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Case No: BV18D04796

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/04/2020

Before:
MR NICHOLAS CUSWORTH QC
(SITTING AS A DEPUTY HIGH COURT JUDGE)

- -

Between:

	G	**Applicant**
	- and -	
	T	**Respondent**

- -

SIMON WEBSTER QC and THOMAS HARVEY (instructed by **Payne Hicks Beach**) for the **Applicant**
ROBERT PEEL QC and LAURA HEATON (instructed by **Farrer & Co)** for the **Respondent**

Hearing dates: 23rd March – 2nd April 2020

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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.

....

This judgment was handed down in private on 2 April 2020. It consists of 71 paragraphs and has been signed and dated by the judge.

The judge hereby gives leave for this anonymised version of the judgment to be reported.

Mr CUSWORTH QC:

1. This judgment concludes the final hearing of an application for financial remedies, following divorce proceedings. The first listed day of the hearing was Monday 23 March 2020, which has meant that as a result of the Coronavirus pandemic, it has not been conducted in the Royal Courts of Justice, but rather by means of a video-conferencing facility, through which the parties and the court have all engaged entirely remotely, save for the wife's evidence which she gave whilst in the same room as her Counsel and instructing solicitor, albeit at an appropriate distance. In this way I have taken the evidence of the parties, one witness who was overseas, and the Single Joint Expert, Ms Hall, as well as written and oral submissions from both leading counsel.

Background

2. The husband is English, and the wife is South American by birth but is now a British citizen. Both are currently 45. They met in 1998 and married in September 2000. The parties have two daughters; aged 8 and 3. The children respectively attend a fee paying school and nursery in central London.

3. The marriage came to an end in 2017. The parties separated in October/November 2017 and shortly afterwards the husband moved into rented accommodation; he now has a new partner with whom he has a young son, born in 2019. The wife continues to live in the former family home with the children of the marriage.

4. The wife presented her divorce petition in February 2018. Decree Nisi was pronounced in July 2018, and it has not yet been made Absolute. Child arrangements have not proved to be easy, and will no doubt have proved costly for the parties. That unfortunate background makes the costs of these financial proceedings merely a part of what must add up to a daunting total. Those financial costs for the husband stand at £697,903 and for the wife at £812,808. This is especially striking when one of the major issues between the parties beyond the value of their assets has been their past and future liquidity.

5. Shortly after the parties' marriage, in 2001, the parties moved to mainland Europe for the husband's work. The wife too worked in the financial sector whilst living there and continued to do so after the parties returned to England in 2004, until 2011. Following the birth of their first child, in 2012, the wife left formal employment and has not returned. In 2016, the parties moved with their elder daughter to live abroad where the husband's business was setting up a new office, and where their younger daughter was born. The family returned to London in 2017.

6. Not long after their return the marriage broke down. Given the value of the parties' assets, examined below, and their agreement that any award (within the spectrum of those contended for as fair for her under the sharing principle) will meet her needs appropriately without the need for her to consider a return to work if she does not wish to, her future earning capacity has not been a live issue between them. It should be said that, insofar as she may choose to return to work in the future, there has not been a suggestion that that should happen within a timescale that will affect her liquidity during the time period which will be necessary to enable full implementation of the court's order.

7. The family home, Flat A, has two bedrooms, but in fact the parties own three separate flats in the same building: Flat C is rented out, whilst Flat B is occupied by the nanny. Plans to unite the properties have been put on hold. Flat A is valued at £4.4m, with a mortgage of £3.5m secured on it. Flat C is worth £1.7m against a mortgage of £1.1m, and Flat B is worth £515,000. Accordingly, whilst all three flats have a gross value of £6.6m they only have equity of around £1.9m.

8. These mortgages over the three properties are inevitably expensive to maintain. In the period since separation the parties have used the liquidity available to them to meet these and other property payments. This has been because the husband's income has been significantly reduced from its previous levels and so has not been sufficient to service the family outgoings. Those costs together with living and legal expenses have reduced the investment fund held at the time of the parties' Forms E from around £4.2m to just under £1.5m now.

The husband's business ("B Ltd")

9. The company was originally incorporated in offshore in 2011, but subsequently shifted its centre to an alternative offshore jurisdiction. B Ltd sits at the top of a corporate structure. The husband is one of the founder members of the business, as well as being its single largest shareholder. The business of B Ltd now takes two forms: Proprietary Trading, where employees trade in the markets and make profits/losses from those trades, and Market Making, where the business acts as a middle-man to facilitate trades. It deploys its own funds in the marketplace - it does not borrow money or use third parties' funds. The traders use B Ltd's money, so that the outcome of each trade directly impacts on the value of the shareholder's funds in the company.

10. The business started trading in late 2011. The husband and two other co-founders, Mr Y and Mr Z, are the directors of B Ltd: I heard evidence from Mr Y. Collectively, these three own nearly two thirds of the shares in the company. The husband holds about 1/3 of the total shares. The remaining shares are divided between the further employees, or former employees, or on their behalf.

11. The business now employs some 190 people, many more than the amount at the point when the parties' marriage broke down. It briefly operated in 3 areas, adding asset management to its other 2 arms in 2016. However, this proved short lived. After the departure of their main trader Mr X in late 2018 to set up a rival business, the asset management arm was closed down, and the business returned to its core activities - proprietary trading and market making.

12. The husband relies upon the fact that B Ltd has no underlying regular income stream. It briefly received some management fee income, but that ended when the short-lived asset management arm shut down in 2018. The traders therefore need to make substantial profits, to cover the business' operating costs, and to pay their own significant bonuses, which keep them employed by B Ltd rather than moving to rival concerns, before then turning a profit for the shareholders. However, historically they have done that very effectively.

13. In order to effect multiple trades, the business uses a number of prime brokers. The prime broker will deploy its own capital to place the trade and requires B Ltd to

provide collateral against its own assets. It is therefore the husband's case that the value of B Ltd can be set at the end of each day, in that it represents the sum of the accumulated profit held by the business. He points out that talented staff are integral, and that selecting and retaining traders who will continually produce substantial profits for B Ltd is now a key skill of his. In particular he points to the period after the departure of Mr X towards the end of 2018, as a period when he had to work hard to maintain team morale and replace departing staff with others who would produce comparably good results going forward.

14. The husband acknowledges that most trading firms have a relatively short life span because of the difficulty in continuing to make substantial profits over a lengthy period in a fiercely competitive market. Eventually, like some other such businesses, he suggests that B Ltd will be wound up. However, although most trading businesses do not last much more than about 10 years – and B Ltd is now in year 9 of its life cycle – he says that he and his partners have no immediate plans to liquidate their asset. His case is that the very significant recent increase in staff numbers presages a new attempt to grow the business and increase profitability for the existing shareholders, rather than as any form of preparation for a sale or other liquidation at any price greater than the net asset value of the company.

15. During the brief tenure of the asset management arm of the business, the husband operated as a trader in asset management. He however stepped back from that section of the business even before its early closure. His performance is said to have suffered during the first 6 months of 2018, which his counsel Mr Peel QC describes as 'a very difficult time for (him) personally because of the divorce and children proceedings'. I have no doubt that that was the case. He resigned from his asset management role in August 2018, just a few months before Mr X's departure and the closure of that element of the business. He continues to have oversight of the other teams.

16. The single most important dispute between the parties revolves around the value to be ascribed to the husband's interest in B Ltd. It is essentially the reason why the case has not been resolved before trial. Resolving that issue has generated a very significant input not just from the SJE, Ms Faye Hall, who has reported, responded and updated regularly during the past 18 months. But also latterly from Mr Mark

Bezant, who has been deployed for the wife as a shadow accountant to provide a critical evaluation of Ms Hall's methodology.

17. Although a *Daniels v Walker* application was made on her behalf at the PTR in January 2020 for the court to receive full evidence from Mr Bezant, Holman J declined such an application as coming too late, but did allow the admission into evidence of a letter which Mr Bezant had written on 3 December 2019, setting out his concerns about the basis of the valuation before the Court. The accountants subsequently met and have produced a statement identifying the areas on which they are agreed. Mr Peel QC for the husband had the opportunity to cross-examine Mr Bezant on the contents of his letter, but, on the basis that no positive case as to valuation is there set out, he declined. The only expert testimony that I therefore heard came from Ms Hall, to whom Mr Webster QC for the wife put the concerns which Mr Bezant had raised. I have carefully considered the content of their joint statement.

18. Before assessing that valuation evidence I will first set out the factual evidence which I have about the financial position of the company and its benefit to the husband. The husband's income for the last 4 tax years has been: April 2016 - £5,123,865 gross; April 2017 - £2,086,503 gross; April 2018 - £2,411,865 gross; April 2019 - £411,072 gross; April 2020 - a gross salary of £50,000pa, rising to £200,000 in December 2019, and a bonus of £959,564 relating to the business' year to June 2019, paid in August 2019.

19. There has been some contention about the level of the husband's pay since separation, and whether there has been any element of manipulation by him to reduce the amounts that have flowed to him. This has forced the parties, and in particular the wife, to use up much of the balance of the parties' liquid capital in meeting costs that would in previous years been treated as income expenditure. Previously, the husband has (up to 2016) received substantial dividends from the company, as well as significant bonuses. For different reasons unconnected with the breakdown of the marriage, he says that these are no longer available to him.

20. *Dividends*. The last dividend received by the husband was paid in the tax year to April 2016. The primary reason why this has been the case is said to be the change in the

tax regime after that date which rendered the payment of large dividends to shareholders in lieu of salary uneconomic. In addition the husband relies on the business' internal policy of seeking to maintain a balance 4 times its annual running costs as a cash float within the company (which it is not currently doing thanks in significant part to its recent heavy recruitment of new staff); the demands of the Prime Brokers that all of the trades placed by B Ltd are backed with cash collateral; and a concern that staff might mistake the payment of healthy bonuses as the prelude to exit preparations by the major shareholders, which in turn might trigger an exodus from their ranks.

21. *Bonuses.* In his evidence the husband was at pains to explain the importance to the business of continuing to incentivise the workforce, to avoid their departing to potentially greener pastures. Thus, he says, in a year where some make profits from their trades but others losses, full bonuses to the profit-makers will be paid, which may therefore be disproportionately large having regard to the overall profitability of the company. Historically he has been both active and successful in his trading, which has led to his becoming entitled to substantial bonuses over the years. Now that he is not trading directly, he says that the prospects for him to receive significant bonuses going forward is reduced. His benefit comes in the increase in the value of his equity through the successful trading of those that he recruits.

22. There is a slight anomaly in the bonus position: because the company year-end falls in June, with bonuses paid in August, accounts to April in any given year will show bonuses paid in that year which relate principally to the previous year's trading results. In a normal year this would make little odds, but in a year when the company suffers a sharp drop in profitability, as it did in the year to 30 June 2019, in the wake of the closure of the asset management arm, the reduction is magnified by being calculated against the backdrop of the bonuses paid in August 2018, on the back of the year to the previous June when the business recorded a net profit of over £60m.

23. That drop in B Ltd profitability in the year to 2019 has been explained and is readily understandable. So too is the fact that the husband's bonus paid in August 2019, of £942,000 gross, was a lesser sum than that paid to at least one of his fellow directors, on the basis that whilst he may have worked hard over that time to preserve the

business, he did not create profit which is the major driver of remuneration. What on its face is more striking is the fact that this year was not the nadir of the husband's earnings. It was rather in the previous year, when B Ltd itself was in very significant profit, that the husband's performance – he says in large part due to the strains of the breakdown of his marriage – was so poor that he received a bonus in August 2018 of only £308,958 for his efforts in the previous year. As I will discuss below, that is to be set against the fact that the net asset value of his shareholding in the business in fact increased during the twelve months to June 2018 by a gross figure of over £12.5m.

24. The use of such a net asset valuation as the true measure of the value to the husband of his shares is controversial. Mr Bezant's letter expresses a number of concerns about Ms Hall adopting that method, under two general headings. Collectively, he states:

    a. That she has valued the husband's shares at their *pro rata* interest in the net asset value ("NAV") of B Ltd. However, he believes her valuation framework is internally inconsistent and places too much reliance on the prices observed in the internal share market for B Ltd's shares; and

    b. That Ms Hall has then assessed the liquidity of the husband's shareholding. However, in so doing she has excluded what he considers to be the most realistic means by which he can extract value from his shares (dividends and bonuses). Instead, she has focused on what he considers to be the unrealistic assumption that the husband either sells his shareholding through the process set out in B Ltd's shareholders' agreement over a period approaching 20 years, or B Ltd is wound down.

25. The detail of these points, which I shall not set out in full but which I have carefully considered, was put robustly to Ms Hall by Mr Webster for the wife, but she remained firmly in her reported position. On both points, she had responded by letter on 3 March 2020 to the criticisms made as follows:

    a. She did not agree that she had placed too much reliance on the prices observed in the internal share market in valuing B Ltd's shares, and that to value B Ltd by reference to any earnings methodology would be highly subjective in terms

of both B Ltd's maintainable earnings and an applicable multiple thus providing an unreliable result; and that in not distributing the profits earned in recent years and utilising them within the business to generate further returns, the NAV at any given date provides a reliable estimate of the value of the business at that date, as it captures trading gains or losses as they happen, with any future returns being inherently uncertain; and

b. In view of a dividend stream realisable from the company, the husband is unable to solely influence any decision to make such a distribution and as such she could not see that a reliable income stream in the form of an annual dividend is currently easily discernible. The payment of any dividend would impact on the remaining NAV of the company at that point in time which would reduce in an amount equal to the dividend paid; in view of the husband's reduced trading activity, she could not see that a reliable income stream in the form of an annual bonus from B Ltd was currently easily discernible. She also appreciated that this situation may change, and the husband may again receive a higher trading bonus.

26. I am keenly aware that I have heard evidence only from Ms Hall, from whom I have also received a full report and a series of further calculations and responses. From Mr Bezant I have only his single letter, which questions Ms Hall's assumptions but for entirely understandable reasons is not able to offer a positive alternative case, for which reason he was not invited by Mr Peel to give oral evidence. I have read and considered the comparable but different business transactions considered but rejected as direct comparators by Ms Hall, re-raised by Mr Bezant and then again distinguished by Ms Hall. In the absence of a balanced case on each side, it is not straightforward to form a view about which I can be sure that I would be satisfied in any circumstances.

27. However, the alternative valuation posited by Mr Webster – one taking a price to book calculation after significant discounting, is one rejected by Ms Hall in her initial report and not positively championed by Mr Bezant. Ms Hall, in December 2018, had taken 2 public companies operating within the same industry as B Ltd, but for reasons she had explained both under markedly different models from B Ltd. She also pointed

out that the accounting policies of the companies could be very different. She then took the average ratios for those companies' market share price over their respective book values, noting that industry ratios tend to reflect market expectations of future growth in the industry. She also considered price to earnings ratios, but as this approach is vulnerable to the wildly divergent earnings in B Ltd, it is not pursued by Mr Webster.

28. Ms Hall in her rejected calculation applied discounts on account of the lack of marketability, given B Ltd's status as a private company, and a further restricted stock discount on account of the specific characteristics of a shareholding in B Ltd. These considerations included the fact that no formal or informal offers had ever been made in respect of the business, and that a sale of the husband's equity was restricted by the Shareholders' Agreement to sales on an internal market, which I will consider in more detail below. Taking the figures as at October 2018, she arrived at an applicable ratio (rounded) of 1.4, which ratio Mr Webster 'with some reservation' invites me to apply to the October 2019 NAV of the husband's shareholding in B Ltd in calculating the quantum of the wife's award.

29. The restrictions in the shareholders' agreement are important, not just in considering the only historical basis upon which B Ltd shares have traded, but also when considering liquidity issues in relation to realisation and implementation. The underlying aim of the policy as described by the husband is that all shares are held by employees so that they have "skin in the game" and B Ltd vetoes any attempt to sell shares externally. This is evidently not a completely accurate description, as some former employees, given their high churn rate, retain their shares for some years after departure, and will not normally be required to sell immediately. Equally, some employees do choose for tax reason to have their shares held by family members, or other vehicles.

30. However, this I accept does not detract from the overall purpose lying behind so much of the company's operation, which is to ensure that the best staff can be retained and recruited. This is because, I am satisfied, the directors see that as being the surest way to ensure that the significant profit levels of past years are maintained – for the ultimate benefit of their equity interests.

31. Mr Peel has made criticisms of the wife, for seeking at an earlier stage in the proceedings an order for the transfer of some of the husband's shareholding to the wife, in part satisfaction of her claim. Such criticism is misplaced. Particularly at a time of extreme economic turbulence, whether for the company, as in the latter half of 2018, or for the global economy as of now, an outcome in a case such as this where there are fundamental issues about the true value of a private company, its liquidity and the paying party's available exit strategy may in not a few cases be met with an acceptable solution of the sort discussed in *Wells v Wells* [2002] EWCA Civ 476, and ultimately cautiously approved by the court appeal in *Versteegh v Versteegh* [2018] EWCA Civ 1050. That they did not through Mr Webster pursue that outcome as their primary position before this court I take to be a pragmatic recognition by the wife's advisors of the difficulties that they would encounter, given the stringent restrictions on share sales and the evident hostility of the directors – foremost amongst whom of course is the husband.

32. Those restrictions include a narrow annual sale window in what is an internal market for share sales and purchases between employees. This means that there is a practical limit to the number of shares which can be sold; which is determined annually by whether there are sufficient purchasers to buy the shares. In the past 2 years, not all of the shares which have been offered for sale have in fact been taken up. The value of each share is set by the NAV referable to the June year-end accounts just past, and calculated by the auditors. Sales to third parties are only allowed in very exceptional situations, and have never in practice occurred. Borrowing against shares is barred without consent, and whilst as indicated it is possible for employees to transfer shares to trusts or family members with permission of the directors, the directors are able to refuse a request to transfer shares in this way, and are able to refuse to register any such transfer. Whilst the husband's own expressed reluctance would ordinarily create little traction, the rarity of this having taken place historically is relevant. In any event, the wife's primary case is for a clean break in a fixed sum paid over a period of years, a similar scheme to the husband's, albeit in significantly greater amounts.

33. Let me say at once that I understand the reservations expressed by Mr Bezant and Mr Webster about the basis of Ms Hall's valuation, limited as it is to the NAV of the husband's shares. Whilst such value will, as she comments, capture all of the historic

profitability in the company (and this is especially so in absence of any dividends in the past 3 years), it doesn't appear on its face to capture the fully rounded value to the shareholders of an edifice which has been remarkably successful at generating profits over the 9 years of its existence to date. That concern is only compounded by the husband's frank evidence that he would not want to sell his shares now, at NAV, because of course they are worth more to him than that, in that he anticipates continuing to operate B Ltd into the future, and to continue to recruit staff to its banner whose efforts will only swell the value of the equity in the company.

34. The problem for the court is to determine from the limited evidence before it whether that obviously enhanced value to the directors actually has a corresponding value in the marketplace. In other words, whether any third party would see value in acquiring B Ltd as a going concern, at a premium based upon its past trading record. It is striking that no example has been citied to me of any similar entity having been acquired in such a way. The husband's case is that, if he were to depart, the collection of employed traders which he has assembled would soon dissipate, and with them, their individual ability to generate profits for the shareholders. His case is put upon the basis that the equity in B Ltd is no more than a pile of cash, the accumulated profits of past trades, and essentially that no-one is going to pay more for a pile of cash than its simple value.

35. The question is whether the B Ltd name, the IT systems, which the husband says are unique to each trader and would become obsolete upon their departure, and the current accumulation of traders all in the same place would be of sufficient additional value that an offer for a significantly greater sum than the simple value of the cash pile can be predicted, with sufficient certainty that an award can be made in the wife's favour valuing the husband's interest in the business at a specifically greater amount than his current interest in the equity, as adjusted by Ms Hall.

36. I must also remember that it is clearly the case that, since the parties' separation, the business has undergone a significant degree of surgery, beginning with the husband's own resignation from the asset management department in the summer of 2018, the departure of Mr X and the closure of that department, the loss of a very large number of the traders then employed and the recruitment of very many more, such that the

personnel now trying to generate the profits for the shareholders of B Ltd will be almost completely different from those who were there in 2017/8, and are there now in much greater numbers. What this means in practise on analysis is that even if such an offer were made now, the traders whose skill was being purchased by the prospective buyer would be substantially different from those who were in place when the parties separated. So, any Price/book calculation would have to be applied to the NAV at the appropriate time – which time I will discuss below.

37. However, notwithstanding any issue of timing, I am not persuaded, on the evidence before me, that a proposed entrant or current participant into the market who had a fund in excess of say £200m with which to start to trade would pay a premium to the directors of an established trading house to buy an operation such as this, absent the acquisition of secured or at least likely prospective financial benefit from so doing. If the personnel stay, as I accept that they do, because of the current directors' enlightened bonus policy, it is foreseeable that the departure of the directors would soon precipitate the departure of many of their traders. That is not to say that such an acquisition is impossible, simply that it is not sufficiently likely, especially in the absence of any obvious precedents, to render it fair to the husband to make an award to the wife on the assumption that it is more likely to happen than not.

38. Whilst I am far from being sure that when the husband does realise his residual interest in B Ltd he will only be able to do so for its NAV, on the balance of probabilities, for all of the reasons which I have expressed above, that is the most likely scenario on the evidence before me. I accept the husband's evidence that proprietary funds of this size do not regularly get sold. I have considered that the fact that the usual lifespan of such a concern is not much more than 10 years would suggest that an exit for the directors will come sooner rather than later. But equally, the fact that the current rapid expansion does not suggest that this is a business on the verge of wind-down by its directors. There is no evidence before me of any impending sale, and the evidence of both the husband and Mr Y very clearly is that none such is in prospect – nor any other exit. I remind myself that the asset management arm of the business was wound up in 2018 rather than sold.

39. *The Authorities*. I have also carefully considered the several recent authorities about the approach to be taken when attempting to place a value upon a private company for the purposes of a financial remedies application, when there is no evidence that the company is in the throes of sale. Those authorities now firmly take their cue from the decision of Moylan J (as he then was) in *H v H [2008] 2 FLR 2092* where he pointed to the fact that the fact that the vulnerability of such valuations had been specifically recognised by the House of Lords in *Miller v Miller*; *McFarlane v McFarlane: [2006] UKHL 24, [2006] 1 FLR 1186*. He said:

> 5. The experts agree that the exercise they are engaged in is an art and not a science. As Lord Nicholls said in *Miller v Miller* ; *McFarlane v McFarlane [2006] 2 AC 618* [26]: "valuations are often a matter of opinion on which experts differ. A thorough investigation into these differences can be extremely expensive and of doubtful utility". I understand, of course, that the application of the sharing principle can be said to raise powerful forces in support of detailed accounting. Why, a party might ask, should my "share" be fixed by reference other than to the real values of the assets? However, this is to misinterpret the exercise in which the court is engaged. The court is engaged in a broad analysis in the application of its jurisdiction under the Matrimonial Causes Act, not a detailed accounting exercise. As Lord Nicholls said, detailed accounting is expensive, often of doubtful utility and, certainly in respect of business valuations, will often result in divergent opinions each of which may be based on sound reasoning. The purpose of valuations, when required, is to assist the court in testing the fairness of the proposed outcome. It is not to ensure mathematical/accounting accuracy, which is invariably no more than a chimera. Further, to seek to construct the whole edifice of an award on a business valuation which is no more than a broad, or even very broad, guide is to risk creating an edifice which is unsound and hence likely to be unfair. In my experience, valuations of shares in private companies are among the most fragile valuations which can be obtained."

40. More recently in *Versteegh v Versteegh* [2018] EWCA Civ 1050, Lewison LJ explained in a little more detail the reasons why Moylan J's rationale in the former case was a sound one. He said:

> 185. The valuation of private companies is a matter of no little difficulty. In *H v H [2008] EWHC 935 (Fam), [2008] 2 FLR 2092* Moylan J said at [5] that "valuations of shares in private companies are among the most fragile valuations which can be obtained." The reasons for this are many. In the first place there is likely to be no obvious market for a private company. Second, even where valuers use the same method of valuation they are likely to produce widely differing results. Third, the profitability of private companies may be volatile, such that a snap shot valuation at a particular date may give an unfair picture. Fourth, the difference in quality between a value attributed to a private company on the basis of opinion evidence and a sum in hard cash is obvious. Fifth, the acid test of any valuation is exposure to the real market, which is simply not possible in the case of a private company where no one suggests that it should be sold. Moylan J is not a lone

voice in this respect: see *A v A [2004] EWHC 2818 (Fam), [2006] 2 FLR 115* at [61] – [62]; *D v D [2007] EWHC 278 (Fam)* (both decisions of Charles J)."

41. Subsequently, in *Martin v Martin* [2018] EWCA Civ 2866, Moylan LJ, as he now his, returned to the theme and analysed how the court should look to utilise these valuations once they have been received and determined. He said:

> 93. How is this to be applied in practice? As referred to by both King LJ and Lewison LJ [in *Versteegh*], the broad choices are (i) "fix" a value; (ii) order the asset to be sold; and (iii) divide the asset in specie:…The court has to assess the weight which can be placed on the value even when using a fixed value for the purposes of determining what award to make. This applies both to the amount and to the structure of the award, issues which are interconnected, so that the overall allocation of the parties' assets by application of the sharing principle also effects a fair balance of risk and illiquidity between the parties. Again, I emphasise, this is not to mandate a particular structure but to draw attention to the need to address this issue when the court is deciding how to exercise its discretionary powers so as to achieve an outcome that is fair to both parties. I would also add that the assessment of the weight which can be placed on a valuation is not a mathematical exercise but a broad evaluative exercise to be undertaken by the judge.
>
> 94. …The need for this approach derives from the fact that, as said by Lewison LJ, there is a "difference in quality" between a value attributed to a private company and other assets. This is a relevant factor when the court is determining how to distribute the assets between the parties to achieve a fair outcome.
>
> 95. It might be said… that it would be unfair to award one party all the "upside" in the event that the valuation proves to have been an under-estimate. That, however, is intrinsic in an asset being volatile. There is potential for the value to increase as well as decrease. If one party is not participating in that risk and is obtaining what Thorpe LJ referred to in *Wells v Wells* as a secure result, one aspect of achieving that result is that, because they don't have the burden of the risk of a decrease in value, they also don't have the benefit of an increase in value…
>
> 96. …it is all about weight and balance. Not placing undue weight on a valuation and seeking to achieve a fair balance of risk between the parties in the allocation of the assets.

42. So too in this case, I remind myself that there is no certainty at present what the economic future of the planet will hold, in the short or medium term. The husband's evidence has been that, since the last company figures were received in October 2019, the asset value of the company had first risen sharply, to the tune of more than £50m, but then fallen back to a figure now which is probably less if anything than it was in June 2019. That he had not disclosed the fact of the original rise may fairly be the

subject of criticism, regardless of the precise wording of the PTR order of Holman J, but of more import is the fact that, by fixing a price for the assumed value, there is no likelihood that that creates prejudice for either party in particular.

43. It is also right that, given that the value put forward by Ms Hall is one based on the NAV of the company, the court can be certain that is accurate as at the date that it is taken. The only question is as to alternative methodology, and that renders this valuation perhaps more robust than those based on uncertain forecasts predicated upon past performance.

44. I would also stress that in this case, I am not faced with a 'bracket' for valuations provided by the experts. Ms Hall's is the only expert valuation before me. Mr Webster's brave attempt to apply her rejected methodology to more recent figures is worthy of consideration, but must inevitably come with considerably less weight. In this regard, Moylan LJ continued in *Martin* as follows:

> 97. I have not yet addressed one key aspect of Mr Marks' submissions, namely that a judge should adopt a conservative figure when fixing the value of shares in a private company. I am acutely aware of the importance of reducing scope for argument and "the need for clear guidance", as I mentioned in *Hart v Hart*, at [97]. However, as Lord Nicholls said in *White v White*, at p. 612 G, as "with so much else in this field, there can be no hard and fast rule". I do not consider it appropriate to seek to limit or direct where in a bracket a judge should alight…As I have already said, it is the use which is made of such valuations which is of critical importance.

45. It follows from the above that I accept in the circumstances Ms Hall's methodology and valuations at various points in time as being the safest and most reliable available to me, and that the husband's shares in B Ltd will therefore be considered at their NAV for the purposes of determining the outcome of this case, rather than as calculated by any other method. However, the issue of determining a fair value does not end there, as there remains another matter of key importance, which is the date at which the value of the husband's shareholding should be calculated.

46. In *Hart v Hart* [2017] EWCA Civ 1306, Moylan LJ dealt with the approach which the court should take in determining what property should and should not be included as property which is subject to the sharing principle. He said:

67. The exercise on which the court is engaged, when applying the sharing principle… is …to determine whether the current assets owned by the parties …comprise the product of marital endeavour. The court must then decide how that determination should impact on the court's award…

…

84. In my view, the court is not *required* to adopt a formulaic approach either when determining whether the parties' wealth comprises both matrimonial and non-matrimonial property or when the court is deciding what award to make. This is not necessary in order to achieve "an acceptable degree of consistency", Lord Nicholls in *Miller* (paragraph 6), or to achieve a fair outcome…

85. It is, perhaps, worth reflecting that the concept of property being either matrimonial or non-matrimonial property is a legal construct. Moreover, it is a construct which is not always capable of clear identification. …When property is a combination, it can be artificial even to seek to identify a sharp division because the weight to be given to each type of contribution will not be susceptible of clear reflection in the asset's value. The exercise is more of an art than a science.

86. In my view, the guidance given by Lord Nicholls in *Miller* remains valid today and, indeed, bears increased weight in the light of the courts' experience since that case was decided. It can, as he said, be artificial to attempt to draw a "sharp dividing line". Valuations are a matter of opinion on which experts can differ significantly. Investigation can be "extremely expensive and of doubtful utility". The costs involved can quickly become disproportionate. Proportionality is critical both because it underpins the overriding objective and because, to quote Lord Nicholls again: "Fairness has a broad horizon"…

47. This was later taken up by King LJ in *Versteegh*, when she said:

90. Wilson LJ (as he then was) in giving judgment in *Jones* was by no means blind to the limitations inherent in his choice of the arithmetical route saying:

"[35]…Criticism can easily be levelled at both approaches. In different ways they are both highly arbitrary. Application of the sharing principle is inherently arbitrary; such is, I suggest, a fact which we should accept and by which we should cease to be disconcerted. "

…

93. In *Goddard-Watts v Goddard-Watts* [2016] EWHC 3000 (Fam) Moylan J took issue with the use of the word 'arbitrary' in relation to the judicial decision making process saying:

"…. Wilson LJ said in *Jones*…. "Application of the sharing principle is inherently arbitrary". Whilst I am not entirely happy with the concept that that sum I award to reflect these factors is arbitrary, I take it that Wilson LJ meant discretionary rather than susceptible to the application of a precise formula."

94. In my judgment it is however the observation of Lord Nicholls in *Miller and McFarlane* [2006] UKHL 24;[2006] 1FLR 1186 which continues to carry the day:

"[26] This difference in treatment of matrimonial property and non-matrimonial property might suggest that in every case a clear and precise boundary should be drawn between these two categories of property. This is not so.

[27] Accordingly, where it becomes necessary to distinguish matrimonial property from non-matrimonial property the court may do so with the degree of particularity or generality appropriate in the case. The judge will then give to the contribution made by one party's non-matrimonial property the weight he considers just. He will do so with such generality or particularity as he considers appropriate in the circumstances of the case.

48. Further, in the case of *Martin*, Moylan LJ also said this:

113. In conclusion, a judge has an obligation to ensure that the method he or she selects to determine this issue leads to an award which, to quote Lord Nicholls in *Miller; McFarlane*, at [27], the judge considers gives "to the contribution made by one party's non-matrimonial property the weight he considers just … with such generality or particularity as he considers appropriate in the circumstances of the case". This provides the same perspective as Wilson LJ's observation in *Jones v Jones* about "fair overall allowance", at [34]. This was why Holman J was entitled in *Robertson v Robertson* to reject the "accountancy" approach, not only because it seemed unfair to the husband, but because he did not consider that this fairly reflected the relevant considerations in the "overall exercise of (his) discretion", at [59]. Both of the latter cases concerned the development of trading companies and, in my view, these observations apply with particular force in such circumstances.

…

115. Finally, on this question, I mention briefly that the manner in which the court determines whether property is or is not matrimonial can probably be described as partly evaluative and partly discretionary. …the exercise is clearly at least in part evaluative because it is based on the court's assessment of the evidence as to whether the relevant asset is from a source external to the marriage or the product in part or in whole of marital endeavour. But I also consider that it can be partly discretionary for the reasons set out in paragraph 113 above.

49. *The time for valuation*. In this case, the determination for the court is the assessment of the date at which it should determine the value of the husband's shareholding is fixed, for the purpose of placing a value on the wife's sharing claim. For the husband, Mr Peel argues that this should be, because it can be very nearly determined, the date or at least the month of the parties' actual separation, he says in October 2017. There is no dispute that the shares in B Ltd were completely matrimonial up to that point, and the husband has, throughout the relevant period, held 2,547,813 of them. Mr Peel argues his position thus:

    a. There has been no 'passive growth' in the value of the shares, which simply reacts to the rise and fall in NAV, dependent upon the success or otherwise of the daily trades;

    b. There is no underlying income stream: profit is only generated by successful trading; and

    c. The so called '*Cowan* principle' of one party trading with the other party's undivided share of the assets has not survived *Miller*.

50. Taking the first 2 of these 3 arguments together, there is of course a superficial attraction to fixing on value as at the date of separation if the court can, because it is a fixed point when something significant in the marital relationship changed. The share price at that point, relied on by Mr Peel, was 12.03. However, notwithstanding the daily nature of the trading business, a closer analysis of business' history, and of its figures, makes it clear in my view that such a determination would produce an unfair outcome for the wife.

    a. As at year end June 2017, the share price for B Ltd was 12.52. 1 year later, as at June 2018, that price had risen to 17.058. The price as at October 2017 was clearly not reflective of the overall trend at that time.

    b. Later in 2018 the husband was to resign from the asset management arm of B Ltd on account of his poor performance, and receive a bonus which, by the

standards of every bonus earned by him prior to that date can fairly be described as negligible.

c. His own case is that in the first 6 months of 2018, the period immediately following separation, he was affected by the difficult children proceedings and generally the breakdown of his marriage, and so was not able to give his best to the company.

d. It was only some months after this resignation by the husband that Mr X resigned, and necessitated the husband springing into the action by which he says that he saved the company by closing down asset management, and by reorganising and upscaling the balance of its other operations.

e. There is thus no evidence before the end of the year to June 2018 of the husband taking extraordinary post-separation steps to preserve the value and integrity of the business. Indeed, the evidence from his bonus share in that year suggests that his contribution was much less than in the years which both preceded and followed it.

f. Notwithstanding the husband's comparative lack of contribution, the period between October 2017 and June 2018 was a very profitable one for the company, with the share price rising by nearly 5 full points from 12.063 to 17.058. This added £12.7m to the gross value of the husband's shares, £10.2m to their net value.

g. Given the company's restrictive share sale policy, the first opportunity for the husband to sell any of his shares had he wanted to do so to provide for the wife's entitlement was after June 2018, at which point the referenced share price rise had taken place.

51. As to Mr Peel's third point, I acknowledge Mr Webster's submission that that the '*Cowan* principle' is now in practice considered under the general heading of '*Continuum versus new ventures*', a phrase coined by Roberts J in *Cooper-Hohn v Hohn* [2014] EWHC 4122 (Fam), and subsequently taken up by Mostyn J in *JL v SL*

(No.2) [2015] EWHC 360 (Fam). In that case the judge discussed his own summary analysis of the principles relating to post-separation accrual in *Rossi v Rossi* [2006] EWHC 1482 (Fam), and stated:

> 34. '…the Court of Final Appeal of Hong Kong in its recent decision of *Kan v Poon* FACV20/2013, (2014) 17 HKCFAR 414 approved my summary. Ribeiro PJ stated at para 133:
>
> ""The summary of the principles provided in *Rossi v Rossi* is broader than Thorpe LJ''s stricter approach [in *Cowan*] and is, in my view, preferable. It points to various factors relevant to deciding whether a post-separation accrual justifies departure from equality, including the length of the marriage and separation, the nature of the property accruing and the means or efforts by which it was acquired, and so forth.""
>
> 35. In that case the attempt by the husband to exclude the post-separation accrual from the marital pool failed. Ribeiro PJ stated at para 134:
>
> ""In my view, the increased Analogue Group profits do not provide a ground for departure from the equal sharing principle in the present case. The parties married in January 1968 and separated in mid-2008, over 40 years later. The period of separation prior to the hearing date was relatively insignificant. The profits accruing to the Analogue Group during the post-separation period arose out of the business which had been built up in the course of the marriage, in respect of which W can legitimately assert an unascertained share on the principles accepted in *LKW v DD*.""

52. Mostyn J then considered whether Roberts J's decision in *Cooper-Hohn* may have been an example of a sharing award made against non-matrimonial assets. He said:

> 40. …I think the proper analysis is that Roberts J was saying that the fund retained its matrimonial character but the wife would share unequally in the increase in the value achieved by the husband alone in the period of separation.
>
> 41. This approach is to my mind undoubtedly correct for those assets which were in place at the point of separation. They remain matrimonial property but the increase in value achieved in the period of separation may be unequally divided. I emphasise may. Obviously passive growth will not be shared other than equally, and there will be cases where on the facts even active growth will be equally shared, as happened in *Kan v Poon*.
>
> 42. On the other hand there will be cases where the post-separation accrual relates to a truly new venture which has no connection to the marital partnership or to the assets of the partnership. In such a case the post-separation accrual should be designated as non-matrimonial property and save in a very rare case should not be shared.

> 43. In *SK v WL* [2010] EWHC 3768 (Fam) there had been a substantial increase in the value of the matrimonial assets during the six years which had elapsed between separation in 2004 and trial in 2010. A business which had been incorporated in 2001 was built up by the husband substantially after separation and sold for a large sum in 2008. Moylan J declined to calculate the assets at the point of separation (which were conceded should be divided equally) and to determine what share (if any) the wife should be awarded of the post-separation growth. Rather, he awarded the wife 40% of all the assets, the departure form equality reflecting his intuitive view of how the growth should fairly be reflected.
>
> 44. It would appear that Roberts J in the end adopted the same approach in *Cooper-Hohn v Hohn*.

53. In this case, the husband has not shown that the post-separation accrual relates to a 'truly new venture' in the period up to June 2018, nor that that venture has no connection to the assets of the partnership. Whilst the profits may have depended upon new trades, the traders were no doubt for the most part those selected and put in place by the husband and his partners during the marriage; these were not new profitable trades or endeavours by the husband himself. On the facts of this case, for all of the above stated reasons, I find that the balance of fairness would not lead to a date for fixing the value of the wife's equal interest in the husband's shareholding earlier than June 2018.

54. Mr Webster however would go further, and his calculation, although based on Ms Hall's multiple computed by reference to the June 2019 figures, would take the share price uplifted to October 2019, when the share price stood at 20.651. For the reasons which I have already in part articulated, I reject this date as one on which to quantify equal sharing as being too far from the ending of the marital partnership to be a fair one for the husband. The evidence which I accept is that, although not perhaps in a trading role, he did make significant interventions to protect and preserve the value of the company from the autumn of 2018 onwards, as corroborated by the evidence of his co-director Mr Y. It is also of relevance that there has been a large turn-over of trading personnel since that time, and a significant increase in the number of employees. The business has far less of a feel of continuum to it than it did in the summer of 2018.

55. I have given careful thought to whether some lesser share in the growth of or decline in the B Ltd NAV would be fair for the wife in the period after 2018, up to the date

when the court's order is fully implemented and all of her share has been paid to her. Until that day, in a very real sense the husband is 'continuing to trade with her share', and it was plain from his answers to me that his hope, certainly on the basis of his proposal for resolution, was to be able to realise enough to meet his obligation largely from future remuneration, rather than by the sale of shares if he could avoid it. It is clear that, regardless of the current world turmoil, this husband still expects to grow the value of B Ltd as and when trading conditions allow him to – that is one of the advantages of the 'zero-sum game' that the business engages in; there are profits to be made in bad times as well as good.

56. On balance I have decided that overall fairness would not be met by this outcome; any notional uplift to the value of the shares as at June 2018 would be so artificial as to be meaningless, and falling on the wrong side of the line that must, in my view, be drawn between the discretionary and arbitrary, where such a line can be drawn with confidence. As it is, the June 2018 price is likely to be well within 2 points of the current value, which has recently fallen back by more than £50m on the basis of the husband's evidence to me. I consider that it is fair to both parties to determine that the recovery from 2018, the roller-coaster that has been the last 9 months, and any progress or otherwise from this point are properly beyond what might be classed as marital endeavour.

57. However, I consider that in the exercise of my discretion, it would equally be fair in these circumstances to ensure that the period for which the wife is kept waiting for the full implementation of her award fixed at that date is as limited as possible within the constraints of the available liquidity.

58. I will therefore take the value of the husband's B Ltd shares for the purpose of the wife's award as being 17.058, giving a gross value of £43.4m and a net value of £35.3m, assuming a realisation at CGT rates. Given that the value of the wife's share will be paid over time, as envisaged in both parties' final proposals, this is fair.

59. I should add that whilst I have had regard to the wife's challenged evidence that the husband once told her that he thought the business may be worth more than £200m, it

can carry little weight in any circumstances, and does not affect my acceptance of the SJE's conclusions.

Other Assets

60. Before I turn to questions of liquidity and timing, I will deal with the remaining more minor issues about the valuation of the balance of the parties' assets. The non-business assets stand at just under £4.3m million net. There are a number of properties, many of which are subject to mortgages. The combined net equity of these properties is about £3.1m net. In addition there are various bank accounts, investments and pensions, which have been depleted by the need to service the parties' living costs in the absence of sufficient income, and the very significant expenditure on legal fees referable both to the children proceedings and these financial proceedings.

61. The issues between the parties which I will determine are as follow:

    a. *The Gym*. Soon after separation the husband unilaterally invested £300,000 into a gym. His case is that is now worthless, having been devalued before the coronavirus epidemic, but now killed off by it. The wife wants the whole of this investment added back at cost to the schedule on his side. Whilst making this investment might have been insensitive on the husband's part, it was carried out before the collapse in his income the following year, and (contrary to his case that the wife's interest in B Ltd should actually be fixed before this date) as I have taken the view that the gain in the value of his shares in the period when the investment was made should accrue to her benefit, it would be inappropriate to add this asset to the schedule. In the event that the husband does in fact recover anything, then he should share it equally with the wife.

    b. The wife further seeks to include in the asset schedule about £400,000 paid by husband to or for the benefit of his family over a number of years as follows:

        (i) £169,000 was given to his mother to refurbish the property which was bought in the parties' joint names soon after separation but in which the

husband's mother now lives with his sister. Although I do not accept the husband's case that this work on the property was 'pre-agreed', it is the case that the property is on the asset schedule and has been valued in its current condition post-refurbishment. It would therefore be inappropriate to add back any of this sum.

(ii) £50,000 given by the husband to help his sister with a deposit to buy a property in 2004; this payment is far too long ago to merit reattribution now and should not have been claimed, notwithstanding any purported agreement between the parties.

(iii)£30,000 which was invested by the wife into the husband's brother-in-law's business. This item was not referred to in the closing submissions for the wife, and should in any event not be included in all the circumstances

(iv)£150,000 was given to the husband's sister to pay for school fees for her children. In his oral evidence the husband said that he was quite prepared, appropriately, for this gift to be taken onto his side of the asset schedule, and given its nature there is no obvious reason why the wife should contribute to the payment of those fees, so that should be included.

c. *Chattels and artwork*. The husband wishes to include the contents of Flat A on the schedule at £75,000, and accepts that artwork acquired and held by him should also be included at £45,000. The wife's position is that neither item should be included and that in the event of any issue an in specie division can be discussed and arranged. As with the above issues, this is really *de minimis* in the context of the principal area of dispute between the parties. I consider that it is inappropriate to include the chattels for division in this way, but in those circumstances will also exclude the artwork, and leave the parties to make their own, hopefully consensual, arrangements.

d. *The European property*. The wife wishes for this property to be sold and its proceeds divided, as she is unsure about its current valuation. The husband's case is that the property should be attributed to her in the division of assets. In

circumstances where neither party wants to retain the property, it should be sold and the proceeds divided. I will leave it to the parties to agree who should have conduct of sale, and how its eventual sale price will impact upon the schedule of payments which I will direct below in relation to the balance of the wife's entitlement.

62. Finally, I have not excluded the balance of the husband's net 2019 bonus from the asset schedule, given how much joint capital has been spent in meeting income obligations since separation, and I have allowed as appropriate the deduction of the March mortgage figures from the wife's bank balances.

Structure and Implementation

63. Turning now to the structure of the order, and to how the wife's entitled share will be provided for her, the parties' respective open offers both provide for the wife's share to be paid out to her over a period of over 5 years. However, the payments to be made on the wife's proposal are exponentially bigger than those offered by the husband. They also fall in June rather than in September. Whereas, in addition to the transfers of heavily mortgaged properties, the husband only suggests the payment of just over £1m (payable in September 2020) before September 2021, the wife seeks £6m in June 2020, and a further like sum in June 2021. Overall, her calculations would leave the husband to find a series of lump sums totalling £30m, whereas the husband offers only £11m, and so staged that in all probability he is hoping to pay these sums from his remuneration, however received, as opposed to by the sale of shares. Neither proposal is reasonable, quite apart from the respective eventual quantum.

64. Taking the figure for B Ltd calculated as set out in this judgement, and making the adjustments to the other disputed figures as indicated, leaves the total matrimonial asset base for division between the parties of £39.662m, which should be divided equally, pursuant to the sharing principle. The wife's small non-matrimonial properties are excluded. This leaves the wife's share at £19.831m, of which £16,787,595 will be comprised in the lump sums to be paid to her over time by the husband. I am satisfied that this is a fair sum overall, having taken into account all of the factors in s.25 of the Matrimonial Causes Act 1973, and the guidance contained in

the Court of Appeal authorities referred to above. The award represents just over 45% of the total asset base if the NAV for B Ltd as at June 2019 is taken, which is the latest reliable figure, which fairly represents a departure as the result of the husband's efforts since June 2018.

65. In terms of an appropriate payment schedule, I do take into account that in the financial year to 2019, over £11.6m of shares in B Ltd were offered for sale and £8.36m of shares were taken up, or the value of around 20% of the husband's current shareholding. Whilst it clear that there is an active internal market for these shares, it is equally clear that there are usually more on offer than can be purchased, so there will be a limit on the amount that the husband can fairly raise annually. However, given the value of the equity attributable to his holding, and given his immediate obligation to the wife, the husband will have to begin taking far more active steps than he has to date to begin to realise some of his interest, or to extract funds by means of bonuses or dividends (if agreed) if the shares cannot be sold in sufficient quantity, or if he wishes to retain them. Providing fairly for the wife will require the husband to work hard to raise the amount required. I do accept Mr Webster's submission that B Ltd's current restrictions on liquidity are a function of the company's desire to continue to trade at ever increasing levels, and he should therefore have some scope for flexibility.

66. In relation to the date for first payment, I accept Mr Peel's argument that a payment plan including payments annually in September is fair, given that it will allow the husband to sell shares in the internal market, and/or process his bonus at the year end. I also acknowledge that the current year is an extraordinary one for everybody. However, there is also force in Mr Webster's criticism of the husband that he should have made some effort during the currency of these long drawn out proceedings to attempt to sell some of his shares, so that at the least he could have enabled the wife to discharge in short order the substantial mortgages which she will inherit.

67. I find that a fair spread of the husband's liability will be that he should pay £2,787,595 by 1st September 2020, £5m by 1st September 2021, a further £5m by 1st September 2022, and then a final payment of £4m by 1st September 2023. I consider that he will be able to withdraw those sums from his interest in B Ltd with no more

than proportionate disruption to the overall business of the company, when balanced against the desirability of providing the wife's award to her and achieving a clean break as soon as practicable. I am satisfied from his evidence to me that this will be practical for him, and whether it be by dividend, bonus or share sale, or a combination of the 3, is a matter for him.

68. In the meantime, there has been a dispute between the parties about the applicable rate of interest in relation to the outstanding payments, absent default, with the husband contending for 1.75% or 1.5% and the wife seeking the current judgment rate of 8%. Given the length of time over which the payments are being made, the rate proposed by the husband is too low. However, the judgment rate should only be applicable in the event of default. The appropriate rate will be the current Duxbury rate of 3.75% to run from 1st May 2020.

69. As to the other terms of the order, I consider that a fair balance would be achieved by the following:

    a. Given that I have shortened the anticipated time for payment, an acceleration clause in not appropriate.

    b. Similarly, having determined that the fair value of the business is all the circumstances in that of the NAV as at June 2018, there should be no 'ratchet' provision in the order.

    c. In relation to security, the husband is prohibited by the corporate documents from creating any charge over the shares unless the company so permits. Unsurprisingly, B Ltd has confirmed that it would not permit such borrowing. That leaves 3 possible ways by which the husband can extract funds to meet the wife's award: share sales, bonuses and dividends. It is fair for the wife to have reasonable notice until such time as the order has been implemented in full, of the husband's anticipated receipt from each source on every occasion of receipt, sufficient to enable an application to be made if appropriate either to delay extraction for further consideration or, more likely, freeze some appropriate part of that receipt. This would clearly also apply in the event that

there was in fact a sale in whole or in part of the business. But in any of those events the court will have in mind in dealing with such application:

i. The imperative to achieve a clean break as soon as practicable;

ii. The evidence that the husband has given about his inability to create liquidity which has led to the wife's award being paid over 3 ½ years rather than immediately; but also

iii. The fact that the husband himself will be entitled to a reasonable measure of liquidity going forward in circumstances where he is meeting the payments due to the wife under the court's order timeously.

d. Given what I said at (c) above, any issue about permitted extraction should be dealt with by application in the circumstances which have arisen – but both parties should be cautious about referring the matter back to court if a proportionate and sensible way forward can be arrived at.

e. I will leave counsel to agree the detail of these and the other provisions in the order.

70. As to the level of child maintenance, I have fully in mind the views of Mostyn J as recently expressed in *CB v KB* [2019] EWFC 78. I also bear in mind the fact that under my order the significant majority of the husband's receipt from all sources over the next 3 ½ years will be employed in meeting the wife's capital entitlement. However, it also seems appropriate to add to what would otherwise be the appropriate level of child maintenance an additional element for extra-curricular expenses, to avoid future dissention between the parties. Payment should be at the rate of £35,000pa per child, and of conventional duration.

Conclusion

71. Finally, I would like to express my gratitude to all of the lawyers concerned for the sensible and pro-active way in which they have dealt with the novel logistical issues

in this case. By meeting on screen 30 minutes before the start of each day we have ensured that no time has been lost during the hearing, and a conclusion for the parties through this judgment will have been received by them at the time originally mandated by the court at the PTR hearing in January 2020. Whilst I of course express the hope that the current government restrictions will not require to be in place for a very prolonged period, I equally trust that the experience of this hearing at least will have demonstrated that the court system is able to function remotely as needed, at least where financial remedies cases are concerned and insofar as available resources allow.