Neutral Citation Number: [2022] EWHC 711 (Fam)

Case No: FD09D05089

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/02/2022

Before :

SIR JONATHAN COHEN

- -

Between :

JULIA GODDARD-WATTS	**Applicant**
- and -	
JAMES GODDARD-WATTS	**Respondent**

- -
- -

Ms L Stone QC & Mr S Webster QC (instructed by **Farrer & Co LLP**) for the **Applicant Wife**
Mr T Bishop QC & Mr R Sear (instructed by **Pinsent Masons LLP**) for the **Respondent Husband**

Hearing dates: 24 January – 3 February 2022

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR JONATHAN COHEN

This judgment is a redacted version of a judgment which was delivered in private on 3 February 2022. All persons, including representatives of the media, must ensure that any publication of the judgment or any information contained within it complies with the redactions set out herein. Failure to do so will be a contempt of court

SIR JONATHAN COHEN:

1. This case has a very unusual history and is the second rehearing of the application of the wife ("W") of her claim for financial remedy orders. On two occasions previous orders of the court have been set aside as a result of the non-disclosure of the husband ("H"). Thus, I am in 2022 conducting a hearing when the parties separated as long ago as August 2009 and were divorced the following year.

Background

2. The parties met and commenced cohabitation in 1987 when each was still young. W was then 23 and is now aged 57. H was then 21 and is now aged 55.

3. They did not marry until 1996 by which time they had two sons who are now aged respectively 27 and 25 and the year after they married their youngest son was born and he is now 24.

4. H's parents had set up a very successful hardware business in which H and his brother later became involved which was sold soon after the marriage and provided H with some £15m net. In 2000 H acquired a company operating in the same field which for the purposes of the hearings has been described as CBA. It has been at the centre of the argument before me.

5. In August 2009 the parties separated and in 2010 H moved to and has since lived in Switzerland. He has formed another permanent relationship and he and his partner have four young children.

6. W has remained in England with the three children of the family. She still lives in the former matrimonial home in the West Country. The children now live in London and pay visits to their mother.

7. The parties negotiated a consent agreement which was converted into an order which was approved by the court on 1 June 2010. Under the terms of its provision, W received the former matrimonial home (£3.25m) and a lump sum of £4m, with £3m being paid within 3 months and the balance by instalments over 8 years. With the addition of some small other assets retained by her, she exited the marriage with about £6.6m immediately available and £1m to come.

8. Within the 2010 court process H valued his interest in CBA at £6m. There was no formal valuation. He retained his shares and director's loan account in CBA. The effect of the agreement, as I am told, was that W received approximately 45% of the disclosed assets (although the arithmetic seems to me to produce a figure closer to 40%) and H received the balance, no doubt his greater portion reflecting the risk/liquidity in the business and, perhaps, I know not, the origin of some of the funds. These figures exclude the value in the two undisclosed trusts.

9. In 2014 W came to understand that there were significant trust assets of which H had failed to disclose that he was the primary beneficiary. She therefore sought to appeal the consent order made on 1 June 2010 by the deputy district judge.

10. H argued that there was no non-disclosure or at least not of anything that was material. That argument was rejected by Moor J who granted permission to appeal the final order out of time, allowed the appeal, and set aside the final order. H sought to appeal the order of Moor J but was refused permission by the Court of Appeal.

11. Within the proceedings that then ensued, CBA was valued by the forensic accountant David Greene of MGR Weston Kay LLP as SJE. His instructions included valuing the company as at June 2010 as well as at 2016. He concluded that its value in 2010 was some £6.7m, within 10% of what H had said at the time.

12. The final hearing came before Moylan J (as he then was) and on 23 November 2016 he ordered H to pay a further lump sum of £6.42m reflecting half the marital element of what he found to be the undisclosed trusts with certain adjustments. He also accelerated the payment of the last £1m of the lump sum.

The 2016 judgment of Mr Justice Moylan

13. It was W's case in 2016 that she should receive an equal share of the parties' current resources including the assets in the trusts. She argued that the sharing that took place in 2010 was of no continuing relevance because it was procured by H's non-disclosure and that therefore W was entitled to have her award determined by reference to the current position including the increased value of CBA. She sought a lump sum of around £14m plus 40% of the uplift of the proceeds of any sale over the valuation figure.

14. H's case was that while W should receive a share of the value of the trust assets to reflect the loss caused by H's non-disclosure, the other assets were shared in 2010 in a manner which was and remained fair.

15. The arguments that I have heard have in their essence been identical to what was heard by Moylan J.

16. The judge therefore had to consider whether to start from scratch or whether to adopt a more tailored position as had happened in the case of Kingdon v Kingdon [2011] 1 FLR 1409.

17. At paragraph 49 of his judgment Moylan J said this:

> *I do not consider that the difference between the figures given by the husband in 2010, namely a total of £6 million, and the values given by Mr Greene, totalling £6.7 million, is sufficient to undermine the validity of the former. As Mr Greene has said, valuation is not an exact science. The differential is just over 10% in the value of these assets and less than 5% of the total resources in 2010 excluding the Trusts' assets. Further, once the loan from the husband's father is taken into account, which it would have to be, the total based on Mr Greene's valuations becomes less than the £6 million figure given by the husband in 2010.*

18. As at 2016 Mr Greene valued H's shares in CBA at a little over £16m. In doing so he had to consider the relevance of an indicative conditional offer made by a PLC, called for these purposes FED, in September 2015 in the sum of £82.6m net of debt. H's

case was that the offer was withdrawn without explanation the month after it was made.

19. Mr Greene commented that the conditional offer was a very high offer as it reflected more than 26 times the company's EBITDA for the year ending July 2015 and was subject to the achievement of a number of key assumptions. It was H's case that the offer was so heavily caveated that it was never a realistic offer in the sense of being achievable.

20. The judge agreed with Mr Greene that the offer was of no relevance to the exercise he undertook because it had been withdrawn and did not reflect the likely value of the business.

21. In *Sharland v Sharland* [2015] UKSC 60, [2015] 2 FLR 1367, Lady Hale, with whom the rest of the court agreed, said this:

[43] Finally, however, it should be emphasised that the fact that there has been misrepresentation or non-disclosure justifying the setting aside of an order does not mean that the renewed financial remedy proceedings must necessarily start from scratch. Much may remain uncontentious. It may be possible to isolate the issues to which the misrepresentation or non- disclosure relates and deal only with those. A good example of this is Kingdon v Kingdon [2010] EWCA Civ 1251, [2011] 1 FLR 1409, where all the disclosed assets had been divided equally between the parties but the husband had concealed some shares which he had later sold at a considerable profit. The court left the rest of the order undisturbed but ordered a further lump sum to reflect the extent of the wife's claim to that profit. This court recently emphasised in Vince v Wyatt (Nos 1 and 2) [2015] UKSC 14, [2015] 1 WLR 1228, sub nom Wyatt v Vince [2015] 1 FLR 972 the need for active case management of financial remedy proceedings, 'which ... includes promptly identifying the issues, isolating those which need full investigation and tailoring future procedure accordingly' (para [29]). In other words, there is enormous flexibility to enable the procedure to fit the case. This applies just as much to cases of this sort as it does to any other." [emphasis added]

22. The judge had to consider, as have I, W's argument that "fraud unravels all".

23. In Kingdon, Wilson LJ (as he then was) was dealing with a case where H, the non-discloser, argued that the first-instance judge should have taken an assessment of all the assets of the case while W, the victim of non-disclosure, wished to confine her claim to a share of the non-disclosed asset. The trial judge had agreed with her. In his judgment Wilson LJ said these words:

[35] In Williams v Lindley [2005] EWCA Civ 103, [2005] 2 FLR 710, the supervening events were the engagement of the wife to her employer one month after a needs-based award of capital to her and their marriage five months later. Applying its decision in Smith above, this court directed a rehearing of her application on an up-to-date reassessment of all the matters specified in the subsection. But the valuable distinction to which I have referred at [33] was drawn by Thorpe LJ in the preface to his conclusions, at [22], as follows:

'So I would emphasise that this case is to be clearly categorised as a supervening event case and not a case of a tainted order. Accordingly nothing that follows is to be

understood to apply to taint cases where the ***procedure and adjudication*** *may need to reflect the degree of turpitude of the party responsible for the taint.' (****Italics supplied****).*

[36] Notwithstanding the distinction drawn by Thorpe LJ, I can well imagine cases of nondisclosure — for example where an applicant has secured a needs-based award without disclosure of a substantial asset or of an engagement to marry — in which the proper course is indeed to conduct the exercise under s 25 all over again on updated material. The same might apply to non-disclosure by a respondent which was so far-reaching as to have led the court to survey the entire financial landscape on a false basis. What I cannot accept is that the exercise will always have to be conducted again. The exercise certainly has to have been conducted. But it has been conducted; and the nature of the defect generated by the non-disclosure may — or may not — require the whole order to be set aside and the whole exercise to be conducted again.

[37] Take, then, the present case. In the exercise conducted, ultimately by consent, in 2005, what was the nature of the defect generated by the nondisclosure of the shares? The nature of the defect was the omission of a subparagraph in the part of the order which provided for the wife to receive a lump sum, namely of a subparagraph which provided for an extra, deferred, contingent element of lump sum referable to the shares. There is nothing wrong with the order dated 18 April 2005 save that it requires such an addition. There is no need to dismantle it: the need is to add to it. Indeed, in that in November 2006 the contingency arose, there is no further need to express the provision by way of a formula: the husband's net gain on the shares has been precisely quantified and whatever would have been the appropriate percentage expressed in the formula can be translated into a specific sum.

[38] I have come to the conclusion that the judge was entitled to proceed there and then to repair the defect by enlargement of the lump sum provision in the order dated 18 April 2005. The reasons for my conclusion are as follows:

(a) he had a discretion as to how best to proceed;

(b) in exercise of the discretion he was required to seek to deal with the case justly, and thus in a way which was proportionate to the complexity of the issues and which would save expense and ensure expedition: r 2.51D(1) — (3) of the FPR 1991;

(c) the non-disclosure was of a discrete element of the husband's assets and it generated a defect which could be cured by one simple enlargement, to be devised pursuant to the sharing principle, of provision in the order dated 18 April 2005: see [37] above;

(d) the order had been fully implemented and there was no need to reverse any part of its implementation; and

(e) ... In the words of Thorpe LJ in Williams v Lindley, set out at [35] above, <u>the procedure needed to reflect the degree of the husband's turpitude</u>." <u>[emphasis added]</u>

24. In his judgment Moylan J said this:

94. In 2010 the wife received a share of the marital resources. This was procured by false disclosure in relation to the Trusts. However, subject to one point, the parties' other resources were divided in a way which was fair and which, in my view, remains fair. The wife received less than half of the disclosed assets but this reflects the fact that the husband's business interests formed a significant part of the wealth retained by him. To adopt what Wilson LJ said in Kingdon:

"the non-disclosure was of a discrete element of the husband's assets and it generated a defect which could be cured by one simple enlargement, to be devised pursuant to the sharing principle, of provision in the" 2010 order.

Or to adapt what Lady Hale said in Sharland, it is fair in this case to isolate the resources which were not disclosed and to deal only with those, subject to one small caveat.

95. It is clear to me, as I have said, that the division of the non-trust assets which was effected in 2010 was fair and remains fair save in one respect. The one aspect is that, if the truth had been known about the husband's interest in Trusts, I doubt whether part of the wife's lump sum (£1 million) would have been payable over 8 years. I do not accept Mr Pointer's submissions including that, if the wife had known about the cash held by the Trusts, she may well have "opted" to receive some of her award by way of shares in [CBA]. *This was not explored during the hearing but I see no prospect of this either having been agreed or being ordered by the court. It was the husband's business and the court would not have given the wife shares in it unless a fair award could not otherwise be achieved. Plainly, it could.*

96. Further, if I was to undertake the discretionary exercise by reference to the current value of the resources, I would have to make considerable allowance for the fact that the current values of [CBA] *reflect the husband's work over the course of the last 6 years. Indeed, it would be easy to conclude that the difference between the values given for 2010 and the current values are not the product of marital endeavour. The husband has not been trading (per Cowan) or gambling (per H v H) with the wife's share because the resources as disclosed, including the husband's interests in these companies, were shared in 2010.*

97. ……..As referred to above, the current value of the business is the product of post-separation endeavour, as between the husband and the wife, and gives her no entitlement to a further share in addition to that which she received in 2010.

25. Ms Stone QC who appears with Mr Webster QC on behalf of W urges on the court that Moylan J was wrong to take the approach that he did but not withstanding that, the fact that H failed properly to disclose what was going on in the business at the time that Moylan J was making his decision takes this case into a different league of non-disclosure and that if Moylan J had known what the true value of CBA was he would not have taken the approach that he did. In a sense, this proposition is unnecessary because, as I will shortly come to, the order of Moylan J was subsequently set aside and thus I have the discretion to determine what approach I should adopt in this rehearing, and whether I start completely afresh or whether I should adopt a more limited Kingdon approach.

The 2018 set aside application

26. As mentioned earlier, in 2015 FED had been sniffing around CBA as a purportedly interested prospective purchaser of it. It was H's case before Moylan J that FED swiftly exited the scene and was no longer proceeding with its offer.

27. It transpired, and Holman J so found, that the offer of FED was not actually formally withdrawn but it petered out because it was not high enough for H to accept. Even after September 2015 the possibility of the sale by H of all or some part of his shares to FED remained.

28. On 28 October 2016 the judgment of Moylan J was circulated in draft and a formal hand-down took place on 23 November 2016. Just the day before hand-down Grant Thornton, acting on behalf of H/CBA emailed FED outlining H's offer to sell 25-30% of his holding (I include in that description a holding that the children's trust had in CBA) for £25-30m cash which would give an enterprise value of £125m.

29. This was part of an ongoing process which H did not disclose and the judge was in no doubt that this was a deliberate failure to disclose.

30. Holman J held that if Moylan J had been told of the offer he would not have made the order when he did and would have withheld handing down his judgment whilst the full and true facts were ascertained and W and her advisers could take stock. Thus it was that the non-disclosure deprived W of "a real prospect of doing better at a full hearing" (as per paragraph 15 of Sharland).

31. At paragraph 62 Holman J concluded:

> *The original consent order from 2010 had been set aside by Moor J in 2015. Moylan J in 2016 was, accordingly, re-exercising the statutory duties under section 25 of the Matrimonial Causes Act 1973, as amended. It was arguable, to put it no higher, that the property of the husband, consisting of the shares, although valued by Mr Greene at around £16 million, was capable of being sold to the special purchaser for over five times that amount. Moylan J might, in the end, still have adopted the Kingdon approach. But it is not possible to say that there was not "a real prospect" of the wife doing better. The wife is accordingly entitled to re-open the case and has, so far, been deprived, by the husband's deliberate concealment, of a full and fair hearing of her claims when all the relevant facts are known.*

32. H sought to argue before Holman J that there was no non-disclosure, but that in any event it was not material because:

    i) The effect of adopting the Kingdon approach was to leave the shares and their value as agreed in 2010. In 2016 Moylan J simply apportioned the previously undisclosed trust asset and what had happened with the business since 2010 was irrelevant.

    ii) To put the matter somewhat differently, W had received her fair share of the business in 2010. There was no non-disclosure at that time in respect of that asset. What it was worth in 2016 was immaterial to the exercise that Moylan J carried out.

iii) The current value of the business as at 2016 was the product of post-separation endeavour and gave W no entitlement to a further share in addition to that which she received in 2010.

33. Holman J rejected those arguments and at paragraph 71 said this:

I quite agree that there would, or should, have been very considerable discounting for post-separation endeavour, but I cannot accept that a judge exercising his duty to have regard to all the matters in section 25 would not (although he might not) have awarded more to the wife if the true facts were known. That "more" might only have been measurable in some hundreds of thousands of pounds, or, say, £1 million, but even such sums are significant, and I cannot say, as the paragraph 33 exception requires, that Moylan J would not have made a significantly different order, although he might not.

34. In doing so, the judge applied the Sharland test set out at paragraph 33 of Baroness Hale's judgment which places the burden upon the perpetrator of showing that the court would not have made a different order if fully informed of what was now known.

35. Accordingly, Holman J set aside the 2016 final order. H once again unsuccessfully sought permission to appeal. Thus it is the matter comes to me to consider the case.

The value of CBA

36. As I have already set out, CBA was valued at £6m by H in 2009/10 and there has been no challenge to Moylan J's determination that this was within a realistic bracket.

37. In the proceedings in 2016 Mr Greene valued H's share in the two companies which comprise CBA at £16.1m, that being about one quarter of the amount that H would have received if the sale to FED had gone through.

38. In January 2018 FED purchased 25% of the total shares in CBA, comprising 25% of H's total shares and 25% of the 1999 Children's Settlement total shares. H received £20.45m and the settlement £4.45m, in each case for a sale of one quarter of their original holdings. The sale contract provided that FED had an option exercisable in or before January 2021 to buy the residue of the shares for £75m, which would result in H receiving a further £61.3m and the trust its proportionate share.

39. In the event FED did not exercise its option. The contract gave H an option for 2 years beginning in January 2021 to buy back the shares that were sold to FED at the sale price. H's unchallenged evidence is that commercially he needs either to float or sell some or all of the company so that he can repay FED the £25m.

40. In these proceedings before me Mrs Faye Hall of Smith and Williamson has been appointed as SJE. The shareholding in the company following the purchase referred to in paragraph 38 above is that H owns 61.3%, FED 25% and the 1999 Settlement 13.6%. Several key employees have a very small stake under an incentive scheme.

41. Mrs Hall's first report was filed in November 2020. As the first £25m had to be repaid to FED, H's interest in CBA was therefore only worth £2.9m. In addition, he was

owed approximately £5.4m from CBA by way of repayment of shareholder loans of which £3m was owed by him to his brother who had advanced money.

42. It was against a background of trading difficulties that Mrs Hall valued H's interest in the company as of November 2020 at £2.9m, less by some way than it was valued in 2010, even after adding back the shareholder's loan account.

43. One year later Mrs Hall produced her second report by way of addendum. The equity value needed to be reduced by the £25m to be paid to FED. She estimated the value of H's interest in CBA to be £56.4m. It may be (Mrs Hall's report is silent on this) that a reduction needs to be made for the value of the employees' interest but that is sufficiently small as to be able to be ignored by me. As before, H is owed £5.4m by way of shareholder's loan of which a portion is money borrowed from his brother.

44. Whilst there had been a reduction in the company's debt, it is obvious that the major contribution to the greatly increased value is the forecasted substantial increase in the maintainable earnings.

45. Mrs Hall was called to give evidence.

46. In the light of my approach, as will be seen later, it is unnecessary for me to seek to make a precise valuation of CBA and there is insufficient reason for me to go behind Mrs Hall's valuation.

H's current disclosure

47. Much effort was made by W to seek to persuade me that even now H had in this set of proceedings not given full and frank disclosure until the very last moment before the trial started. It is unnecessary to lengthen this judgment by analysing this argument at length. I shall give my conclusions on it but the detail adds nothing.

48. As 2020 went on towards its end, CBA's sales improved.

49. W is extremely critical of H not informing the court at a hearing on 5 February 2021 of the improvement in CBA's performance.

50. There is some but limited justification in W's criticism.

51. At the hearing on 5 February 2021 I made a direction for the provision of ongoing information and H was required to file and serve a sworn statement providing full details of, amongst other things, any discussion with any third party in relation to any sale or potential sale of all or part of CBA.

52. The time for the statement was extended by agreement and it was provided on 12 May 2021. I am satisfied that that statement provides the information to which W was entitled.

53. With the benefit of hindsight, the order of 5 February 2021 might have been framed more expressly. H interpreted the order in a limited way.

54. Ms Stone is right to say that with his track history, H should have erred on the side of excessive discovery.

55. I do not find H's disclosure in this round of proceedings to have been significantly deficient or material to the outcome.

W's assets

56. W continues to live in the former matrimonial home whose value appears to have remained static since 2010. She owns an investment property and has other liquid funds net of outstanding costs of about £2.9m. She has pension funds with a value of a little over £200,000. Thus, she has some £3m outside the value of her home to meet all her income needs.

H's assets

57. H divides his time between Switzerland and Majorca owning houses in each place with a combined equity of some £6.4m. He has bank accounts holding about £900,000 and has cars, boats and watches worth about £5.1m. He has outstanding costs and a loan from his brother so as to produce net assets excluding his interest in CBA and his SLA of some £9.7m. He has pension funds worth about £1m.

58. It is quite apparent that both parties have been living a lifestyle which cannot be maintained by their income. In her Form E W describes her only income as being the rental from the investment property at some £44,000 p.a. She puts her income needs as being £346,000 p.a. H in his Form E puts his income needs and actual expenditure at £1.8m p.a. gross of tax and inclusive of the cost of his second family against his income of about 1/8th of that sum.

59. W is plainly not living to her budget and I will consider its reasonableness in due course. However, notwithstanding having received £4m cash under the 2010 consent order and a further £6.4m cash under the order of Moylan J, her resources apart from the home are only some £3m rather than the £10m that might have been expected, excluding any reference to inflationary increase.

60. There was no real investigation during the trial before me as to why W's funds are so depleted. Since 2009 to the end of November 2021 she had spent £1.933m on costs and the further costs incurred to the end of this trial are likely to have increased that figure to approaching £2.5m. Of that sum of £1.933m, she has recovered a little under £800,000 by way of costs orders from H.

61. In addition, at the end of 2017 and the start of 2018 she bought each of the 3 children a flat in London. The total cost to her of that exercise was £2.4m.

62. The relationship between H and W has for years been at rock bottom. There is next to no communication between them and each blames the other for that unhappy situation. The boys have been caught in the fall-out and have no current relationship with their father.

63. The purchase of the flats by W was something that she did unilaterally and without consulting H or seeking that the purchase might be financed from the children's 1999 settlement of which she is a trustee. W's motives were mixed and not easy to divine, but included a combination of wishing to see the boys set up in their own homes in London rather than having to pay rent, advanced inheritance tax planning, guilt at their

lack of support received from the trusts of which they are beneficiaries, and guilt about the situation that had developed, in particular the loss of the lifestyle that the children had enjoyed during the marriage.

64. During the course of the hearing, H offered through counsel that the settlement should make a payment out to the children to enable them to repay their mother the costs of the flats. W did not accept that offer. She had made the children a gift and did not want to take from them their money. I understand her response, whether it is wise or not, and I do not criticise her for it.

65. In many cases I would consider it appropriate that the sum expended by W on the flats and the £360,000 gifted to members of her family (very largely to her brother who has assisted her in the proceedings) should be added back into her resources, particularly in the circumstances of H's offer to refund.

66. On the facts of this case, however, I do not take that course. In a case where H's expenditure has dwarfed that of W, this relatively modest level of expenditure to provide each child with a starter home was not inappropriate and nor were the payments to other members of her family.

67. As the parties have no communication whatsoever and H and the children are in effect estranged, it was understandable that W did what was necessary or desirable for the boys without reference to H. H could have made his offer for the children's trusts to reimburse very much earlier than he did. Further, if it was to be taken up it would simply mean less being available for the children at a later stage, including the three of H's four children from his second relationship who fall within the category of beneficiaries.

68. For his part, H's expenditure has not been near to having been met by his income. That is hardly surprising: the expenses of running his boat alone come to some £30,000 p.m. and his salary is the sterling equivalent of a little over £200,000 p.a. He has lived off the sale proceeds of various assets and the use of the sums that he has had in his bank accounts. .

Offers

69. On 7 October 2019, shortly before the hearing before Mr Justice Holman took place, W offered to settle her claim for £3m. On 21 November 2019 that offer was repeated but subject to the addition of the requirement that H pay her legal costs in the sum of £660,000, being presumably the costs incurred during the hearing before the judge.

70. On 4 February 2021 W increased her required sum to £5m plus costs. Each of these offers was rejected by H who made no offer of any payment.

71. On 12 January 2022 W increased her proposal to a requirement that H make a payment to W of £13.4m by 31 January 2024 or an earlier realisation of H's shares in CBA. H's response once again was that he would make no payment to W but would not seek his costs provided that his offer was accepted within three days.

Approach

72. My starting point is that I am adjudicating upon W's claim de novo albeit against the background of the orders made in the past which have provided her with funds. I am acutely aware of the criticisms made by the courts in the past of H's disclosure which has deprived W of the opportunity of being able to consider the resolution of her claims with full knowledge of what the asset base was.

73. I bear these points strongly in mind but I am convinced that the approach I should adopt is the Kingdon approach. I reach that conclusion for the following reasons:

i) The whole of this case before me has been about the value and realisation of H's shares in CBA. It has been a single issue case.

ii) This was inevitable. W received her fair share of the non-disclosed trusts in 2016 and her share of the other assets in 2010.

iii) Moylan J adopted the Kingdon approach in 2016 and the fact that one further aspect of non-disclosure has come to light does not lead to a conclusion that I should adopt a different course. There is a merit in consistency, but it is not just consistency that drives me to this approach.

iv) There has never been any attack in this hearing against H's disclosure of the value of CBA in 2010. Indeed, Moylan J had the benefit of a retrospective valuation prepared by Mr Greene which showed that H's disclosed value of the company was in the right region. Ms Stone says that the value in 2010 is of no or little relevance in the light of the non-disclosure generally, and in particular of H's undisclosed trust interests. I do not agree. It was part of the basis of the parties' agreement.

v) It follows inevitably, as Moylan J set out, that W received her share of the company upon separation. Since then, she has made no contribution to the marital partnership and the parties have lived in different countries, for most of the time with different partners. W has made, of course, a significant contribution to the children of the family, to which I shall return.

vi) To look at the case the other way round, if CBA had gone bust, , H would not have been able to resuscitate a claim against W. He took the shares in the company as part of the settlement and whether the company succeeded or failed would have made no difference to the outcome of the case. This illustrates that the sharing of the company took place in 2010 and there is no cause to revisit. H was not trading with W's funds and she was not bearing any of the risk.

vii) It is well established law that changes in the value of an asset after an order effecting sharing has been made would not justify reopening the capital claims. Each party bears the consequences of the change in the value of their portfolios. See for example *Cornick* [1994] 2 FLR 530 and *Myerson* (No. 2) [2009] 2 FLR 147.

74. W claims that if she had known the full picture and prospects of CBA she might have insisted that she receive some of H's shareholding in the company as part of the settlement. I reject that argument for a number of reasons:

    i) She never sought shares in the company at any stage when negotiations were taking place in 2009/10;

    ii) The relationship between H and W was so bad that it is inconceivable that a court would have contemplated such a situation;

    iii) W's involvement in the business had been negligible;

    iv) There is no prospect that H would have agreed it.

    In short, I regard this argument as a rewriting of history. It would never have been in W's contemplation to seek an interest and nor would it ever have been awarded.

Contributions

75. Ms Stone says that W's contributions to the children, now aged 27, 25 and 24 have endured for many years after the separation in 2009 and that entitles W now to share in the fruits of the wealth built up since then. She accepts the general approach that Baron J enunciated in *M v M* [2004] 1 FLR 688

    74. The parties' contributions to date have been equal.

    75. Henceforth the marriage partnership will be dissolved and the Court must mark this fact. Future contributions to the welfare of the family will be as mother and father. This is a different qualitative contribution and does not give rise to a continued entitlement in a share of future wealth unless there are special circumstances.

    76. Normally in a big money case, a mother's future care will be counterbalanced by a father's substantial financial contribution to the children's ongoing maintenance.

    but says that this case is different as her contributions have been made prior to the date of the (i.e. this) hearing rather than after.

76. All cases are fact-specific. In this case the parties had divorced in 2010 and in 2010 and again in 2016 separated their affairs in a proper and fair way. It would not in general terms be appropriate or fair for W to share in the increase in value of CBA since 2010.

77. There is however one aspect which I can properly consider. It cannot have been in the contemplation of either party that the whole of the burden of the children's care and upbringing should have fallen on W from 2010. As a result of the disagreement between the parents all the emotional and physical parenting has fallen on W. I take that into account in my approach to needs.

Needs

78. H says that this part of W's claim is an afterthought prompted by me. In a limited sense Mr Bishop QC who appears with Mr Sear for H is right. It is not W's primary claim and it is barely touched on in her Form E or s.25 statement.

79. However, it is apparent from reading both those documents that it is W's case that she has not the means to enjoy the standard of living which she enjoyed before or one which properly reflects what she is entitled to.

80. The fact that she says that she will cut her cloth according to what is available does not mean that the claim does not exist. While its presence may have been disguised by her claim for the much greater award reflecting a share in the company, it was always there.

81. At the outset of the hearing I required Ms Stone to clarify her client's case. I was not greatly assisted by her description of the needs claim as being a cross-check in an unexplained amount but the answer was sufficient to alert Mr Bishop that this was a live claim with which H had to deal.

82. I have to consider all the s.25 factors and that is the approach that I have adopted. These include needs assessed as at the time of trial. In doing that assessment I shall take into account W's contributions over the years including those over and above what was anticipated in 2010.

83. W's housing needs are met. She says that she is not happy living in the matrimonial home which was foisted upon her. It is of course open to her to sell the property whenever she wants. I am not prepared to accept that such a sale should be treated as releasing surplus funds to W to provide for her future, and H did not press this point. She could rehouse for much less but that will be a matter entirely for her and she will reasonably require a property of sufficient size to accommodate children and grandchildren.

84. W lives with her partner with whom she has been for about 10 years. He does not contribute financially and he is not a man of significant means.

85. W's budget has quite properly not been the subject of a line by line scrutiny. Several major items were challenged:

    i) The sum of £50,000 p.a. towards dependants. I accept that W pays at the current moment more than that sum towards the care home costs of her elderly mother, but this is of recent origin and will inevitably be of limited duration. She may provide some other assistance to one of her brothers but that will be a matter for her.

    ii) £30,000 p.a. for holidays for the children who are now adult is not going to be a reasonable continuing expense.

    iii) The cost of any new home that she might move to will obviously be lower than the very expensive to run home where she now lives. Recurring costs of £90,000 p.a. on the main property will be short-lived.

86. In adopting the approach that I have, I do so against all the facts of the case, including H's "turpitude". I do not accept that this is an all (complete rehearing) or nothing (sharing having already taken place) case. Each case deserves its own bespoke treatment.

87. I take W's income needs as properly put in the sum of £200,000pa. I arrive at that figure by looking at what I find properly to be her budget against the wealth that exists in this case, taking into account that it is largely acquired post-separation. I have notionally in my mind pruned most of her payments to her mother on the basis that they will likely be short-lived, certainly when compared to W's lifespan, and significantly reduced housing costs. I have applied a modest reduction to some of her other expenditure.

88. I have not reduced this figure by the amount of W's pension funds as for a period W will have the expenditure on her mother's care home costs. I have also not acceded to her argument that I should ring-fence £1.8m of her income fund as being income-producing only without being amortised. I arrive at that conclusion because of W's alienation of some £2.8m of her funds. I have not criticised her for this but it does not encourage the ring-fencing of what she has kept.

89. Reference to the Duxbury tables in At A Glance show a shortfall of £1.1m so as to provide the necessary fund: (£4.026m - £2.917). That is the award which I make and which I consider produces a fair outcome in all the circumstances of the case.

90. At the end of the case before me, Ms Stone asked me to make an additional award of some £812,000 being the costs incurred by W in previous hearings which have not been part of the costs awards made in her favour. I reject that. If W incurs costs which are far in excess of what costs orders (two of them on an indemnity basis) have produced, that is a matter for her. As I have approached this case on a needs basis, this argument turns out in any event to be sterile.

91. It is a tragedy that the parties have between them spent in legal costs in this round of the litigation alone (W:824k per Form H1: H:737k per Form H1) more by some way than the amount of my award. That will give rise to difficult questions when costs fall to be considered as they now will.