He founded the company in November 2002 and he has been a senior employee throughout the period, albeit he ceased to be a director in 2014 as a family decision in the light of the investigation;

    ii) In addition to his interest through Company U's Holding Company, he also had an indirect interest in it through Trust B1 which he did not initially disclose;

    iii) His family advisors wrote a letter on 28th January 2013 (6:760) saying that they "act as accountants and tax advisors to H and his family's businesses within the Company U Group …"

    iv) H accepts that he spoke to the protector of Trust D2 on a weekly basis yet claims (unbelievably) never to have questioned the decision for his removal as a beneficiary;

    v) Although H allegedly transferred the shares to his brother in 2014 he was not paid anything for them until 2017 and payment only came about (he says) as a result of his uncle, rather than his brother, making a payment described as "a gift". H claims that he had completely forgotten that the payment received from his brother, originating from his uncle, was anything to do with the shares. To add to the mystery of the transaction H had only, a couple of months before then, given his brother $485,000, and the payment of $500,000 made in February 2017 at first blush would suggest a cancelling payment rather than an independent transaction by way of settling a long-outstanding debt arising from the share transfer. In respect of this as in many transactions H just says, "it was a family decision", and can offer no further explanation.

74. H says that his decision to transfer the shares to his brother was as a result of an internal family arrangement. He says that he remembers nothing whatsoever of the events. He claimed in oral evidence that he only found out that he had been excluded from Trust D2 in 2018 when he requested documents from the trustees.

This is of course inconsistent with the solicitor's letter referred to at paragraph 67. He claims to remember nothing whatsoever about his exclusion nor indeed of the exclusion of W and C as beneficiaries.

75. In addition to the loans of £14.267m made by H to Company U's Holding Company, H has also loaned £2m to Company U3, which is 97% owned by Company U. Two other companies of which he is the sole owner, namely Company K, Mauritius and Company L, Mauritius, have also made loans in or about 2016 in the sum of $500,000 each to Company U's Holding Company. In each case Company U's Holding Company is described as a related entity having a common owner – i.e. H.

76. It was put to H that he did not care about the exclusion because in fact it made no difference on the ground, as he could simply be re-admitted. It is certainly right that he appeared completely unconcerned about the exclusion and said that whether he was re-admitted was a matter for the trustees.

77. I cannot fathom why the exclusion took place in 2009. Equally I am completely satisfied that H's distancing himself from Company U's Holding Company and Company U is not a true presentation of his relationship with them. I am asked by W to find that H is owed by Company U's Holding Company £14.267m as per the accounts.

78. I have no hesitation in finding that H is indeed owed the sum by Company U's Holding Company which appears in the company accounts and which H does not challenge. The figure is the addition of those appearing at [2:425], [3:596] and [3:652]. I do not accept that these sums are subject to any clawback to H's family.

79. W asks me to attribute to H 50% of the value of Company U. Her case is put this way:

    i) H founded the group in November 2002; he has worked in it since its incorporation and is a director;

    ii) Company U is almost wholly owned by Company U's Holding Company and H, along with W and C, were beneficiaries of one half of Company U's Holding Company whilst his brother was the beneficiary of the other half;

    iii) H's disclosure in this case has been woeful;

    iv) H can or will be able to receive benefits from the trust by being re-appointed as a beneficiary of Trust D2;

    v) It is inconceivable that H would not have an interest in such a valuable entity when he and his brother had always been treated broadly equally;

    vi) H has made unsecured loans to the company and to Company U's Holding Company both personally and through companies owned by him in a way that are completely inconsistent with an absence of any interest in the underlying assets.

    I have simplified but I hope accurately stated the way she puts her case.

80. H says that he has no interest in Company U and is simply entitled to the return of the £2.9m which appears at line 142.

81. Whilst I am of the clear view that H does have an interest in Company U, I am unable to assess whether it is 50% as W claims or something less. The principal reasons I reach my conclusion are because I accept the force of the arguments made by W at paragraph 67 onwards and:

    i) I think it inconceivable that H would work so hard and so long for, and lend substantial sums of money, both directly and indirectly, to an entity in which he has no interest;

    ii) The fact that his brother has a 50% interest and the brothers are broadly treated equally makes it highly likely that H has a substantial interest in the company;

    iii) H's inability to provide any plausible explanation of his removal from the company makes his account incredible.

82. The value of Company U

    It is very difficult to know what value I should attribute to the whole of Company U for the reasons set out in the schedule prepared on behalf of W and which I attach hereto marked B. Five properties and plots of land were valued by Smith & Williamson for the purposes of a return to HMRC. Mr Todd QC questioned their basis of valuation but I have no reason to think that it was anything other than a proper market valuation. Six properties were valued by Savills and others pursuant to an order made by me. The ratio of value against cost falls between 1.16 at the low point to 7.59 at the high point. This is not necessarily a criticism of the accounts as the properties no doubt will have appeared at cost price. The effect of applying the mean of 2.54 (as W proposes) to the cost value of the properties/non-current assets would enhance their value by some £228m, as the schedule sets out.

83. Mr Caldwell did not think it proper to value Company U on anything other than the figures that appear in the accounts, save for updating for those properties which had been the subject of SJE valuations. The result of that would be that Company U had no net value. He says that what he did was in accordance with normal accounting practice but he understands why it is that the court might wish to take a different view. Mr Todd QC did not demur, when I put the matter to him, that it would not be unrealistic for me to uprate the cost figures if I did so in a modest and proportionate way.

84. It is relevant at this stage for me to refer to what happened when the valuer came to value Hotel 2, India, and which can only be called most unfortunate shenanigans. The freehold of the hotel is owned by a company owned as to 99.79% by H's father and aunt. It is leased to Company U1, India, which is a 100% subsidiary of Company U. Savills valued Company U1's long leasehold interest at a little over the sterling equivalent of £50m. There was no suggestion whilst they were doing the valuation that there was any problem with the hotel company's ownership and tenure of the land, yet after the valuation was produced it was asserted for the very first time that the landlords, who had apparently issued a final ultimatum to the

hotel in October 2018 to carry out works, might be in a position to terminate the hotel's lease, with a dramatic reduction in its value.

85. In the light of this assertion Savills valued the leasehold on two additional bases, namely (i) the value assuming the lessee's rights are revoked in the litigation (£26,000) and (ii) the value of the lease assuming on-going operations with no future development (£3.55m).

86. W argued that the court should take the figure of £50m, as if there was no litigation, and H asked me to take a figure between the two lower figures.

87. It was extraordinary that the existence of this dispute should have arisen in these proceedings for the first time in this way; even more remarkably, it is completely inconsistent with the accounts of the hotel company to 31 March 2019 which declared that it was not involved in any litigation which could affect its value. The landlord is, of course, one of the companies within H's family business empire and the alleged dispute is between close members of H's family. Unless there was a corresponding commercial benefit (and none was explained) it is hard to see the reason for terminating the hotel's lease other than to reduce its value having become aware of the SJE valuation.

88. I conclude that this was a blatant attempt to minimise the assets in this case and a strong pointer that H's assertion that he should be treated as having no interest in Company U is untrue, because otherwise there would have been no need for or benefit in this charade.

89. It would be proper for me to disregard the ratio 7.59 which appears as the multiplier for Hotel 2, India because it is so much an outlier, but with that excluded there is still an average increase of 2.25%. I think it right that I should adopt a conservative approach and having thought about the matter, rather than applying a ratio of 2.54% or 2.25% to cost value I have decided to apply a ratio 1.75%. The effect of this would be to increase the net assets of the company to £216.334m after adding back the Company U's Holding Company loans, and a half share to £108.167m.

90. I cannot go so far as to make a finding that H's share is worth £108m. On the assumptions that I have made, this will be the maximum that it is worth, but I have no doubt that he has a substantial interest in the company which will not be less than 25% and may be 50%. I take the figure of 25% as the minimum because there are 4 active participants in the family ventures, being H, his parents (or father alone), his brother and his uncle.

91. I accept that in taking a figure of 25% it might be argued that I have been too generous to H. I have done so because I am confident that by so doing I am not overstating his interest and also because the realisation of it may require the cooperation of H's family.

92. I disregard the debt to Company U's Holding Company in the Company U records of £151m. It is in a sense artificial for these purposes because if it was paid it would on my findings ultimately make its way back to H, pro rata with his interest.

Although at the current moment his interest in Trust D2 has been removed, I find that this will not remain the case unless it is what he determines.

Company Q, Singapore

93. H says that he overlooked his interest in this business when completing his Form E. His interest came to light in examination of the Company U accounts by W which revealed that H owned 100% of the shares in Company Q which in turn owned various other significant companies. The 2017 accounts for Company Q disclosed an outstanding amount due to the shareholder of $19.322m. H explained that this was funded in the main by Company U, in part by H and in part by his uncle. He provided a breakdown which stated that $11.922m was due to Company U, $6.150m was due to H and $1.260m was due to his uncle. H accepted that he failed to disclose this debt due to him in his Form E albeit it remained W's case that the whole of the $19.322m was due to H. The breakdown to which I have just referred contained various discrepancies which H could not explain and in respect of which I draw no conclusions.

94. On 28 February 2014 H had divested himself of his shareholding in Company U. Yet, since that date Company U loaned to Company Q some $12m. Why, one might ask, would Company U loan monies to Company Q when on paper Company Q had nothing to do with Company U and when Company Q was owned 100% by H?

95. H's explanation was that his uncle and brother made a business decision to invest in Company Q. Yet, as referred to in paragraph 71 above, the loan from Company U to Company Q does not appear in the Company U accounts. In the Company Q accounts the sum of $19.322m is described as "due to shareholder", (i.e. H).

96. H claims that he has an effective interest of 16% in Company Q. He says that he owns 100% of the shares in the company via a nominee. He says its funding came from shareholder loans, namely 61% by Company U, 32% "ostensibly by me" and 7% from his uncle. However, he says his loan was in fact funded by his father subject to family arrangements and is due back to his father with the consequence that nothing is available to H.

97. It is apparent from Mr Caldwell's analysis of Company Q that the value of the company is due to the shareholder and that the shareholder referred to in the accounts can only be H. I reject H's assertion and find that H is indeed owed the sum that the accounts show. Of course, that is not conclusive of the argument that he should be given credit for advances given by his family from their own resources.

98. I turn now to comments on some of the individual companies. Those not commented upon are covered by the general considerations that I have set out.

99. Company B, BVI and Company C, BVI (lines 181-182): I take these two companies together because in respect of each H has said from the time of his Form E (albeit not in his PNA disclosure) and notwithstanding his apparent 100% interest, other family members own two-thirds of the company and that he only owns one-third beneficially. But his position in respect of those two companies

evolved on 31 October 2019 to state that although they were subject to the family arrangement described, the work that had been done to enhance the value of the companies had been done by others and that he had had no involvement in it. Thus he says, that rather than the sums at which they had been valued by him in his Form E, the only sum available to H was his share of the passive growth, put by him on 31 October 2019 at £607,000 and £295,000 respectively, but now put at £346,000 and -£21,000 respectively.

100. The decline in the value in Company C was explained by H by the fact that he had failed to reveal that the shares held in the company had been converted into cash. He went on to say that when the shares were sold the money went into three trusts, Trust B1 (H's trust), Trust B2 (his mother's) and Trust B3 (his brother's). It follows that his account at paragraph 41 of [5:204] was, if ever true, overtaken by events. The Company C share investments had been sold in March 2017 for $9.776m and of that $7m had been paid to The B Trusts' Subsidiary Company 1 (the family office owned by Trusts B1, B2 and B3) for distribution in equal shares between the family trusts. But, the difference of $2.776m remained with H and was used by him.

101. According to the contemporaneous documents he gifted $495,000 to his brother and $150,000 was put by him into Trust E. He said in reply to questionnaire that the remaining $2m was going to be put into Company U's Holding Company. In oral evidence he said that the $2m that went into Company U's Holding Company came out of the balance of the $2.776m but although he refused to admit it in his oral evidence in a number of answers, the bank documents show quite clearly that the $2m in fact came from the $7m that went to The B Trusts' Subsidiary Company 1, of which $2m came back to H, who then paid it to Company U's Holding Company. Thus, it was established that the $2m that went into Company U's Holding Company came through H. This will become relevant as seen later.

102. A similar situation arises in respect of Company B. On 6 June 2018 Company B sold part of its investments for $13.37m and that sum was transferred to H. In his answers he said that $10m of that sum went to The B Trusts' Subsidiary Company 1, but that this was the case was incapable of proof by H as he says he has never had access to The B Trusts' Subsidiary Company 1's accounts. He accepts that those who manage The B Trusts' Subsidiary Company 1 would have no means of knowing how the balance of $3.37m might have been used by H. H said that he would have told his father and brother (when they met) that in fact the sale proceeds were $13.37m rather than $10m but there would be nothing in writing to evidence it.

103. It would have been very interesting to have seen any form of documentation from The B Trusts' Subsidiary Company 1 which would show how the respective accounts of the three trusts were kept and how equalisation might have taken place between the three parties. Unfortunately, no such information was provided although records must exist for parity to be achieved.

104. With some misgivings about where the unaccounted for money has gone, I am prepared for these purposes to accept H's interest in Company B and Company C as being one-third because there is evidence of the monies going to The B Trusts' Subsidiary Company 1 and benefitting the trusts of two other family members and

because in his Form E (although not in his PNA disclosure) he set out his interest as being one-third.

105. It goes without saying that H's contention that only the passive growth is "available to meet our needs" is not borne out by the way that monies have been divided.

106. Company G, India (186): In his Form E, H described his holding as being 45.03% which is confirmed by the accounts. It was subsequently diluted to 38.53%. In the company accounts H, his father and his brother are described as individuals having control over the company with H's brother having the same shareholding as H and his father having the remaining 9.94% of the shares (before dilution). H now claims that he has been told by his family that in fact the company beneficially belongs to his brother and his father. He did not know before and there is no document that supports his assertion.

107. H's 6th statement refers to his interest being reduced to 23.58%, which if accurate would reduce the value of his interest from £5.3m (38.53%) to £3.2m, a figure accepted by Mr Caldwell if H's assertion was correct. The higher figure of 38.53% appeared on all schedules that I was provided with, unchallenged as to the size (as opposed to the value) of the holding. It appears likewise at 38.53% in H's closing schedule (emphasis added). In the circumstances I intend to take this higher figure.

108. I reject the assertion, as I similarly reject the like assertions made in respect of his interest in Company H, India (188) and Company J, India (190). However, Company F, India and Company G, India, uniquely among H's business interests, were plainly founded and operating well before the parties' marriage.

109. Company K, Mauritius and Company L, Mauritius (190-192): I deal with these two companies together. In each case, H in his Form E declared he was the 100% owner and in the Companies' accounts he is described as the ultimate beneficial owner. He now says that 50% of each company is beneficially owned by his father, his brother and himself and the other 50% is owned by his uncle's side of the family. Thus, his interest in the company is, he says, 16.67%.

110. H's shifting evidence was that the Company K dividend had been divided between the family, before he changed his answer to say that he did not know if it went to him and others, before finally, having seen the bank statements, accepting that all the Company K dividend came to him. He was unable to explain how the others who were allegedly beneficially interested in the dividend would have been compensated for their non-receipt.

111. Of particular interest is the fact that each company (Company K and Company L) loaned $500,000 to Company U's Holding Company, which was then written off in the accounts of the companies. H says that in respect of each company the funds came from the older generation and that it was purely as a matter of convenience that the shares were put in his name. In the circumstances of both his declared ownership and his receipt and use of funds it is clear that his beneficial interest is 100% and I reject his argument to the contrary.

112. There was a dispute as to the value attributable to H's interest in Company L, put initially by Mr Caldwell at £1,779,797 and then revised by him to £1,000,186 if the certain loan balances to two corporate entities had been written off, as H subsequently asserted but without providing any underlying documentation. The lower figure has been a shifting amount because of currency movements and in closing was put by H at £934,781. I have looked again at Mr Caldwell's reports. It is clear that again he revalued the asset on the basis of the assertion made by H. In this instance H has set his case out consistently since 31 October 2019 when his solicitors raised this issue and although the supporting documentation is incomplete, I am prepared to take the lower figure.

113. Company M, Seychelles (193): In his Form E, H said that he was a 50% shareholder but that the company had no assets and thus his interest was of no value. That was plainly erroneous because subsequent disclosure by the company shows that the company had the funds to subscribe for two sets of shares in the total sum of $1.478m. The other shareholder in the company was H's brother. It came as an apparent complete surprise to H when he was told that "the intention has always been that the shares will be transferred back to my parents in due course".

114. Company N, Seychelles (194): H says that a similar situation arises with Company N. In his Form E, H described himself as the 50% shareholder and said that the company was a holding company of no value in itself. Subsequent disclosure by the company described the company as having a net asset value of $1.245m and stated that H "is the ultimate beneficial owner of the company since 7th April 2015" (i.e. 100%, not 50%), as H's later presentation accepted. H's answer to this was to say that the value to him remained as nil because he was told by his family to his surprise that the money in the company would revert to the older generation who supplied it. In each instance I reject his argument.

115. Company O, Singapore (195): In his Form E, H said that he had a 100% interest and that the company was of no value. He was only told late on by his family that his interest is 25%. Exactly the same applies to Company P, Singapore (196). I reject that evidence but as both companies have negligible assets it is unnecessary to say more.

Disputed Liabilities

116. HMRC: In his schedule H claims that he owes £1.369m to HMRC. It transpired during his evidence that about £200,000 of that has been paid and that the balance is being challenged. I have no basis upon which I can or should speculate whether any further sum is payable, but I am satisfied that H will have the resources from undisclosed assets elsewhere to meet any liability that might ultimately be due.

117. The B Trusts' Subsidiary Company 1: This is the family company which has produced no accounts for the court to consider. It is impossible to believe that no documentation is available. There is no evidence that persuades me that this is a debt owed by H. It does not appear in his Form E as a liability nor in his sixth statement. Whilst there may be a document evidencing the receipt of a loan, I do not find there to be any satisfactory evidence it will be repayable. I therefore reject

that a sum is repayable but I also do not take into account the offsetting sum of £425,000 which H says was transferred from that advance to his brother.

118. W's debts: I accept that W owes her cousin £230,000 which she has advanced to W to help with her costs. The money is properly evidenced and I accept it as a liability. I do not, on the other hand, accept a liability to her father to repay him the sum of £1.05m that he put forward to pay the investigative agent instructed by W in respect of H's disclosure. I know nothing about the work that this man might have done. I know nothing about the instructions that he was given. There is no commercial loan arrangement between W and her father. W may wish to repay him but that is a matter entirely for her and is not a liability that I should take into account.

Minority Discounts and Tax

119. For just 7 companies Mr Caldwell applied a minority discount to H's interest, varying between 10-25%. He said that he applied a lesser discount than would normally be the case to reflect the fact that the purchaser would find a ready market within the family. In the case of all these companies the shareholdings are held by entities which are completely under the family's control. He said that he applied a market participant standard not an interested party standard. The total value of the discounts is £3.5m.

120. This is the perfect example of the quasi-partnership to which a discount will not attach. I accept that if an outsider was to buy into one of these companies he or she would expect a discount, but it is in my judgment inconceivable that any outsider would either be permitted ownership or be interested in acquiring it. Nor could I imagine why an outsider would want to invest if he would not have any control. I refer also to what I say at paragraphs 133 onwards as to movement of resources. There is no history of family members acting to the detriment of other family members. On the contrary, they assist each other.

121. When Mr Caldwell first reported he assumed that most assets would on sale be subject to capital gains tax. At that time H was tax resident in the UK. He has now moved to the UAE where there is no income tax. It has not been suggested to me that tax (other than the HMRC debt to which I have already referred) is a feature in this case and I pay no further regard to it.

Company R/Company S/Company T

122. W argues that I should attribute to H the value of £13.696m in respect of his shareholding in Company S. Mr Leech QC puts that figure as the value of the visible shares owned by Company R in Company S and on the basis that there is no other figure that he can select. It is no fault of W that there is no other way of presenting it.

123. The figure is somewhat speculative but when Mr Caldwell attempted to value the whole of the Company S he was able only to produce the very wide bracket of $51.94m - $215.83m. The lower figure ascribes value only to the A and B shares not subject to redemption at the current price of $10.20 per share. The higher figure includes all of the shares including the B shares which H has, but which only

have value when (or if) the project takes wing whereupon they are automatically converted into A shares.

124. H's disclosure has been lamentable. It was only in August 2018 that he revealed that he had an interest in these entities and that it was "omitted from my Form E in error". Only more recently did he say that his interest was in fact 41.34% of its 20% ownership of Company S. This was subsequently reduced by H changing his presentation to say that there was a family arrangement so that he only held 25% of 41.34%. It would be consistent with my findings to reject, as I do, that assertion.

125. Company S is a company set up to make property acquisitions in New York and $150m was raised by way of an IPO, a fact which H also did not reveal. The intention was to invest in projects and on three occasions Company S has come very close to acquisitions. For various reasons those acquisitions have fallen through and if there is no further acquisition by 28 May 2020 the shareholders are entitled to the return of their investment unless a resolution extending the date is passed. Mr Caldwell, the SJE forensic accountant, says that there is a strong incentive for the original investors to extend the date and the public subscribers would benefit likewise as their investment is held in trust and there is no downside for them if the date is extended.

126. Mr Caldwell's attempts to value H's interest have been completely frustrated by the refusal of Company S/Company T/Company V to provide any information whatsoever for various purported reasons including confidentiality. I am in no doubt that if H had wanted them to provide information that could have been achieved.

127. As Company T holds 4,232,222 shares of Company S (representing 20% of the total issued stock) and at a value of $10.20 per share, a 41.34% interest would be worth some $17,845,000, the sterling equivalent being £13,696,678. H's shares will, of course, only acquire this value as and when the project goes ahead. If that does happen then they may become worth significantly more. At $11.50 per share, the warrants which he holds acquire a value but only upon payment, and I accordingly exclude them.

128. H is an extremely astute businessman and I find it hard to think that if the investment was thought likely to fail, he would not have told me so, which he did not. I am therefore driven to accepting the figure put forward by W as the best information that there is in the circumstances. In arriving at this conclusion, I bear in mind that it is desirable for me to make a finding of the probable value if I properly can as the project is plainly a matrimonial endeavour. H knew how W was putting her case and in my judgment it was within the power of H to produce information if he wished to counter it.

Trust B1

129. H is the beneficiary under a trust known as Trust B1. H's interest in that trust has been valued by the parties respectively at a little more or a little less than $25m (£20m) and I accordingly take the midpoint. Mr Caldwell had not been told by H that the accounts of one of its underlying subsidiaries made no reference to the

ownership of a flat in New York, the existence of which had not been disclosed and of which there is no evidence of value.

130. I find the evidence on this point to be clear. The flat in New York is owned by Trust B1's Sub-subsidiary Company 1, a subsidiary of Trust B1's Subsidiary Company 1, which in turn is owned by Trust B1. Yet, the ownership of Trust B1's Sub-subsidiary Company 1 is not revealed in Trust B1's Subsidiary Company 1's accounts, which refer only to "securities" which are not the same as "real estate". Mr Caldwell knew nothing of Trust B1's Sub-subsidiary Company 1 or its assets and accepted when it was put to him by Mr Leech that the apartment was "off balance sheet". In re-examination by Mr Todd it was put, without any underlying evidence being produced, that "securities" could include the Trust B1's Sub-subsidiary Company 1 shareholding. Mr Caldwell accepted that it was possible but as H had not disclosed the Trust B1's Sub-subsidiary Company 1's accounts, he could not verify this. H's evidence that it was included was tentative and unpersuasive and I do not accept it.

131. Mr Caldwell applied a discount to H's interest in 2 of Trust B1's companies. I do not understand the logic and it was not pressed by H. The parties agreed the value of Trust B1, subject to the issue of the apartment, and it is unnecessary to say more on this issue.

132. There remains uncertainty as to whether Property 12, London remains in the ownership of another subsidiary company or whether it has been sold to a third party. The uncertainty arises at least in part by H answering a questionnaire served on him by indicating that he still has (in the present tense) an interest in the property. In evidence he said that he sold it in 2012 and indeed it is clear that the ownership did change in 2012, but the identity of the new beneficial owner is a mystery. I do not have the evidential basis for concluding that the flat remains in H's ownership.

Movement of Resources

133. I have referred to the manoeuvres of H and his family in connection with the valuation of Company U. It is appropriate that at this stage I should refer to some other like matters.

134. Both H and W accept resources and monies flow between the different family members of H's family in a fluid manner. The distinction between them is that H says that he simply does whatever he is asked to do by his father without there being any form of quid pro quo, while W says that there is a form of accounting kept so as to ensure that in broad terms the family members, and in particular H and his brother, are treated equally. As a matter of common sense, W's account seems to me to be far the more plausible.

135. Assets and monies are transferred on a frequent basis. This takes a number of different forms. For example:

i) In 2014 immediately after his arrest as a result of the investigation, H transferred his shareholding in Company U to his brother. No consideration

was paid until 2017 when a payment was made, not from his brother, but from his uncle;

ii) In November 2015 H transferred some shares in Company AB, to his uncle and in January 2017 his interest in Company AC. Likewise, in June 2017 and January 2018 shares in other entities were transferred to his uncle.

iii) Very large sums of monies were paid to H from his uncle including some $1.8m in an 18-month period from January 2016. All of these are described as "gifts" but were very probably a quid pro quo as part of a business transaction between them.

iv) H was excluded from Trust D2 for reasons which he claims to have absolutely no knowledge of and in respect of which he has provided conflicting evidence saying that he was told at the time of his exclusion in February 2009 and then saying that he only learnt of it in 2018. It is completely inconceivable that this happened without his knowledge or approval. H just shrugs his shoulders and produces no documents to explain a decision which has such apparently serious financial consequences for him as being a perfectly reasonable action of the trustees.

v) H dips in and out of trusts as a beneficiary when it is thought expedient so that benefits may be received.

vi) In a different context, but one which is apt in this context, H's case was that "funds are transferred to whoever requires them".

136. A clear example of the way that the family operates can be seen by the transactions that happened following the DNA results. H had settled a trust fund by the name of Trust C1 for C but of which W was also a beneficiary. On 25 January 2018, just after decree nisi, W was excluded from the Trust. On 4 March 2019, just after receipt of the confirmatory DNA test, C was excluded from the Trust and in place of C, H's brother and his children were added as beneficiaries.

137. H was very insistent that the decision was taken by the trustees and protector. He tried hard to disassociate himself from the decision. He accepted that the decision makers might have heard that C was not his biological son. It was prised out of him that he did not disagree with the trustee's decision. He claims that it was entirely the decision of the trustees to change the beneficiary away from C. His assertion that he was in no way a participant is completely at odds with his other actions taken against W upon the discovery of C's paternity.

138. C suffered a similar fate in respect of Trust C2. H had settled the trust in 2010 for the benefit of his parents but they were not the only beneficiaries. On 4 March 2019 any illegitimate child of H was excluded from being a beneficiary. H claims that he had no idea that illegitimate children were being excluded, notwithstanding that he was the settlor of the trust. He also claimed to be astonished to find that he was a potential beneficiary of the trust. He thought that the only beneficiaries were his parents. I do not believe him.

139. Both W and C were beneficiaries of Trust A. That trust owns the matrimonial home. H says that he does not know whether or not they have been excluded from this trust. I think it unlikely that he does not know and almost certain that they are excluded as beneficiaries.

140. I have focussed on the movement of resources and the way that the family operate as "one for all and all for one". It also shows also how inappropriate it would be to apply a minority discount. The family operates as one unit.

Hindu Undivided Family

141. At line 223 there is a figure of £458,337. This is the difference between the value given for the HUF and the value attributed to Property 8, India. The figure itself is not in dispute but the ability of H to access it is. It would be consistent and logical for me to accept the figure but to park it as a non-matrimonial asset.

Trust E

142. Trust E holds a substantial amount of art, valued at around $48m (£37m). On 17 December 2018 a meeting was held by telephone where notice was waived and an immediate decision made to redomicile the Trust from Panama to Dubai. H says the meeting did no more than implement what his parents had decided to do some time ago and that it was complete coincidence that it happened within a couple of days of the results of the DNA test. Notwithstanding Mr Leech's invitation, I do not think it is right for me to draw any conclusion about the timing or reason for the re-domiciling as I can see no logical connection between the action taken and the discovery of C's paternity.

143. In his Form E, H said this:

> *The applicant is a 50% discretionary beneficiary under the [Trust's] regulations, but the council at its sole discretion can add or remove potential beneficiaries at any time. Value calculated on the basis of mid-point of auction values (per Sotheby's catalogue) plus invoice value of artwork purchased subsequently (less costs of sale).*

144. H is indeed a 50% principal beneficiary, the other beneficiary being his brother. The trust is administered by a professional advisor and by H and his brother.

145. In various places the Trust has been described as charitable, but it plainly is not charitable in a sense that would be understood by English law. The pictures are held in houses belonging to members of the family. Some are in storage and some are on display in company premises. A study of H's accounts shows that payments are made from them from time to time for expenses of the Trust. H explained that they were payments for things like transportation and storage of art works and insurance.

146. W says that some paintings were purchased by the parties and placed in the Trust. I was given no detail. Whilst I have no reason to doubt this, I am confident that the scale of provision by the parties was not substantial. But, in so far as the parties can show that they have purchased from their own resources artwork which has

been placed in the Trust, I will consider its future at the same time as that of the artwork retained in their names.

147. I accept that H's mother has been for many years the leading light behind the Trust, the purchase of artworks for it, and the person in the family most interested in art. I accept further that that artwork is not immediately available to H and his brother, but I have no doubt that it is a resource that will be available to them in due course.

148. In support of my finding I rely also on his first statement when he said "in preparing my Form E I received confirmation that I in fact have a 50% discretionary interest in the [Trust] and that my interest has always been at this level" and the letter of instruction to a firm of valuers by H's solicitors in which again they refer to H's interest as being 50%. Only in October 2019 did he change his case.

149. H makes the point, which I accept, that Trust E has never made any distributions to its beneficiaries and that its origin was his parents' personal art collection which they have grown over the years. It follows that I accept that, with the exception of those items purchased by the parties, it is very substantially non-matrimonial and I treat it as such.

Pre-acquired/Externally Provided Assets

150. The sharing principle applies to all assets but in so far as assets emanate from without the matrimonial partnership they are normally to be treated in a different way to those generated during the partnership. It is in that context that I have to consider the extent to which H's assets have been self-generated or provided by his family for him.

151. Company F, India and Company G, India were founded well before the marriage but have grown during the marriage. All the other interests which H has acquired were created during the course of the marriage. I have no satisfactory evidence which permits me to do any sort of precise calculation.

152. H states that he was worth some £17m at the time of the marriage. The marriage lasted for some 14 years, encompassing most of the parties' 20s and 30s.

153. Money washes around in H's family in such a way that I cannot see any trail. I have no doubt that H's early investments were funded by monies that came down through his father but as time went on H became more able to set up entities with the profits made from his business activities.

154. Because of his ability and training, H was able to start creating wealth very soon after he established his business career. Whilst I accept that he would have had a degree of spoon feeding and benefit from his father in the early years, as time went on the need for this kind of generosity disappeared.

155. I can only make a broad assessment on everything that I have heard and read and conclude that it would be fair to regard 25% of the wealth that H has created to be non-matrimonial. In reaching this figure I have taken into account particularly the

length of the marriage, the abilities of H, and his own estimate of his worth at the time of marriage.

156. It would create a false degree of precision to apply a different percentage to Company F and Company G, and it is a relatively insignificant part of H's wealth.

157. In arriving at this figure, I make it clear that my assessment of H is that he is an extremely able businessman. He was brought up learning business from a young age. I do not for one minute accept the description of him as a playboy. True it is that he has played hard, but he has also worked hard as well. I have no doubt that he had made very substantial sums of money during the marriage but equally he was given a significant step up by his family, which needs to be recognised.

The known unknowns

158. I have already commented on Company R/Company S/Company T and the New York apartment owned by Trust B1 of which H is the beneficiary. The most significant other known unknown is Company V.

159. Schedule A sets out various other known unknowns. I am unable to make any finding as to whether there is value in them for H.

Company V

160. Company V makes money out of New York property. It invests in new-build properties or renovations and their management. In public documents H is described as a co-founder of Company V and President and Director of the company which manages the investment funds. He has provided very substantial guarantees for the company projects. H claims that he is unable to take any money out of the Company V structure. W describes the business as his baby since its founding in 2010.

161. H has put a considerable sum of money into Company V although he was unable to recall anything about the size of the investment. His guarantees amount to £68m, more than what he now states his entire wealth to be. They include £34m in respect of acquisition and construction loans taken out for Company V's real estate projects in New York. H plainly regards the chances of his being called upon to honour his guarantees as minimal.

162. There are two arms to Company V. The first is Company U2, which is owned 100% by Company U. H is the President and Director of Company U2. His involvement is an additional reason why I am disinclined to believe his removal from an interest in Company U. Company U2 receives a fee for the management of the Company V enterprises.

163. The profits from the Company V ventures go to five trusts including one settled by H for the benefit of his parents (Trust C2), one settled by H's brother for his family (Trust C3), and one settled by H for the benefit of W and C (Trust C1). 50.2% of the profits go to those 3 trusts with the balance to two other trusts with which I need not be concerned. Company V is said to have $1.2b of assets, although I cannot know whether that is anywhere near accurate.

164. The attempts to find out what Company V is worth have, as the case is presented by H, been completely stymied by the trustees. As is to be found in other instances, the trustees' unwillingness to give information is only partial and, I have no doubt, directed by H or his family.

165. The non-disclosure of this asset by H is significant and serious. I find it incredible that H would spend his time and invest his money in the enterprise if he had no interest in it. I am satisfied that H has or will have in the imminent future, a substantial interest in Company V, probably to the extent of 16.67%, being the original interest of W and C before their removal. That would put him in a position of equality with his brother and with his parents. However, I can form no assessment at all of its likely value, although I am satisfied that is it substantial.

Unknown unknowns

166. This aspect is even more obscure. W has been able to expose H's ownership of assets that he did not disclose. I have no means of knowing what remains undetected, whether held for him in his name, that of a nominee entity, or by other family members. The family have closed ranks so that the court's vision is dimmed. I am confident that H will have an interest in assets not held in his name, but I cannot begin to speculate what that interest or its value might be.

Costs add-back

167. I am asked, somewhat half-heartedly, by Mr Leech to add back the sum of £4m reflecting the completely unnecessary costs which W says H has both spent himself and caused her to incur by the torrent of litigation that he has unleashed. I decline to do so. H is on the receiving end of orders for costs in the Chancery Division proceedings and in the Queen's Bench Division proceedings which I dealt with and dismissed. True it is that it means that there is less money to be divided between the parties but in the context of the sums in this case I do not consider that there is any justification for an add-back.

Contributions

168. H's contributions have been significant. He has provided well for his family and has built up very significant sums of money. He has taken the role of a fully committed father. But, for these purposes W's contribution has been equally significant. It was by agreement between them that she did not work during the marriage. She was in charge of the home and family. H accepts that she has been a good mother to C and was complimentary about the support that she gave him throughout the marriage and in particular when times were difficult, such as when the investigation was taking place.

The Wife

169. There is no doubt that both H and W come from very wealthy families. Each is fortunate to belong to a very supportive and close family.

170. W, perhaps because of her gender, has not had any involvement in the running of her father's family business. She has very small shareholdings in some of his

companies worth less than £1,000. She has never been involved in business affairs. H sought to counter this by reference to a statement prepared by Mr S who is a professional financial advisor to H's family. I accept that W has no particular knowledge of or interest in financial affairs. That is not in any way to suggest that she is anything other than intelligent. I am satisfied that she is an educated, intelligent and articulate lady, but one who has largely been excluded from financial affairs.

171. W denied that she was aware of the existence of any arrangement whereby Indian family monies were the subject of a family arrangement which permitted the older generation to claw back money passed on to the younger generation whenever wanted. She said, and I accept, that whilst a child might out of filial loyalty comply with a parental request made for monies to be returned, there is no legal obligation absent a specific agreement to do so.

172. Her understanding was that money, when it came into H's family, was divided between H's father, H and his brother, and it was theirs to do with as they wished. Whilst money might shift between the different family members in a fluid manner, a scoresheet would be kept so that approximate equality could be achieved in the long run. That is what I would have expected to be the case.

173. H was very critical of W's disclosure of financial support from her family. I do not regard the criticism as being of any material significance. Clearly W's father did not regard it as being any part of his responsibility to pay W's legal fees when she could obtain an order that H should do so. What he did do was pay £1.05m to an investigative agent to assist W dealing with and enquiring into H's disclosure and wealth. I have no report and do not know how the money was utilised. In my judgment if W's father wishes to spend his money that way that is his option. W may want to pay her father back, but there is no legal obligation to do so and I disregard it as a debt in considering her resources. In exactly the same way if W wishes to use £72,000 of her brother's money to pay for an upmarket concierge that is a matter between her and her brother and not a debt which I should take into account.

Property 11, London

174. This is a flat which is held in W's name. I have read the conveyancing file. In my judgment the position is clear. This two-bedroom flat was purchased for W's parents as their pied-a-terre in London. Initially it was going to be held in their names but during the conveyancing process it was decided that it was simpler for it to be held in W's name. The conveyancers carefully explained to W's parents that if it was declared that W was the legal and beneficial owner they would have no right to the property in the event that their relations with their daughter broke down. I am satisfied that the property is indeed held by W. But, it is plain to me that she properly regards the flat as not one she can deal with and which is held to the order of her parents. Subject to what follows, it is plain that W put no money into the property and that it should be regarded as non-matrimonial and unavailable for W.

175. W put no money in to the property, but H put £2m towards the purchase, representing somewhat under 40% of the cost of the purchase price, the balance

having been paid by W's parents. W was cross examined as to whether or not the £2m had been repaid by her father or grandfather to H. She said that she understood that he had been repaid and Mr Todd QC on behalf of H challenged this.

176. I accept W's case that notwithstanding the ownership, she regards it as her parents' home in London. She has spent 2 nights there in some 7 years. Her parents stay in it when they come to London as does her brother on his occasional visits. I expect that in the long run when the parents no longer have any use of the premises it will become an available resource for her, but in the short term it is not.

177. In closing submission H made it clear that he did not expect back his investment from W. It may be of significance that nowhere in his Form E does H declare £2m as money owing to him. It is not within the remit of this trial for me to investigate whether he has been repaid or not, but bearing in mind the determination of H to pursue W via every form of litigation possible, I make it clear that I find that he has no claim against her for this sum.

178. I have concluded that the fairest way of treating H's investment in the property is to say that 50% of his contribution is to be treated as matrimonial, and the rest of the value of the property as non-matrimonial.

179. W has no earned income and nor has there been any suggestion that she has an earning capacity. She derives a modest rental income from the two properties in India gifted to her by her father.

Conduct

180. The court is under a duty to take into account conduct if it would be inequitable to disregard it. H says with force that W's conduct is such that any right-thinking person would conclude that this is indeed such a case. Putting it very graphically H says, "if one partner deceives another, then they are not entitled to gather in the fruit from that poisoned tree". Conceiving "a child by another man and keeping that secret (thus inducing H to commit both financially and emotionally to another man's child) was misconduct".

C's paternity

181. W was cross-examined at length about her relationship with C's father. It was in that connection that I heard evidence from a former and a current employee of W. I shall seek to place their evidence in context.

182. The identity of the man that W claims to be C's father is now known. H accepts that this man is indeed C's father, although the man has made no admission of paternity. He is a professional person. There is no evidence that I regard as persuasive that he has ever seen C and he has expressed no desire to play any part in C's life.

183. W's evidence was that the relationship began in March 2009. H challenges that and relies on the evidence of Mrs R, a long-time employee of W and her family. She claims that she saw the man at the matrimonial home in winter 2008. The

circumstances of the meeting, if it happened, are unremarkable and cast no light on anything relevant. She says that W told her on one or two occasions that she was having an affair. That particular comment does not appear in her statement.

184. Mrs T, who succeeded Mrs R in her role from January 2006, says that she knew nothing of any affair. It is plain that Mrs T did not have the same closeness of relationship with W as had Mrs R.

185. I regard the precise dating of the start of the affair as immaterial. I decline to accept that either the evidence of Mrs R or the exchange of intimate messages in 2007 is probative of the relationship starting before 2009. The messages do not evidence physical proximity as opposed to emotional closeness.

186. W said in her written evidence that the affair continued from March 2009 to about 19 April 2010. She accepts now that the cessation of the affair must have been about one month later than that as the conception period was between 11-31 May 2010.

187. W says that she only ever had unprotected sex with H and that is why she was convinced that he was the father of C. It is H's case that on 22 May 2010 W persuaded H to have sexual intercourse with her as a cover for the fact that she knew or suspected that she might be pregnant by C's father. I cannot make this finding on the evidence.

188. However, it would be naïve of me to find that it never crossed W's mind, as she claims, that anyone other than H might be the father of the unborn child. I regard that evidence as incredible. I am prepared to and do accept that she was very anxious to believe that H was the father and as time went on put the alternative to the back of her mind.

189. I have no reason not to accept that the relationship stopped as soon as W discovered that she was pregnant and that it has not resumed save for a one-off occasion in 2018. I reject as far-fetched the attempt by H to prove that there was something going on between them recently in Goa based on the fact that he attended a large party which was attended also by W's siblings. I have no reason to think that he will play any significant part in W's life or that of C in the future.

190. The first question I have to ask myself is whether this is indeed conduct. I do so against the factual background whereby I have concluded that W did not know that she was carrying another man's child, but that it is impossible to believe that the thought that the child was not H's never crossed her mind, however much she wished it to be the case.

191. It is not just the silence of W that I have to consider, but also the effect of it on H. I accept that the impact on H of finding out that he was not the biological father of C as C was reaching the age of 8 had a devastating effect upon him.

192. I reject unhesitatingly H's attempt to say that the circumstances and/or duration of the relationship are part of all the relevant circumstances which I need to take into account. This is unarguable, as *Miller, McFarlane* [2006] AC 618 made clear

[paras 64-65]. The only matter of any relevance is whether W's action in allowing H to bring up C in the belief that he was the natural father amounts to conduct.

193. In my judgment W's actions are conduct so egregious that it would be inequitable to disregard. How I take it into account seems to me a much more difficult issue.

194. H argued that W's conduct disentitled her from any sharing award. When challenged as to what his case was if I did not accept this argument, Mr Todd's eventual response was that as C was conceived about mid-way through the marriage, I should therefore reduce W's award by 50%. I can see the logic behind the proposition without accepting it.

195. In part, it is unrealistic simply to draw a line through the marriage at the time of the conception. I cannot speculate what would have happened if W had informed H of her unfaithfulness. I have no doubt that there were many happy moments from 2010 onwards between H and W and they were far more numerous than the bad times. Further, notwithstanding C's paternity, H has a paternal relationship with C which is of enormous value to both C and to H. C knows no other father and H treats no other child as his.

196. There is no guidance in reported authority as to how this sort of conduct should be reflected. I accept that it can have the effect of reducing W's award. There are some cases of which I am aware from the 1980s in which sexual misconduct has been reflected in an award. But those cases are of no value in the times in which we now live.

197. Reflecting in financial terms the cost of the emotional damage to H of the sort inflicted by W is like comparing apples and pears.

198. The conundrum is in my view answered in this way: I have found that H's disclosure has been seriously deficient. I am quite confident that he has access to/ownership of assets which he has not disclosed as well as his interest in Company V (in particular) which I cannot quantify. I consider in the circumstances that whilst I cannot and should not try to put a monetary figure on undisclosed assets, I should likewise not reduce W's award by giving her a lower percentage of the disclosed assets. That would be to inflict a double jeopardy.

199. There is one exception. I have to alight on an appropriate figure for child maintenance. The man who is assumed to be C's father is a professional man. I have no reason to believe that he is unable to pay a proper sum towards C's maintenance costs. On the other hand, it would plainly be wrong to expect him to pay all the burden. After all, H is C's psychological father and plays a full part in his life.

Needs

200. The parties' presentation of needs were at the two ends of the scales (one might say beyond the two ends).

201. I do not need to dwell long on needs. I am satisfied that the award that I am making can more than permit W to live with her reasonable needs met. I regard

her budget as hugely inflated. That is not to say that it represents a standard of living which she did not enjoy in the past. But, she is only 38 years old. She cannot expect to make her way through life living at an astronomic standard paid for by her former spouse.

202. I have come to the clear view that the former matrimonial home and mews property should be transferred to W. She should receive them free of charge. It is the only home that C has known. The suggestion by H that C should live in a property about a quarter of the value to what he knows with no room for any staff is unrealistic and the polar opposite of the life he enjoys when with H. The family home is of course a very substantial property for a spouse and one child, but virtually every aspect of the parties' lives exceeds needs.

203. That said, when casting an eye at W's needs I work on the basis that the time will come, at the latest when C finishes his schooling, when it would be appropriate for W to move into smaller accommodation and I attribute half the value of the FMH to be a reasonable housing cost for W thereafter and the balance to be available to meet income.

204. On that basis her capital sum will be topped up by another £7m plus in due course. Together with the award I am making this is more than sufficient to meet her needs.

205. I reject W's claim insofar as I have to consider it for other properties. The claim for an Indian property was not supported by the evidence as W accepted that she would always go and stay with her parents. It makes no economic sense for W to have the expense and anxiety that would go with a holiday home in the South of France when she would spend next to no time there, as most of her holidays would be spent in India, restricted as she is to England during the school terms.

Child periodical payments

206. In his open proposals H proposed that C's father should be responsible for payment of one half of C's reasonable expenses. As a starting point I have no problem with the suggestion that C's father should contribute. It is a reasonable proposition bearing in mind that he is the biological father of C, whilst H is C's psychological father and the man who assumes the paternal parental role in C's life.

207. The issue is complicated by the fact that at H's instigation W has given an undertaking that C should have no contact with his natural father. There would be an obvious tension if H were to argue that that this man should have little or no part in C's life whatsoever, yet at the same time be responsible for all his costs.

The approaches of the parties

208. W's case is as set out in the schedule. She says that H's visible worth is not less than £347m and that she is entitled to share in that fully. She has not explained how it is that her claim at less than 50% of this is calculated but she says that her claim is at a figure which is the minimum at which her entitlement should be put, is one that meets her needs, and one that H can meet with ease.

209. H's approach is that he was already wealthy when the parties married as a result of gifts that were made to him by his family. Thereafter, the money that was made was largely subject to various family arrangements which permit the older generation to recall the funds. Insofar as assets are in his name, they are in the main the product of funds advanced to him by his family and their genesis is non-matrimonial. Therefore, he says that W's claim is not a sharing claim but is one to be calculated on a needs basis, the vast bulk of which he says is available to her from her own resources.

210. Each party has a duty to provide the court with full and frank disclosure of means. As I have set out, H has singularly failed to meet this requirement. He has hidden from the court's eyes the extent of his wealth. His non-disclosure deprives W of the opportunity of her entitlement claim being fully considered.

211. I am not able to calculate the value of that which he has not disclosed. All I can say is that I am satisfied that he is very comfortably able to meet the award which I am making and that the level of his wealth justifies the award. As the recent case of *Moher* [2020] 1 FLR 225 explains, the court does not need to make its award by reference to the quantification of non-disclosed resources. But notwithstanding that, I can and do find that their existence is established, and this makes the level of award one well within H's capacity to pay and fair between the parties.

212. My approach must be to start with an assessment of the available resources. Thereafter

    i) Each party is entitled to share those resources which have been built up by the efforts of either during the course of the marriage. Unless there is reason to the contrary that sharing will be equal.

    ii) Provision made from outside the marriage, that is gifts or inheritances from third parties, are subject to the sharing principle but would not normally be shared between the parties unless the meeting of needs so requires, which it does not in this case.

    iii) Insofar as assets have been built up during the marriage on the foundation of pre-existing assets I must form a view as to the extent of the accrual which is due to matrimonial endeavours and the extent to which it is the result of money which has been built up before the marriage or provided by third parties.

    iv) My goal is to produce an outcome which is fair to the parties bearing in mind all the considerations set out at section 25(1) Matrimonial Causes Act 1973.

The Award

213. I am asked by the parties only at this stage to give headline figures. They expressly have not asked me to deal with issues such as liquidity, time for payment, interim provision and security.

214. The conclusion that I have reached therefore is that the matrimonial assets to which H can have immediate recourse in terms of ownership are £117m. So far as

Company U is concerned, I find the value of his interest to be between £54m (25%) and £108m (50%). I take the lower figure as it is one which I can be confident is or will be available for H. I calculate W's assets at less than £1m.

215. I regard as being non-matrimonial the property in France, bought as it was with borrowed money as the marriage was ending, H's interest in the HUF and his interest in Trust E, and the bulk of W's interest in Property 11, as well as the relatively modestly valued properties each owns in India.

216. Deducting 25% from the assets in H's name and a 25% interest in Company U produces a marital acquest of £128m. Adding W's limited asset base to this total results in a sharing claim by W on an equal division of £64m. I have rounded figures slightly to avoid giving a false precision.

217. As I have been preparing this judgment I have become concerned by the absence of address on liquidity. Mr Caldwell put it in his report as being very modest, but he did not have my findings as to ownership. H said no more than if asked to find £30-£40m he did not know how he would do so. I shall require to be addressed upon how the sum should be paid and whether W should receive any part of her award by way of transfer of assets.

218. The matrimonial home and mews property together are worth £15m and for the reasons already given I order that they be transferred free of charge to W. I decline to make any order in relation to the other property in which some of the staff of H and W and some of his brother's staff are accommodated as all of W's staff can be housed in the main FMH or the mews. In addition, I order a lump sum of £49m, subject to the point made in the immediately preceding paragraph.

Child periodical payments

219. Excluding the costs of education and childcare, I find it difficult to envisage a case in which a level of child periodical payments in excess of £100,000 p.a. per child could appropriately be ordered (putting to one side those rare cases involving children with special needs). Both H and W's budgets include eye-watering figures – for example each of clothing and holiday costs over and above the costs to his parents for this 9 year old boy at £100,000 p.a. per item. That may have been what was spent on him in the past, although I doubt it, but it does not mean that it is reasonable for it to be paid in the future.

220. I conclude that costs of C should broadly be divided between H on the one hand and W and the natural father on the other hand. The childcare costs substantially exceed the costs of education. The appropriate order to make to achieve that broad equality is that H should pay C's school fees and all associated educational expenses and the sum of £60,000 p.a. It will be up to W to obtain whatever assistance she seeks from C's father.

221. It is of course open to the parties to spend very much more on C than these figures. H will have C staying with him for significant periods of time. He alone will bear the costs of those periods and the maintenance is not reduced for the periods when C is absent from his mother. W will have more than sufficient resources as a result of my award to spend whatever she wishes upon C.

Conclusion

222. The sum that I have awarded will no doubt be a disappointment to both parties. It has been tragic to see them locked in this litigation.

223. Both parties come from loving and supportive families. Mr Todd on behalf of H readily accepted that if H was to meet financial ruin nevertheless his family would give him full financial support and in all probability his life would continue as before. I am sure the same applies to W. The sum that I am ordering H to pay to W is in the big scheme of things a small part of the resources available to H and a very small part of the family resources, amounting to about 8 years of family expenditure. Pride is very important to H and I fully understand how hurtful the breakdown of the marriage has been. Mr Todd floated across my bows the difficulties that H may say he has in complying with an order for payment. I very much hope that these premonitions do not turn out to be accurate, but they cannot be a reason for the court not making what it regards as a fair order.

Supplement to judgment

224. During the trial I was (quite conventionally) not asked to assess needs in a situation where I found that W's sharing claim exceeded her needs-based claim.

225. As the order was being finalised I have been asked to provide a figure for the value of the "needs" of W and C for the purposes of enforcement under the Maintenance Regulations and the Lugano Convention. Maintenance is for these purposes given a wide definition under the Convention. I have not been addressed by either counsel as to the level I should so designate but have been referred to AAZ v BBZ [2016] EWHC 3234 at paragraphs 129-133.

226. I find W's needs to be

(i) A house worth £15 million.

(ii) An income fund of £2.5 million p.a. to which I would apply a multiplier of 9 = £22.5 million

(iii) £250,00 p.a. inclusive of education expenses for C for 13 years which should take him to the end of his first degree = £3.25 million

(iv) A sum to meet her debt to her cousin and outstanding legal costs which together total £296,388.

227. Together these total £41,046,388. I assess for the purposes of enforcement under the Convention this figure to be the minimum to meet the "maintenance" of W and C.