



Neutral Citation Number: [2016] EWHC (Family) 594

Case No: FD14D01776

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/03/2016

Before :

MR. JUSTICE MOYLAN

Between :

BD

Applicant

- and -

FD

Respondent

Mr. Charles Howard QC and Mr. Richard Castle (instructed by **Hughes Fowler Carruthers**) for the **Applicant**
Mr. Robert Peel QC and Mr. Brent Molyneux (instructed by **Farrer & Co**) for the **Respondent**

Approved Judgment

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

.....
MR. JUSTICE MOYLAN

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

court .has been emailed to you it is to be treated as 'read-only'.
You should send any suggested amendments as a separate Word document.

Mr. Justice Moylan

Introduction

1. This is my judgment determining the wife's financial remedy application. The wife is represented by Mr Howard QC and Mr Castle; the husband is represented by Mr Peel QC and Mr Molyneux.
2. I need only state the parties' respective open positions at this hearing to demonstrate that they cannot both be within the bracket of fair awards. The wife seeks an award which will provide her with resources totalling £29 million. The husband proposes an award which will provide the wife with just over £8 million.
3. That there should be such a substantial divide is, in some respects, surprising given that the parties largely agree that the wife's claims should be determined by application of the principle of need, given that the husband's wealth substantially reflects and/or represents resources inherited by him. This principle is, of course, one of three identified by the House of Lords, in *Miller v Miller; McFarlane v McFarlane* [2006] 2 AC 618, as underpinning the exercise by the courts of their discretionary powers under the Matrimonial Causes Act 1973.
4. The parties also agree, broadly, that the award should comprise (i) an income fund, which should be calculated by reference to the wife's annual income needs for life; and (ii) a housing fund, calculated by reference to her housing needs, again for life.
5. What, then, has led to this stark divide? The focus of the dispute is the assessment of the wife's future financial needs (in respect of both annual expenditure and housing). It is not infrequent for there to be a dispute between parties as to the fair level of an applicant's needs. It is unusual for there to be a divergence as substantial as in this case.
6. Mr Howard accepts that the wife's claims should be determined, largely, by reference to the wife's financial needs. I say, largely, because Mr Howard submits that it is necessary to stand back and look at the effect of the award in percentage terms. The court must "take into account that wealth was accumulated during the marriage". He also submits that the wife's needs, in particular her income needs, "should not be viewed through the prism of spending during the marriage". The standard of living during the marriage is, he submits, not a ceiling when the court is assessing relationship generated needs.
7. The wife seeks the capitalisation of her income needs based on an annual need for life of £500,000. This produces a Duxbury sum, without amortisation, of £17 million. Her housing needs are put at £10.5 million. This would provide the wife with homes in the country (£6 million) and in London (£3.6 million) plus the cost of furnishing and refurbishing these properties (£950,000). In addition the wife seeks

£1.1 million to provide housing for her parents and a sum in respect of costs for proceedings concerning the children.

8. Mr Peel submits that the wife's award should be assessed solely by application of the principle of need. He submits that the sharing principle has no effective application in the circumstances of this case and that the wife's award should be based on her housing needs and her income needs capitalised with an amortising, Duxbury, lump sum. He submits that the standard of living during the marriage is of critical significance. It is not a ceiling but to exceed it would, in his submission, be exceptional. The husband accepts, as referred to above, that the award should meet the wife's needs for life. As a result, her needs will be met for some 50 years, a factor which, Mr Peel submits, must be reflected in the court's assessment of the level at which to capitalise those needs.
9. The husband contends that the wife's housing need is £2.8 million and her capitalised income need is £4.2 million (a Duxbury lump sum based on £150,000 per year). In part to allow for a degree of flexibility and additional security (and based on an earlier offer) the husband proposes the wife should receive a total of £8.2 million.
10. Child maintenance has been agreed at £15,000 per year for each child, a total of £60,000. I propose to order that this continues until the children complete tertiary education.

History

11. The parties married in 2002. The marriage came to an end in 2013. The husband is aged 49. The wife is aged 41. They have 4 children aged between 5 and 10.
12. Before the marriage the wife lived and worked in London. On marriage she left her employment and has not worked in paid employment since then. She sold her property in London and gave the (modest) net proceeds of sale to her siblings.
13. As referred to above, the husband's wealth substantially reflects and/or represents resources inherited by him. He owns, or can be treated as owning (because they are held in a bare trust), assets valued at £58 million and is beneficially interested in assets valued at £105 million held in three trusts. The (now) bare trust was settled in 1984. The husband has a life interest in the three trusts, which were settled between 1959 and 1971. He is entitled to the income absolutely with the trustees also having the power to appoint capital. The origin of this wealth dates back to the 17th century and, accordingly, reflects the endeavours of his family over many generations.
14. During the course of the marriage, the husband has worked on, what might loosely be described as, trust affairs. He has clearly worked hard

in this respect but all the trusts, including the bare trust, have active boards of trustees with specific management teams.

15. The matrimonial home throughout the marriage was a property at the centre of an estate owned by the husband. The family made use of the estate in a variety of ways such as for riding and other activities. The house itself has been valued at between £2.25 and £3 million depending on how much additional land and how many ancillary buildings are included. At the maximum this includes 25 acres (excluding the garden) and a number of ancillary outbuildings. The house itself is approximately 6,500 square feet. With all the outbuildings, the total is 15,000 square feet. It also has a tennis court and swimming pool.
16. When the marriage broke down the wife moved to live in a property ("AB") not far from the matrimonial home. This was purchased, for £2.5 million, by the husband at her request. It is smaller than the former matrimonial home, being in all some 8,200 square feet (the house is 4,700 square feet). Additional land was then purchased at a cost of £366,000. Before the wife decided that she no longer wanted to live in this property she had proposed, and the husband had agreed to fund, significant improvements but the scope and cost of these were never agreed.
17. In June 2014 the wife informed the husband, through solicitors, that she was no longer happy at AB and wanted to move. This remains her position.
18. The parties have also been involved in proceedings concerning the children. During the course of his judgment HHJ Altman found that the wife had procured the purchase of AB with a view to its being a permanent home for herself and the children. The wife has sought to revisit this finding during the course of the hearing before me. Nothing I have heard persuades me that this finding is incorrect. Indeed, I am satisfied that it is correct. The fact that the wife viewed it as a permanent home is demonstrated by a number of factors including the purchase of the additional land and her exploration of the cost of refurbishment and improvements.
19. In addition, when she decided that she wanted to move, the wife proposed (by her solicitors' letter dated 9th June 2014) that the property be sold and that she would put the proceeds of sale towards the purchase of the home she then wanted to acquire. Her suggestion in these proceedings that the property was purchased as an additional property for the estate is inconsistent with the history of the purchase, with the proposal in this letter and other matters.
20. However, the wife has now clearly decided that she wishes to move from AB. She no longer wants to live this close to the former matrimonial home, despite the advantages of this arrangement for the

children as set out in HHJ Altman's judgment.

21. In 2014, within the year of separation, the wife sensibly agreed to transfer to the husband certain properties which had been put into her name during the marriage. At about the same time, the husband agreed to pay the wife a lump sum of £1 million. When this sum was paid, in April/May 2014, the husband stated through his solicitors that he did not expect the wife to use it to fund her legal costs or her living expenses.

Proceedings

22. The wife commenced her financial application in April 2014. The First Appointment took place before me on 5th August 2014. The wife's costs total £740,000 of which she has paid £428,000. The husband's costs total £615,000 of which he has paid £360,000. The combined total is nearly £1.4 million. Having regard to the nature of the issues in this case and despite the level of the husband's wealth, this is not a proportionate level of expenditure on legal costs.
23. The wife's Form E is dated 18th July 2014. At that date she had retained virtually all of the £1 million paid to her by the husband. Her liquid assets comprised £990,000 in bank accounts and £400,000 in an investment portfolio. She states that the standard of living was "extremely high" although this had been dictated by the husband and was not as she would have wanted. Her schedule of annual income needs totals (excluding mortgage) £538,210 for herself (including some expenses which include the children such as £100,000 per year on holidays) and £47,440 specifically for the children.
24. The wife's capital needs are given as: (a) three properties, a home in the country "comparable" to the former matrimonial home; a property in London comparable to the husband's parents' home in London (owned by the husband); and a property in Portugal as a holiday home; (b) vehicles at a total estimated cost of approximately £228,000; and (c) horses.
25. The wife's section 25 statement is 62 pages long. It is excessive both in its length and in the manner in which it addresses the marriage. It descends into wholly unnecessary detail starting with her "first impressions" of the husband's character when they met. Much of it comprises an outpouring of the wife's assessment of the marriage and, in many respects, reads like an extended divorce petition. Absent reliance on the issue of conduct (and the wife does not rely on conduct), there is no justification for an account of how the parties behaved during the marriage. I regret to say that it is a wholly inappropriate document and it may well have encouraged the wife to believe that such details were relevant as some of her oral evidence comprised further emotive assertions.

26. As Coleridge J said in *G v G (Financial Provision: Equal Division)* [2002] 2 FLR 1143, [para 34] as endorsed by Lady Hale in *Miller; McFarlane*:

“For what is ‘contribution’ but a species of conduct? ‘Conduct’ (subs (2)(g)) refers to the *negative* behaviour of one of the spouses. ‘Contribution’ (subs (2)(f)) is the *positive* behaviour of one or other of the parties. Both concepts are compendious descriptions of the way in which one party conducted him/herself towards the other and/or the family during the marriage. And both carry with them precisely the same undesirable consequences. First, they call for a detailed retrospective at the end of a broken marriage just at a time when parties should be looking forward not back. In part that involves a determination of factual issues (and obviously the court is equipped to undertake that). But then, the facts having been established, they each call for a value judgment of the worth of each side’s behaviour and translation of that worth into actual money.’

As Coleridge J said, the law should not and, in my view does not, encourage “a detailed and lengthy retrospective involving a general rummage through the attic” [para 49]. Indeed, the courts positively deprecate such an approach in financial remedy claims.

27. One of the principal factual issues which the wife seeks to raise is the standard of living enjoyed by the family during the marriage. In both her written and oral evidence she has sought to portray the husband as mean. I will return to this issue below, when I consider the standard of living as one of the s.25 factors.
28. The husband’s Form E is dated 21st July 2014. As referred to above, the husband is a beneficiary of four trusts. One, the ECF, is a bare trust. This trust owns the former matrimonial home and the surrounding estate. The husband’s family has owned land in this area for several hundred years. In addition, the husband owns a number of other assets. The assets in the ECF and in the husband’s name have a combined net value of £58 million.
29. The husband has a life interest in three other trusts as described above. The trustees have power to advance capital to the husband. The total value of the assets in which the husband has a life interest is £105 million. A list has been provided of capital appointments made in the husband’s favour. Since 1993 all assets appointed to the husband, apart from £400,000, have been assigned by him to a trust he has established for the children. The sum of £400,000 is also said to have been part of a business reorganisation.

30. On 3rd October 2014 I determined the wife's application for maintenance pending suit. The wife was seeking interim provision of £392,000 but not less than £270,000. The husband was proposing that he should pay £200,000. It was his case, based on schedules prepared by his accountant, that the total annual family expenditure (excluding school fees) was in the region of £200,000.
31. I concluded, on an interim basis, that there was "a significant element of forensic exaggeration" in the wife's maintenance pending suit budget in that the annual sum she sought of £392,000 very substantially exceeded the marital standard of living.
32. I made an order in accordance with the husband's proposal as I did not consider that any further sum was justified. The wife, with maintenance at this level, would have "available to her resources which will enable her to meet her needs. She will have available to her, from her own resources, such sum as she might choose additionally to spend on meeting her and the children's expenses between now and the final hearing".
33. I made clear that this was not a definitive determination and that, at the final hearing, I would undertake a more detailed consideration of the wife's income needs. If the wife spent part of her own resources "to meet her reasonable income needs", I doubted that she would be disadvantaged because I anticipated that her award would be calculated by reference to her actual resources. This was subject to the husband being able to deploy "an add-back or reattribution argument".
34. In the period 1st September 2014 to 31st August 2015, the wife has, in fact, spent just under £900,000 (excluding legal costs). This is a sum very significantly in excess of the wife's maintenance pending suit case as referred to above. The husband seeks to argue that a significant proportion of this sum should be added back to the wife's resources on the basis that it reflects profligate expenditure by her.
35. The parties exchanged open offers in September 2014 pursuant to an earlier Order. The wife offered to settle for approximately £22.5 million (if there was a "swift settlement", otherwise she sought approximately £33 million), comprising two properties for £5.5 million and £3.5 million, a non-amortised income fund of £12 million (£350,000 per year) and further sums for vehicles, furniture and decorating.
36. The husband offered £10 million (a lump sum of £5.5 million and the wife's own resources including AB) an amount said to be in excess of the wife's needs, being for a house at £3.5 million (based on AB) and an income fund of £4.3 million (£150,000). In the event of this offer not being accepted, it would be reduced by the legal costs incurred by

both parties.

37. These offers have been superseded by the proposals made, as summarised at the start of this judgment.

Final Hearing

38. At the final hearing I heard oral evidence from the wife, the husband and the accountant, Mr Mellor.
39. It was apparent during the wife's evidence that she has very strong views about her position and the scope of her claims. She also has a very clear view of the history of the marriage. As a result her evidence comes through, and is distorted by, a highly charged emotionally jaundiced prism. This was reflected powerfully in aspects of her oral evidence and is also reflected in her s.25 statement as described above.
40. In my view, much of the wife's evidence reflects her current assessment of past events. Whilst I do not believe that she has deliberately sought to lie or exaggerate, she is not a reliable witness.
41. I found the Husband to be a generally reliable witness. He was able to bring a far greater degree of objectivity to his evidence than the wife.

Section 25 Factors

Resources

(a) Capital

42. An agreed schedule of assets has been prepared.
43. The wife's capital resources total approximately £2.9 million. This represents the net value of AB (£2.2 million), a timeshare and liquid resources. AB has been valued by a single joint expert. It has reduced in value since it was purchased in 2014 largely because of a planning application which has been made in respect of an adjacent property. This comprises a substantial development. Planning permission has been refused but this is being appealed. It is clear from the valuer's report that the existence of the planning application makes it difficult to value the property. He has given his best estimate within a range of potential discounts.
44. As referred to above, the husband's resources are divided between his personal wealth (£58 million) and his life interests in three trusts (£105 million). For obvious practical reasons, although not technically correct, these have been referred to as non-trust and trust assets. Further, the assets held in the latter trusts cannot simply be aggregated as being part of the husband's wealth as his beneficial interests are limited. All these resources, including the trust interests, were acquired by the husband many years before the marriage.
45. The husband has taken an active role in the trusts' affairs but he states,

and I accept, that the trustees and professional managers and advisers are very actively engaged in managing this wealth through the trusts and their underlying businesses. This includes the estate which is held in the bare trust, valued net of tax at £30 million, which has a management team. It is, therefore, clear that any increase in the value of the assets over the course of the marriage is the product of the work of a number of people as well as reflecting general increases in property and land values.

46. I have no doubt that the husband's own wealth and the wealth in the three trusts have been managed with the intention of seeking to ensure that it is preserved for the children of the family and future generations. In this context, I consider it unlikely that the husband will personally receive any significant benefit from, in particular, the three trusts other than his income entitlement. I make this finding although this is not a significant issue in the case given the level of the wealth which is otherwise available to the husband and given that the predominant principle is that of need.

(b) Income

47. The wife has no income other than from her investment portfolio.

48. The husband's income (from tax returns) for the three years from 2010/11 to 2013/14 has been set out in schedules prepared by his accountant. The schedules contain only taxable income. I have also been provided with his net income for the years 2014 and 2015 which was higher than previous years (by some 20/30%, so not of a different order of magnitude). The husband's income, net of tax, fluctuates but the average during this period was approximately £1.4 million.

49. It would not, however, be right to take this as the income available to the husband to meet his and the family's needs. Much of it is treated as his income for tax purposes because of his life interests but, each year, significant sums are retained within the trusts/businesses to provide working capital and for other trust/business purposes. This is not surprising given the nature of the husband's income entitlement and the nature of the assets held by the trusts. Net of these deductions, the husband's average net income for the years 2010/11 to 2013/14 was just over £800,000. Further, from this income the husband pays significant life insurance premiums and professional fees which, if deducted, would reduce his annual income for these years to approximately £600,000.

50. As explained by the accountant in his oral evidence, because the figures he has given are from the relevant tax returns, some expenses and some gains are not included. However, I am satisfied that the figures in the schedules give a sufficiently accurate guide to the husband's income for the purposes of this judgment.

Standard of Living

51. The standard of living during the course of the marriage has been the focus of much attention. First, to seek to establish what the family's annual level of expenditure has been. Secondly, on the wife's side, to seek to establish that this was lower than was necessary having regard to the resources available to the husband.
52. Much of the wife's written evidence and part of her oral evidence were devoted to her case that the amount the parties spent during the marriage was dictated by the husband who, she alleges, unreasonably limited their expenditure by claiming that he was income poor. The wife makes a number of complaints. These include that she struggled to pay for the family expenditure for which she was responsible because she had insufficient sums provided by the husband. Also that she was, largely, not allowed to redecorate or improve the matrimonial home which was run down.
53. When I questioned whether this was, in effect, a conduct case, Mr Howard submitted that it was not. It was part of the circumstances of the case and there is behaviour which is not conduct.
54. In my view an allegation that a party was mean and unreasonably restricted family expenditure is an allegation of conduct. It is the obverse of an allegation that one spouse was profligate. The essence of the wife's case is that the standard of living during the marriage should be given less weight because it was kept at an artificially low level as a result of the husband's conduct. I suppose, if I were to exclude the various ways in which the wife alleges that the husband was mean, it would not be conduct to submit that the parties could have spent more than they did on their annual expenditure. However, if this was all that was being submitted it would not significantly advance the wife's case because it could equally be said that they could have spent less. As referred to above, this is clearly an issue which is central to the way in which the wife sees her case. I would not normally consider it necessary to do so, but given this, I propose, briefly, to address this aspect of the case in the terms advanced by the wife in her evidence.
55. The husband's accountant has filed a statement and also gave oral evidence. He has prepared schedules of income and expenditure relied on by the husband as demonstrating the family's annual expenditure for the 4 years, 2010/2011 to 2013/14. These purported to demonstrate that the family's annual expenditure in these years was, on average, approximately £215,000, excluding school fees, life insurance premiums and professional fees. The schedule expressly does not include what are described as "ad hoc transfers" to the wife. However, during the accountant's oral evidence it became clear that other items have not been included and that some figures are estimates.
56. The husband's case in his final submissions was that the average annual

total family expenditure in the three years to 2012/13 was approximately £250,000 (including school fees and other expenses for the children), and £200,000 (excluding school fees and life insurance for the children), in both cases excluding other life insurance premiums and professional fees.

57. The wife's submissions contain a competing analysis which seeks to include a number of items said not to be contained in the husband's figures. Excluding additional expenditure in the future, the average total for the years 2010/11 to 2012/13 appears, on a broad assessment, to be in the region of £275,000. This includes £24,000 p.a. for second property costs. For these purposes, I exclude 2013/14 because that was clearly an unusual year given the breakdown of the marriage.
58. The husband's evidence (including that of the accountant) and his case are far more compelling than the wife's. Allowing for some sums being underestimated and for some additional actual expenses not being reflected in the husband's figures, I propose to take £250,000 as providing a sufficient, broad, indication of the standard of living in the last years of the marriage (excluding school fees). Of this, the wife received an annual average (in the three years 2010/2013) of approximately £110,000 (taking the final figures provided by counsel after the conclusion of the hearing).
59. I now turn to the wife's case that the husband provided her with insufficient resources to enable her to meet the family expenses for which she was responsible at a reasonable level. I address this both factually and as an issue of conduct despite Mr Howard's eschewing any such case.
60. It is clear from both the husband's and the wife's evidence that the husband sees himself very much as a custodian of the family wealth. The phrase he uses is "prudent management". Was the husband unnecessarily mean or did he provide the wife with a reasonable level of income? During the course of her oral evidence it became clear that the wife was responsible for some of the utilities (for the matrimonial home), general groceries including food, clothes and other general day to day expenses for her and the children. The wife contends that the amounts she received from the husband were insufficient to enable her to meet this expenditure at a reasonable level.
61. I do not accept this. Based on the figures I have been given for the last years of the marriage, as referred to above, the wife had an annual average sum of £110,000. In my judgment, this provided her with sufficient resources to meet this expenditure. Further, I do not accept that, even at its lowest level in the three years referred to above, the wife can successfully contend that the husband did not enable her to meet these expenses at a reasonable level having regard not only to the sums available to her but also to the overall standard of living.

62. It follows from this conclusion that Mr Howard was right not to seek to advance a case of conduct.

Add-Back Case

63. The final resources issue I propose to address is the husband's case that I should add back to the wife's resources part of the total sum she spent over the course of the year to August 2015.
64. In the year to August 2015 the wife spent a total of approximately £865,000 excluding legal costs; £365,000 on what she describes as capital expenses and £500,000 on living expenses (including the children). Within the former she purchased a number of vehicles at a total cost of £215,000.
65. The husband contends that this was wanton expenditure and justifies a significant element being added back to the wife's resources.
66. Wilson LJ (as he then was) considered the issue of reattribution in *Vaughan -v- Vaughan* [2008] 1 FLR 1108:

[14] Such was a rare legal error on the part of the district judge. Miss Ward tells us that it was curious that he should refer to an absence of legal principles in that she and counsel for the husband had referred him to a recent example of such reattribution, namely *Norris v Norris* [2002] EWHC 2996 (Fam), [2003] 1 FLR 1142. Although such was a decision at first instance, it is the last in a line of authority which stretches back to the decision of this court in *Martin v Martin* [1976] Fam 335 that, in the words of Cairns LJ, at 342H:

'a spouse cannot be allowed to fritter away the assets by extravagant living or reckless speculation and then to claim as great a share of what was left as he would have been entitled to if he had behaved reasonably.'

The only obvious caveats are that a notional reattribution has to be conducted very cautiously, by reference only to clear evidence of dissipation (in which there is a wanton element), and that the fiction does not extend to treatment of the sums reattributed to a spouse as cash which he can deploy in meeting his needs, for example in the purchase of accommodation."

67. Mr Howard submits that the wife's income expenditure has not been wanton. He points out that, in my maintenance pending suit judgment, I did not state that the wife could not spend more than £200,000. However, I did express the preliminary view that her maintenance pending suit budget contained a significant element of forensic exaggeration. Mr Howard accepts that elements of the wife's

expenditure on capital items may not be reasonable but submits that they are not wanton.

68. The threshold to justify the reattribution of resources clearly has to be high, otherwise parties would be encouraged to engage in disproportionate forensic accounting disputes. But, in my view, it must not be so low that parties are encouraged to seek to manipulate the process by acting so as to significantly reduce their resources, either before or during the course of proceedings, and then claim as great a share, as referred to by Cairns LJ.
69. How does reattribution fit within the statutory framework? It is clearly an example of the application of section 25(2)(g), namely it is based on the conduct of a party being such “that it would in the opinion of the court be inequitable to disregard it”. This sub-section was added when section 25 was amended by the Matrimonial and Family Proceedings Act 1984 in order to clarify the circumstances in which conduct could be taken into account. Previously the section had referred to conduct but without any additional formulation to assist with its interpretation.
70. In my view the terminology used by Wilson LJ, as referred to above, is designed to reflect this statutory test and the court’s approach to its application. The threshold is high as reflected by the court’s approach to the issue, more generally, of whether it would be inequitable to disregard conduct.
71. The wife’s expenditure in the year to August 2015 is very significantly higher than the standard of living during the course of the marriage and, indeed, substantially exceeded her own maintenance pending suit claim of £392,000. The wife’s approach was made plain during her oral evidence. She did not see the marital standard of living as relevant. Rather she had adopted a new lifestyle which she asserted was not extravagant because it reflected how she wanted to live which also reflected her social circle.
72. I fully accept that this is only one element in the case and must be viewed in the context of the case overall. However, I have come to the clear conclusion that the wife’s expenditure in the year to August 2015 is sufficiently exorbitant to satisfy the test referred to above. The wife appears to have indulged every whim she had by, for example, spending significant sums on clothes and jewellery; going to expensive hotels and restaurants; buying a personalised number plate; and spending £200,000 on vehicles.
73. The factual foundation has been established for a significant sum to be added to the wife’s resources if I consider it otherwise just to do so. I calculate the sum by taking the difference between £300,000 (in excess of the marital standard of living but to allow for additional expenditure following the wife’s move to a new home) and £500,000, namely

£200,000, in respect of the wife's income expenditure and £100,000 in respect of her capital expenditure representing, largely, the exorbitant amount spent on vehicles. The total is, therefore, £300,000, a sum which, if anything, is being generous to the wife. I will decide whether, and if so how, this sum should be taken into account when assessing the wife's claim.

Needs

74. I propose, at this stage of the judgment, to set out the parties' respective cases as to the wife's needs.

Capital Needs

75. To repeat, the wife seeks in respect of her capital needs: (a) a principal home in the country (£6 million); (b) a London property (£3.6 million); (c) the sum required to enable her to purchase the home currently occupied by her parents (£1.1 million); (d) a sum for furniture, furnishings and redecoration (£950,000); (e) a sum to cover likely future Children Act costs (£170,000). The combined total is £11.8 million. The wife seeks further sums for a car and payments in respect of a timeshare.
76. (a) As referred to above, the wife does not want to remain living at AB. When this was first raised by the wife in June 2014 she had found a property which she considered suitable at a cost of approximately £5.5 million. She wants to remain living in the countryside because both she and the children are used to a rural environment with a particular focus on riding. The wife has looked at a number of properties, one of which was on the market for £3.5 million and another for £5 million, but she did not find any which were suitable. For these proceedings she has produced particulars for only one property which is produced as being merely indicative of her needs. It is, or was, on the market for £4.75 million. Further, the wife would want to purchase additional land and undertake improvements and other works giving a total additional cost of £765,000. With further costs the wife seeks a total of £6 million.
77. Although the wife no longer wants to live at AB, she has obtained an estimate of the cost of works which she says would be needed to bring AB to a proper standard. The total estimated cost is £3.7 million. Clearly, given the sum for which AB was purchased, expenditure at this level would transform the property. This is also a marked increase from the estimated figure of £980,000 given by the wife in her Replies to Questionnaire of September 2014.
78. The wife also relies on the use made by the family of the estate which surrounds the former matrimonial home, a benefit which, it is submitted, is not reflected in the valuation. In her evidence the wife gave examples of how she and the children would use the land virtually daily for a variety of recreational purposes.

79. (b) In support of her case for a second property in London the wife asserts that the husband has “the benefit of a vast number of properties” and that, during the marriage, they made use of his properties in London, Scotland and Switzerland. She also suggests that, as the children get older, they will want to spend more time in London so she should have a home there as well.
80. The husband’s properties to which the wife is referring are as follows. The husband owns a property (£1.85 million) in London which the parties used for the first two years of the marriage. Since then it has been let to tenants.
81. The husband owns his parents’ (his mother and stepfather) London home. They have a home near the former matrimonial home but, in addition, since 1986 they have had a second home (a leasehold flat) in London. The husband purchased this property from his parents in or about 2009 and extended the lease. He says, and I accept, that he did this to enable them to continue to use the property as a home. The husband uses the property as a base when he visits London for his work, usually just during the day. It was clear from the wife’s evidence that the parties never made any other significant use of this property – she described it as very, very much the parents’ home. The husband’s parents also rent a holiday property in the Isle of Wight; the husband pays the rent. The family would stay with them on occasion.
82. The husband has an 80% interest (£510,000) in a property in Scotland. This was used on a few occasions by the family for holidays. He has a third interest (£120,000) in a chalet in Switzerland. The parties rarely made use of this property.
83. The wife’s claim is for a property similar in value to the London home of the husband’s parents (£3.4 million net of costs of purchase). It is submitted on her behalf that it does not sit well for the husband to provide additional accommodation for his parents while contending that the wife should only have one home. I can say, immediately, that I struggle to see how this part of her case sits within the section 25 framework.
84. (c) In or about 2009 the wife’s parents had financial problems which required them to sell their home. They had limited available resources. The husband agreed to provide them with accommodation through a trust. A property was purchased for £800,000 with funds originating from the husband. The terms of the trust permit the wife’s parents to live in the property rent free until 2023.
85. The wife seeks the sum required to enable her to purchase this property for her parents so that they can continue to live there.

86. I can well understand how the wife might want to seek to help her parents beyond the assistance as provided by the husband. However, I do not consider that this element of the wife's capital claim entitles her to an additional lump sum. There could be no suggestion that the wife should simply give this sum to her parents and, indeed, this is not suggested. If the wife decides to use part of her award in this way it will be available as part of her income fund when she requires it in the future. In my judgment, even if this could fairly be described as a need within s.25 (an issue I do not have to address), it does not add to her needs when assessed in the long term.
87. (d) The wife has produced a schedule of the cost of furnishing two properties. The total is £770,000, comprising £532,000 for a country property and £239,000 for a London property. To give some insight into how this total sum is reached, it includes mattresses costing up to £15,500 and rugs and sofas each costing £7,000. The list is not comprehensive and the total cost including decoration is put at £950,000, in part based on an indicative assessment provided by an interior designer.
88. (e) It appears possible, or even now likely, that the parties will be unable to agree about issues concerning the children. The wife seeks an additional sum to cover her expected costs of these proceedings at £170,000.
89. The husband's case as to the wife's capital needs is that they are confined to one property and a sum for furniture and refurbishments/improvements. As to the former, the husband contends that the wife's housing need is met by AB. It was a property chosen by her and is broadly comparable to the former matrimonial home.
90. Even if the wife moves, it is the husband's case that she can obtain suitable alternative accommodation for between £2.2 and £3 million. The husband put forward alternative properties on the market for between £2.1 million and £2.75 million. The wife did not consider any of these were suitable for differing reasons, as given in her oral evidence, which included inadequate acreage for her and the children's horses. In respect of furniture and refurbishments, the husband proposes the sum of £500,000 as being sufficient to cover the likely cost of these items.

Income Needs

91. Although at one point in her oral evidence the wife said that she is only seeking to give the children a lifestyle comparable to that which they had at the former matrimonial home, her evidence and her case overall are to a different effect. In her written statement the wife accepts that the income level she seeks is "not a reflection of" the marital standard of living but is significantly higher. In her oral evidence the wife was clear that she seeks a very different lifestyle and one which, in her

view, is justified because the husband can afford it. On a number of occasions it felt to me as though she was seeking recompense based on her case that the husband had been unduly mean during the marriage.

92. Her case as to the husband's alleged meanness is carried through into the submissions made on her behalf. These include that it would be unfair for the husband to continue to "dictate" her expenditure and that there should not be "a perpetuation of the frugality which he imposed during the marriage".
93. Also, as further developed at the hearing, the wife's budget is based on the different lifestyle she has had in the past year and which she would want to enjoy in the future. The wife would seek to be able to spend more money on holidays and other social activities than the family spent during the marriage. This, in part, is said also to reflect the fact that the children are older so there are more opportunities for additional activities such as these.
94. The wife's Form E budget totalled £538,000 per year with an additional £44,000 specifically for the children. The wife's revised budget (produced with her s.25 statement), excluding the children, totals £500,000 per year. It includes, for example, £27,000 for the cost of a second property; £64,000 for holidays (including weekends away); £40,000 for clothes and shoes; £10,000 for jewellery; £73,000 for staff; £24,000 for vehicle depreciation; £22,000 for repairs and redecoration; £14,500 for gifts.
95. The husband's Form E budget totals £610,000. This includes £244,000 on insurance and savings, £16,000 on business expenses; £67,000 on professional fees and £40,000 on school fees. If these are excluded, the total is approximately £240,000. The husband has also produced a schedule of "personal and family expenditure" for the year ended April 2015 which, excluding life insurance, school fees and professional fees, totals £190,000.

Submissions

96. I only propose to summarise the parties' respective submissions but, when determining this application, I have taken all the matters raised into account.
97. In the position statement filed on behalf of the wife for the final hearing it is submitted that, although this is a needs case, the wife's award "needs to be judged in the light of her sharing claim" and must be cross-checked for fairness against the "total financial resources".
98. It is also submitted that the value of the assets has increased significantly during the course of the marriage. A table is included in respect of both the non-trust and the trust assets. This gives a total increase of £74 million and an increase in "real terms" (allowing for

RPI over the marriage) of £29 million (to 2014/15). During the course of the hearing, this part of the wife's case was barely developed, the focus being on the wife's case as to her future needs and how these should be assessed.

99. In respect of the wife's main home, it is submitted that this should provide comparable accommodation to the former matrimonial home including by reflecting the use made by the family of the surrounding estate. It also has to have enough land for the wife's and children's horses.
100. The claim for a second home is said to be justified by a variety of factors including, the use made by the family of the husband's properties in London, Scotland and Switzerland; that the wife owned a flat and lived in London before the marriage; and that the husband owns two properties in London. Further, the wife is keen to have a property in London to provide a base for her (as part of her lifestyle changes) and for the children as they get older.
101. In respect of her income needs, the wife seeks a non-amortised lump sum, of just over £17 million, to provide her with her claimed needs of £500,000 for life. It is submitted that it would not be fair for this element of the wife's award to be based on an amortised lump sum because (a) she might exceed the assumed life expectancy on which the lump sum calculation is based; (b) the scale of the husband's wealth means that he is financially secure and will always be able to meet his own future income needs, so the wife should be equally secure; (c) the wife should be able to make bequests to the children.
102. As to the wife's future income needs, Mr Howard submits that it would be fair to provide for these at a level significantly higher than the marital standard of living because: (a) of the income and other resources available to the husband; (b) of the increase in the husband's income since the separation; (c) it would be fair to enable the wife to spend more on holidays and other activities, which were not part of the marital standard of living, in part because this standard reflected constraints due to how young the children were; (d) the marital standard of living is only one factor; (e) the wife should have the ability to spend money on additional discretionary items not reflected in her budget; (f) the wife was kept on a tight budget during the marriage. I have dealt with this last point above.
103. Mr Howard also submits that the wife should be entitled to this income level for life and that there should no step down, as in *Y v Y (Financial Orders: Inherited Wealth)* [2013] 2 FLR 924, nor capitalisation for a shorter term, as in *AH v PH (Scandinavian Marriage Settlement)* [2014] 2 FLR 251.
104. He has also referred me to *Hvorostovsky v Hvorostovsky* [2009] 2 FLR

1574 and my decision of *AR v AR (Treatment of Inherited Wealth)* [2012] 2 FLR 1 in which I referred to the wife being entitled “to have sufficient resources to enable her to spend money on additional, discretionary, items which will vary from year to year and which are not reflected in her annual budget” [para 71] and to Duxbury being “a tool not a rule” [para 86].

105. Mr Peel submits that the outcome of this case is determined by application of the principle of need. The wife’s housing needs are met by AB (£2.3 million gross) with an additional sum of £500,000 for furniture, refurbishments and improvements. The husband does not seek to argue that this housing need will reduce in later years. The wife’s income need, assessed for life, is put at £150,000 per year, giving a Duxbury sum of £4.2 million. It is submitted that the husband is being fair or generous, having regard to the wife’s age, by proposing that the wife’s income needs be capitalised on a lifetime’s basis. Her total needs are, therefore, £7 million. The husband in fact proposes an award which will provide the wife with £8.2 million which, it is submitted, will provide the wife with additional security and flexibility.
106. The husband’s offer of September 2014, to pay the wife £5.5 million, would have provided her with £10 million based on the then assumed value of AB of £3 million and the wife’s own resources of £1.6 million.
107. Mr Peel submits that the wife’s claimed needs are “manifestly exaggerated and unrealistic” and far beyond any reasonable assessment. He accepts, as referred to above, that the marital standard of living is not an absolute ceiling but submits that to provide for needs at a higher level would be exceptional.

Determination

108. Turning to the exercise of my discretion.
109. Although it featured little during the hearing, I propose first to address whether the principle of sharing has any effective application in this case. In my judgment, it does not.
110. The sharing principle applies with force to marital property, being treated as the product of the parties’ joint contributions during the marriage. The authorities establish that “non-matrimonial property also falls within the sharing principle”: per Wilson LJ in *K v L (Non-Matrimonial Property: Special Contribution)* [2011] 2 FLR 980. However, absent some specific justification, the sharing principle will not have an effective application against non-marital property.
111. In this case, I can see no justification for the application of the sharing principle to the non-marital property. In any event, any such claim could only be made in respect of the husband’s resources. The wife’s case makes no distinction between the trust and the non-trust assets.

The trust assets are not part of the husband's wealth (as his interest is limited to an income benefit, as referred to above) as well as not being marital property. Further, the broad assessment provided on behalf of the husband is more than sufficient to demonstrate that even at the lower level (of RPI) the non-trust assets have increased by only about £5 million (to 2013) in real terms. If, an alternative and probably more accurate measure, house price indexation, was taken this would demonstrate no real growth. In the light of even this broad assessment, and even on the figures advanced on behalf of the wife (to 2015), the sharing principle is not effectively engaged in this case.

112. Accordingly, the determinative principle in this case is that of need. When an application is being determined by reference to the principle of need the court will, obviously, have to assess the applicant's capital needs (housing and other capital items) and income needs (their annual living expenses). Further, if the latter are being met by the payment of a capital sum, the court will have to consider the period for which income needs, in fairness, should be met and the rate at which they should be made for the duration of or during that period.
113. Subject to first consideration being given to the welfare of minor children, the principal factors which impact on the court's assessment of needs are: (i) the length of the marriage; (ii) the length of the period, additional to (i), during which the applicant spouse will be making contributions to the welfare of the family; (iii) the standard of living during the marriage; (iv) the age of the applicant; and (v) the available resources as defined by section 25(2)(a).
114. In my view, the starting point for the assessment of needs is the standard of living during the course of the marriage. This was the view expressed by the Law Commission in its 2014 report, *Matrimonial Property, Needs and Agreements* (Law Com. No 343) (para 2.34/2.35) in respect of "very wealthy cases": "needs are still assessed primarily by reference to the marital standard of living". This does not mean that it is either a ceiling or a floor but, as Mr Howard agreed during the course of his submissions, it provides a benchmark or starting point against which to assess needs.
115. In *Miller; McFarlane* Baroness Hale said [para 138]: "In the great majority of cases, the court is trying to ensure that each party and their children have enough to supply their needs, set at a level as close as possible to the standard of living enjoyed during the marriage ...". In *G v G (Short Marriage: Trust Assets)* [2012] 2 FLR 48 Charles J said [para 136(iii)(a)]: "the lifestyle enjoyed during the marriage sets a level or benchmark that is relevant to the assessment of the level of the independent lifestyles to be enjoyed by the parties."
116. Usually, due to finite resources, it will not be possible for the marital standard of living to be maintained. Additionally, it may well not be

fair for the applicant spouse to have his or her needs provided for at this level either at all or for longer than a defined period (i.e. not for life) due, for example, to the length of the marriage.

117. However, in my view, if this benchmark is not to be applied, at least initially, it would assist in the development of certainty if some specific justification was identified such as, for example, in *B v B (Ancillary Relief: Post-Separation Income)* [2010] 2 FLR 1214, where the marital standard of living had not adjusted to the dramatic increase in the husband's earned income in the later years of the marriage. Although of limited assistance, as it involved variation of maintenance, a similar approach can be seen in *Hvorostovsky v Hvorostovsky* in which the Court of Appeal noted that [para 35]:

“In 2001, in the aftermath of the decision of the House of Lords in *White v White* [2001] 1 AC 596, [2000] 3 WLR 1571, [2000] 2 FLR 981, Charles J in the case of *Cornick v Cornick (No 3)* [2001] 2 FLR 1240 clearly stated a rule of fairness, namely just as an income fall justifies an application for downward variation, so an income rise justifies an upward variation. In neither case is the outcome bounded by the family's standard of living immediately before the breakdown.”

This is not to introduce an element of sharing but to state that an assessment of needs has to take into account the level of the available resources. Although relied on by Mr Howard, *Hvorostovsky* provides no assistance in this case because the husband's income will inevitably fluctuate (up and down) over the years and the increase which has occurred since the parties separated has not effected any sufficiently significant shift in the financial landscape.

118. The use of the standard of living as the benchmark emphatically does *not* mean that, as referred to above, in every case needs are to be met at that level either at all or for more than a defined period (of less than life). Often, as Baroness Hale said in *Miller v Miller; McFarlane v McFarlane* [para 158]: “The provision should enable a gentle transition from that standard [the marital standard of living] to the standard that she could expect as a self-sufficient woman.” In *G v G*, Charles J said:

“[136] What I take from this guidance on the approach to the statutory task is that the objective of achieving a fair result (assessed by reference to the words of the statute and the rationales for their application identified by the House of Lords):

- (i) is not met by an approach that seeks to achieve a dependence for life (or until remarriage) for

the payee spouse to fund a lifestyle equivalent to that enjoyed during the marriage (or parity if that level is not affordable for two households), but:

- (ii) is met by an approach that recognises that the aim is independence and self-sufficiency based on all the financial resources that are available to the parties.”

He then goes on to identify a number of factors including the marital standard of living (as quoted above), the length of the marriage (of particular relevance to determining the level and duration of any needs claim) and continuing contributions to caring for children.

119. I must also not be taken to be saying that the marital standard of living is “the lodestar”, quoting from Mostyn J’s decision in *SS v NS (Spousal Maintenance)* [2015] 2 FLR 1124, in the sense of an unchanging guide to the assessment of needs. As he says, and I agree: “As time passes, how the parties lived in the marriage becomes increasingly irrelevant. And, too much emphasis on it imperils the prospect of eventual independence” [para 35].
120. However, in broad terms and in the context of this case, in which contributions will have been made over a 30 year period, *where* the resources are available, the longer the length of the period(s) referred to in paragraph 113(i) and (ii) above (being (i) the length of marriage and (ii) the length of the period of contributions to the welfare of the family which can, clearly, both pre-date the marriage and post-date the end of the marriage), the more likely the court will decide that the applicant’s spouse’s needs should be provided for at a level which is similar to the standard of living during the marriage.
121. Further, the longer the duration of (i) and (ii), the more likely that those needs will be assessed on a lifetime’s basis. As Holman J said in *Murphy v Murphy* [2014] EWHC 2263 (Fam) [para 35]:

“What, frankly, the arguments by the husband overlook is that the having of children changes everything. Of course this wife could never have expected a “meal ticket for life” on the basis of six years of marriage and two years of cohabitation if there had been no children. Far from it, she would no doubt have continued to work at Selfridges, or in similar employment, and at the point of the breakdown of their marriage and divorce there would have been a fair capital division and a clean break and each would have gone their own way. But the fact of having children, and their obvious dependence in this particular case on their mother for their care, changes

everything, as I have said. The economic impact on this wife is likely to endure not only until they leave school but, indeed, for the rest of her life.”

122. This is, to repeat, inevitably subject to the available resources in the case, but it is also subject to the important caveat that the *level* at which future needs are assessed will depend on the duration of the period for which they are being met. The longer that period, the more likely that the court will *not* assess those needs at the marital standard of living throughout that period. There are many examples of orders having been made on this latter basis by, for example, assessing the award on the basis that the needs, both in terms of housing and/or in terms of income, will reduce in the future. I have been referred to two examples of the latter, namely *AR v AR* and Baron J’s decision of *Y v Y (Financial Orders: Inherited Wealth)* [2013] 2 FLR 924.
123. In the former the length of the relationship, from when the parties started living together, was 25 years. The parties’ child was 18. The wife was aged 54. I awarded the wife a sum for housing to enable her to purchase a property, for life, of an equivalent standard to the former matrimonial home. In respect of the wife’s income claim, I found that the family’s annual expenditure in the later years of the marriage was £140,000 excluding additional items not reflected in an annual budget. I decided that the wife’s capitalised income claim should not be confined to an amortising capital (Duxbury) sum. She should be provided with additional financial security and the ability to spend additional sums not reflected in the annual income sum of £115,000 which I used for the purposes of calculating the base Duxbury sum [para 100].
124. In that case I decided that the wife was “entitled to have sufficient resources to enable her to spend money on additional, discretionary, items which will vary from year to year and which are not reflected in her annual budget” (para 71). This was based on the nature of her budget. Some budgets might be described as sufficiently replete to give no scope for additional, discretionary items.
125. In the latter case, *Y v Y*, the length of the marriage was 26 years, the wife was aged 51 and the younger children were in their final years at school. Baron J awarded an income fund based on an annual income need of £150,000 reducing by 20% after 8 years.
126. In the present case it is agreed that the award should provide for the wife’s income and capital needs for life (as referred to above, a period of some 50 years). This consensus is, no doubt, based significantly on the fact that the wife will be making contributions to the welfare of the family, both during and after the marriage, for in the region of 30 years (taking the period up to the youngest child reaching the age of 21). The disagreement is, as will be clear, over the level at which those needs

should be assessed.

127. Dealing first with the wife's housing need. I see no justification for the wife being provided with more than one property. The ownership and use of two properties – a principal home and a holiday home – can be sufficiently part of the marital standard of living to justify an award based on the cost of two properties. It was not in this case. The occasional use by the parties of other (holiday) properties and the limited use made by the family of properties (including a home of the husband's parents) in London do not make it a significant part of that standard. In addition, the desire to have a home in London, based on future claimed lifestyle needs and/or the children, provides a wholly insufficient justification for an award to include such a need.
128. The wife's award will, therefore, be based on my assessment of her need for a home in the country. Clearly, as initially expressed by the wife, this should be comparable to the former matrimonial home. As in *AR v AR*, the valuation of this property will reflect its setting but does not reflect the added benefit which derives from the fact that the surrounding estate is owned by the husband and was used by the family.
129. In my view, I cannot simply assess the wife's housing need by reference to AB because it has reduced significantly in value since it was purchased. As a result, it no longer reflects what the parties had, at least initially, considered to be appropriate alternative housing. I do not consider it fair that the wife should bear this loss. I propose, therefore, to assess her housing need more broadly.
130. I have not been helped in my assessment by the fact that the wife has only provided particulars of one property and that as only being indicative. Further, having compared the particulars of this property against the former matrimonial home, including by looking at the pictures of both, it is clear that they are very different houses. Whilst both might be of a similar size, the property on which the wife relies is significantly grander in terms of both appearance and composition.
131. In my judgment, the upper value of the former matrimonial home provides a good guide of the likely cost of a comparable property, with some increase to reflect the factors not reflected in its valuation. I also consider the original value of AB (with the additional land) provides a guide, to which I must add a reasonable sum for improvements (principally extra amenities). In this respect, the amounts advanced by the wife are of no assistance given their extraordinary nature. Finally, I also consider that the properties at the upper end of the range adduced by the husband also provide a better guide than the property put forward by the wife.
132. Based principally on these guides, I consider that the wife's housing

need is in the region of £3.6 million (based on a purchase price of approximately £3.25 million).

133. It is accepted that the wife's capital award should include a sum for the purchase of furniture and for refurbishment/improvements or other associated costs. I propose to allow £500,000 in respect of this element of the claim. The wife's schedule of furniture is clearly excessive, even on the basis of allowing for one property only.
134. I will consider the other, smaller, individual capital claims after considering the capitalisation of the wife's income claims.
135. The wife's proposed annual budget of £500,000 is vastly in excess of the marital standard of living (£250,000). What is the asserted justification for such a substantial increase? Apart from the wife's case that the husband was mean, which I have rejected, it comes down to two grounds. First, that the wife wants a better standard of living and the husband can afford to provide it. Secondly, now that the children are older there is greater scope for more to be spent on holidays and other, social, activities all of which were more restricted when the parties had four children of a young age.
136. In my judgment, the first ground is without substance. Of course, the assessment of need is an objective one, but this point does not justify an increase above the much weightier factor of the marital standard of living. The second factor bears some weight in the circumstances of this case and so provides justification for some increase but nowhere near the amount sought by the wife. In his oral evidence the husband accepted that the wife might reasonably spend more on some items on which less had been spent during the marriage because of the ages of the children.
137. Further, even if, after allowing for child maintenance, the wife's budget for herself *and* the children was initially justifiably higher than the marital standard of living (say, £275,000 or £215,000 after deducting child maintenance), in the circumstances of this case this would not endure for the rest of her life. There would have to be some very significant reduction in the future given that the lump sum will be calculated by reference to approximately 50 years (nearly 35 years after the youngest child will be 21).
138. I propose to follow the approach taken by both parties, namely to assess a level annual future income need to be capitalised by reference to the wife's assumed life expectancy. In my judgment, on this basis, the fair annual sum to use for the purposes of calculating the capitalised income fund is £175,000.
139. How is the income fund to be calculated? I see no justification for

enhancing the wife's claim on the basis that she might outlive her assumed life expectancy. This is far too speculative. Nor do I see any force in the claim for an enhanced sum to enable bequests. There is more force in Mr Howard's submission that, given the following factors in the case - the level of the husband's wealth giving him financial security and flexibility and the length of the period over which the wife will be making contributions - the wife lump sum should not be amortised.

140. However, these factors have to be balanced against the fact that, as I have just mentioned, the income fund is calculated to cover a period of roughly 35 years after the youngest child will be 21. A simple Duxbury for £175,000 is approximately £5 million. Is this the appropriate sum to award in respect of the wife's income needs? I bear in mind that Duxbury is a tool and not a rule (and what I said in *AR v AR*, on which Mr Howard relies) and to the relevant factors in this case as referred to above. In my judgment, in this case, it is fair to take the sum of £5 million. To apply a multiplier (which reflects the wife's life expectancy) to a multiplicand of £175,000 results in a significant level of flexibility *and* security because of the size of the resultant sum. For comparison, the non-amortised sum would be approximately £5.5 million.
141. If the sums referred to above in respect of housing need and income need are added the total is £9.1 million (£3.6m, plus £500,000, plus £5m).
142. Given the level of this capital sum and given the level of the annual income need on which it is based, I do not consider any additional award for the smaller needs advanced by the wife is justified. They can be accommodated within an income need which will inevitably fluctuate over the years. The wife will be able to meet these needs out of this overall award.
143. I must now address the husband's add-back argument. Would it be fair, having regard to all the circumstances, to deduct the sum of £300,000? Given the degree of the wife's profligacy and given that, on a broad perspective and even after deducting this sum, the wife will be able to meet her reasonable needs as assessed above, I consider it would be unfair to the husband not to do so. Applying the statutory test, it is conduct which it would be inequitable to disregard.
144. Finally, before determining my award, must I, as submitted by Mr Howard, in order to ensure that my award is fair, carry out a cross-check against the total financial resources?
145. In *Robson v Robson* [2011] 1 FLR 751, Ward LJ said [para 43(9)]:

“It does not add much to exhort judges to be

‘cautious’ and not to invade the inherited property ‘unnecessarily’, for the circumstances of the case may often starkly call for such an approach. The fact is that no formula and no resort to percentages will provide the right answer. Weighing the various factors and striking the right balance is, after all, an art not a science”.

In *K v L* the court was presented with an argument that the award was “appealably disproportionate”, being “only 9.3% of the parties’ assets”. This was also a case where need was the dominant principle. In response, Wilson LJ pointed out that the percentage of the total wealth which an award represents is no more than an arithmetical product. So, for example, the award in *NA v MA* [2007] 1 FLR 1760 was 23% of the total wealth [para 22]:

“But, in that the respondent’s assets there had a value of £40m, rather than, as here, of £57m, and in that the applicant’s needs were there estimated at £9.2m rather than, as here, at (say) £5.3m, the amount of the award to the applicant, which was no more and no less than the estimated amount of her needs, was bound to bear a much higher ratio to the value of the assets than in the present case. That it there amounted to 23% demonstrates nothing.”

146. I see no utility and, more specifically, I see no correlation with the potential fairness of an award determined by application of the principle of need, to look at a proposed award in percentage terms. To adapt Wilson LJ’s words, it would demonstrate nothing of relevance to the discretionary exercise. A court must ensure that a proposed award, as Ward LJ said, gives appropriate weight to the relevant factors and, thereby, strikes the right balance of fairness.
147. In my view, this is achieved, not by reference to percentages, but by pausing and reflecting whether the proposed award does indeed give the appropriate weight to the relevant factors. In meeting the wife’s needs in the manner referred to above, I am, in my judgment, according proper weight to all the relevant factors and, consequently, making an award which is fair. The award will be such sum as is necessary to provide the wife with £8.8 million (£9.1m less £300,000).