Neutral Citation Number: [2019] EWHC 1224 (Fam)

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 March 2019

Before :

Mr Justice Moor

- -

Between :

AF

Applicant

-and-

SF

(by the Official Solicitor as his litigation friend)

Respondent

- -
- -

Nicholas Cusworth QC and Richard Sear for the **Applicant (**instructed by Payne Hicks Beach)
Philip J Marshall QC, Dakis Hagen QC, James Weale and George Gordon for the **Respondent** (instructed by Hughes Fowler Carruthers)
Tiffany Scott QC for the Trustees (instructed by Farrer and Co)

Hearing dates: 25 to 28 February and 1 March 2019

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JUDGMENT

MR JUSTICE MOOR:-

1. This is an application dated 8 August 2017 by AF for financial remedies following the breakdown of her marriage to SF. I intend to refer to them

throughout this judgment as the Wife and the Husband. I mean no disrespect to either by so doing. I do so simply for the sake of convenience.

2. As will become apparent, the Husband has failed, almost completely, to engage in these proceedings although he has instructed solicitors at times. On 17 December 2018, I found that he lacked capacity to litigate. The Official Solicitor has been appointed as his litigation friend and has dealt with the case with commendable speed such that no adjournment of this final hearing has been necessary.

3. The Wife is aged 49. Having been educated at university, she commenced a successful business with her business partner. The success of the business can be seen by the fact that she was earning around £50,000 per annum but it was sold in around 2004 for approximately £160,000 in total. She has since been a housewife and mother although she commenced training as a counsellor in 2014. She has now qualified although she is intending to take a further three-year course to further her skills.

4. She has once child from a previous relationship, AB, who is now aged 18. He has undoubtedly been treated as a child of the family. He is now working during a gap year before going to University in September 2019.

5. The Husband is aged 47. He does not work although he once did. [**Editor's Note**: the judge considered the Husband's employment and family history].

6. The Husband's family owns an exceptionally valuable property portfolio ["the Estate"]. Almost inevitably, the Estate is held in a complicated trust structure. I am concerned primarily with Fund A, although the Husband also has an interest in Funds Y and Z. I will return to the value and structure of these Trusts in due course.

7. The Husband was married previously but the marriage was dissolved after six years. There is one child of that marriage, CD, who is aged 20.

8. The Husband and Wife commenced a relationship in October 2002. Shortly thereafter, they began to cohabit in a rented property in west London. Thereafter, they moved briefly to another rented property in central London. In November 2002, the Husband purchased the former matrimonial home. This is a substantial part-Tudor listed property with 8 bedrooms, staff annexe, outbuildings, tennis court, outdoor swimming pool and 65 acres of land. It has been suggested that the Husband paid approximately £2 million for the property but the exact details are unknown.

9. Thereafter, a substantial programme of renovation and improvement was commenced. The Wife estimates this work cost approximately £1 million. It is assumed that the Husband paid for it from a distribution to him from a trust that was wound up around this time. Whilst the works were being done, the couple briefly occupied an Estate property in London. The former matrimonial home was valued for these proceedings by William Nicoll of Savills in February 2018 at £2.63 million. It is said that the estate is now "tired" and in need of further

renovation. Mr Nicoll replied to an email from the Wife's solicitors on 23 February 2018 saying that he thought "*easily £500k possibly more could be spent renovating the house, buildings and land*" but I have no further details.

10. The parties married in 2004. There are two children of the marriage. EF is aged 14. He is a weekly boarder. GH is aged 12. He is in his final year at a preparatory school. He will then be moving in September 2019 to a secondary school, where he will also be a weekly boarder.

11. Throughout the marriage, the parties lived to a very high standard due to the large income received by the Husband from Fund A. I will return to this in due course. It is fair to say that virtually none of this huge income has been preserved. It was all spent. The only tangible asset, other than the former matrimonial home, is a property that was built in South America as a holiday home. The Wife invested between £70,000 and £80,000 from the money that she received from the sale of her business into the cost of the home in South America, although the property was conveyed into the sole name of the Husband. Due to the Husband's failure to engage with the proceedings, we have no valuation of the property.

12. The marriage broke down in May 2017. The Husband left the matrimonial home on 30 May 2017 and spent nine weeks away. The Wife complains that, during this period, she received little financial support. She petitioned for divorce in July 2017. The day after the date of the Wife's divorce petition, the Husband transferred £246,000 to her. It has been virtually the only responsible thing he has done in the case. Initially, she believed that this was a repayment of a sum of £250,000 belonging to her son, AB that she had given the Husband to invest. Later, however, he made it clear that this sum was, in fact, maintenance. It seems likely that AB's money remains invested in an account in Monaco.

13. The Husband returned to this country in early August 2017. Initially, he stayed with friends before renting a property outside London and, at least for a time, a property in London. As I have already indicated, the Husband has not cooperated in these proceedings and the exact details of what he is has been doing are not known to the court.

14. The Wife issued a claim for maintenance pending suit and LSPO funding on 8 August 2017 at the same time as her main application in Form A. In her statement of the same date, she said that the Husband had not been paying the household bills or the children's costs (including their school fees). All that he had continued to do was to continue to pay to her a monthly allowance of £4,000. She made the point that she believed he received £68,000 per month from his Trustees on the basis that they also pay his tax bills and, periodically, make further income distributions to him. These included a sum of £1.1 million in the year 2015/2016.

15. She filed her Form E on 18 October 2017. She valued the South American property at £750,000 but concedes that this is no more than a guess. She deposed to £114,009 in bank accounts. This was the balance of the sum of

£246,000 that the Husband had transferred to her. She has chattels worth £54,000 and a pension worth £38,124, giving total net assets of £206,134. In the context of this case, this is a very modest figure indeed. She says her income needs for herself are £27,897 per month and £9,965 per month for the three children but this does not include school fees. She adds that the family lived a very privileged lifestyle. She estimates her future earning capacity from her work as a counsellor at between £20 – 25,000 per annum.

16. The case was first heard by HHJ Hess on 2 November 2017. The Husband had not served a Form E, so he was directed to do so by 23 November 2017. He was further ordered to pay to the Wife £232,746 in respect of maintenance pending suit and £191,796 for legal services by 9 November 2017. The case was transferred to be heard by a High Court Judge. He made no order on the Wife's application to join the Trustees. She has not applied to join them subsequently. The Trustees are therefore not parties although they have cooperated fully and attended various hearings via their lawyers, Farrer and Co.

17. The Husband failed to pay either the maintenance pending suit order, or the legal fees order by the due date so, on 10 November 2017, HHJ Hess made an interim third-party debt order for £424,462. On 17 November 2017, Recorder Nice made a freezing order in the same sum. The third-party debt order was made final on 11 December 2017 by Gibbons DJ.

18. The case was listed before Williams J on 26 January 2018. Both parties were represented but the Husband did not attend. The case was listed on 15 February 2018 for him to attend and for the court to consider the consequences of his failure to comply with directions of the court. He failed to attend before Francis J on 15 February 2018. By now, it was becoming clear that third party disclosure orders would be the only way to get reliable information. A number of such orders have subsequently been made. On this occasion, the Husband was also ordered to pay to the Wife a further sum of £223,392 in respect of legal services and £104,972 in relation to maintenance pending suit. Both orders were subsequently enforced by third party debt orders to his bankers, C Hoare & Co.

19. The Wife filed her Open Proposals commendably early on 5 April 2018. She sought a total award of £17,662,000. This included the former matrimonial home at £2.6 million; £500,000 to renovate the property; £4 million for a London home and a Duxbury fund of £8.4 million to cover a lifetime income need of £334,764 per annum. She also sought £300,400 for AB and capitalised school fees and child periodical payments in the sum of £1,042,000. Finally, she argued that she should have a "*reversionary*" sum of £1,000,000 to cover any legal fees arising from future applications launched by the Husband against her or necessitated by his behaviour.

20. She filed her section 25 statement on 11 April 2018. She said that the Husband was, initially, supportive of her move into counselling. In 2015/2016, the Husband got an income distribution of £1.1 million and he received a further £2.5 million during these proceedings. In November 2017, the Husband had £3.5 million with C Hoare & Co. She said that she needs a home in London

because her family and support network live there. She spent approximately one evening per week in London with the Husband during the marriage, often staying at a luxury hotel in central London. She says she will be staying in London during term time as she will get more patients in London. She added that responsibility for the children is firmly on her shoulders due to the Husband's health. She raises his conduct during the course of the proceedings. I will return briefly to this in due course.

21. The Husband responded by email to the Wife's Open Proposals on 4 May 2018. As with so many of his communications, it is thoroughly offensive to the Wife and her solicitors. I do not propose to quote from any of his communications other than to say that they are peppered with disgraceful anti-Semitic comments that are as offensive as it is possible to get to the Wife and her solicitor. He is also very disrespectful to the court, describing it as a Talmudic Court of Injustice. His communications have undoubtedly distressed the Wife enormously. This email does ask the question why he should have to pay for AB when AB's father is still alive. He contends that the Wife should return to him all monies and possessions that she has "stolen" from him.

22. On 22 May 2018, the Wife applied for a freezing order which was granted the following day, 23 May 201 by Parker J. It froze the Husband's funds at C Hoare & Co, other than the sum of £50,000. It was a complicated order and I am not sure exactly how much it froze but I am told there is approximately £1.75 million left today, after costs have been deducted.

23. On 7 June 2018, the Husband requested that the Trustees distribute £15 million to him "*to make sure I am not homeless"* and to put together a legal team "*of the highest order*". He said his "*demand*" was £3 million less than that demanded by the Wife as he was not having to fund AB. The Trustees replied on 18 June 2018 saying they would fund a legal team for him but that it was not their usual practice to make significant capital advances to beneficiaries. They added that, in any case, it was premature to consider the matter until the financial settlement was resolved, as that would be a significant consideration.

24. Decree Nisi was pronounced in June 2018. The Husband had, in fact, filed his own petition but that was dismissed on a subsequent date in June 2018. On 18 June 2018, the Trustees replied to the Wife's Open Proposals saying that her award was a matter for the court not the Trustees although there was no question of any direct distributions to the Wife or AB as they are not beneficiaries. They said they would consider their position if the Husband seeks assistance. They would be minded to consider the matter in a constructive fashion to the extent that the terms of the trust permit but they remind the court that the intention was to preserve assets for future generations.

25. The Husband did, in fact, file a Form E dated 23 July 2018 although it is a very unsatisfactory document. He says he is of "no fixed abode". He provides no valuations for the two properties. He claims he has £325,000 in an account in Monaco. The Wife believes this is AB's money. He merely says that the Wife is aware of his UK bank account. He claims that he is currently undergoing a persecution that directly attacks his ability to produce income. He says the

family lived modestly. He makes the point that there was no London property during the marriage. He says he accrued significant savings from income. He talks about the Wife's "*criminal behaviour*", claiming the proceedings are "*theft*" and that the Wife has "*already stolen enough*". He claims she told him that she would walk away with what she came with.

26. Having said all that, on 23 July 2018, he made his Open Proposals. I am clear that these were drafted for him by a solicitor as they are formulated in a way that is quite different to everything that emanates directly from the Husband. The document says that he has no wish to disrupt proceedings or to give evidence or make submissions. He proposes that the Wife and children should have exclusive use of the former matrimonial home until the children are over the age of 18. He repeats that there is no need for a London property as the family did not have one during the marriage and they lived "quietly". He says he will pay to the Wife outright 50% of the value of the former matrimonial home, the South American property and his UK bank balances, saying he has already transferred £245,000. There should be no order for costs and a clean break. The document adds that it is wrong for the Wife to receive funds outright as it is "*fundamental that capital should be preserved for future generations*".

27. The matter was listed for final hearing before Holman J with a three-day time estimate commencing on 25 July 2018. The Husband did not attend and was not represented. Holman J was concerned as to the Husband's capacity to litigate. On 23 July 2018, the Husband had sent the judge an email which claimed that the proceedings were "*one of the grossest collusions"* and that "*deceptions are taking place that should result in the abdication of the Crown…*" In fact, Holman J did hear oral evidence on behalf of the Trustees, from Mr K, the Finance Director of the Estate. I have a transcript of that evidence. Nevertheless, he adjourned the case to be heard by me, to commence on 25 February 2019 with a five-day time estimate. He made a further maintenance pending suit order at the rate of £29,992 per month until 28 February 2019, which was payable in the sum of £209,994 by 30 July 2018. He made a further legal services order of £419,353. This covered costs of £120,325 that were outstanding and £299,028 to cover the Wife's costs to the conclusion of the final hearing. There was a freezing injunction directed to C Hoare & Co to cover both payments. He directed that the issue of the Husband's litigation capacity would be heard by me on 18 December 2018.

28. When the Trust accounts for the year ending 5 April 2018 were finalised at the end of July 2018, it became clear that a sum of £1,087,354 of undistributed income was due to the Husband. On 15 August 2018, the Trustees released to him the sum of £723,018, which was net of higher rate tax. They also made a payment to HMRC of £364,336 which was the higher rate tax. At the Husband's request, the sum of £723,018 was sent to an account in Monaco. The Wife complains about this payment, saying the existence of this money was not disclosed in Mr K's evidence before Holman J. The Estate Accounts for the year ending 5 April 2018 were sent to her on 14 August 2018. She applied to Parker J for a freezing injunction on 23 August 2018. Parker J extended the existing freezing injunction to cover the £1 million held by the Trustees but, by then, the money had gone.

29. Around this time, the Wife and children had to move out of the matrimonial home temporarily due to a serious flash flood. They have still not been able to return as the insurance repairs are taking longer than anticipated. The Wife told me they hope to return in April 2019.

30. On 29 September 2018, there was a serious incident which led to me making injunctions against the Husband. I am told that, since that incident, he has not seen the children although the Wife was at pains to point out that this was his decision not hers.

31. I heard the application to determine whether the Husband has capacity to litigate on 17 December 2018. The Husband did not attend, nor was he represented. He did produce a medical report from Dr M, but it did not address the central issue of the Husband's capacity. The wife was represented. She adopted a neutral position in court. I declared that the Husband lacked capacity and invited the Official Solicitor to act for him.

32. On 19 December 2018, the Trustees agreed to pay the Official Solicitor's costs. They indicated that they would prefer the Official Solicitor to instruct "*specialist high net worth matrimonial solicitors*". The offer to pay costs was, however, withdrawn on 10 January 2019 on the basis that payment would be in "*direct contradiction*" to the Husband's wishes.

33. I heard the matter again on 14 January 2019. Counsel instructed by Anderson Rowntree, a firm of solicitors, appeared on behalf of the Husband. I was told that the Husband wished to apply to discharge my order dated 17 December 2018 and that he would see a doctor for a report to be prepared as to his capacity. At counsel's request, I made provision for the discharge application to be made by 4pm on 21 January 2019. On 21 January 2019, Jane Hodge of Anderson Rowntree wrote to the Wife's solicitors to say that the Husband had been unable to keep the appointment she had made with the doctor on 18 January 2019. As she could not rely on an assessment, she could not apply to discharge my order. On 25 January 2019, Helen Clift, on behalf of the Official Solicitor, wrote to the Wife's solicitors to say that Anderson Rowntree had said the firm was not instructed to arrange a further psychiatric assessment or to appeal my original order.

34. The Wife's legal team decided that the only way to keep the case on track was for the Official Solicitor to be put in funds to deal with the case. She therefore applied to me for an order to enable that to happen. On 25 January 2019, I permitted the release of £100,000 to the Official Solicitor. This money had originally been provided by the order of Holman J to fund the Wife's costs. I heard the Pre-Trial Review on 1 February 2019. I found that I had jurisdiction to make orders pursuant to section 22ZA to fund the costs of both the Wife and the Official Solicitor. I made a further order on that day in the sum of £409,000 for these purposes although I subsequently had to extend the funding by a further £60,000 at the request of the Official Solicitor.

35. The trial started with a reading day on 25 February 2019. The previous day, 24 February 2019, the Husband sent an email to a large number of recipients. These included my clerk, the various lawyers in the case, friends, family and various national newspapers. The email was headed "*Pantomime at the Royal Courts of Talmudic Injustice*". It argues that the Husband is the "*pantomime villain*" who is to be "*served up like a turkey*". It alleges that, after five days, I will deliver a decision that "*has already been taken*" that someone unnamed has "*ordered*" me to deliver. It indicates no confidence in the Official Solicitor's representation of him and alleges conspiracies against him everywhere. It is, at times, written in highly offensive language. I received a second similar email just as I was finishing the preparation of this judgment.

The Trusts

36. I now turn to deal with the written evidence before me as to the Husband's interest in the Trusts. Farrer & Co instructed Tiffany Scott QC to prepare a note for the court which was originally dated 5 November 2018 but was updated on 28 February 2019 following the oral evidence. It says that the Husband's entitlement is principally in Fund A of which he and other family members are life tenants with broadly equal notional shares. The Husband's interest is 26.5582%. There is no power to accumulate income. It must all be distributed to the beneficiaries. The Husband will receive the capital outright if he survives until 20 years after the death of certain other family members. This is likely to be between 2045 and 2080, although using actuarial tables, a date of 2064 emerges. It is of note that the Husband would then be aged in his 90s. The assets in Fund A are some £400 million so the Husband's notional share is £106 million. There is no power to make loans. The Trust has to pay the basic rate of tax at 20% on the income. The beneficiaries are responsible for higher rate tax at 40% and, mostly, 45% although, administratively, this is also paid by the Trustees. On the Husband's death, his interest will go to his children equally. At present, this is CD, EF and GH.

37. There is power to advance up to 70% of the capital to the Husband. In theory, this would amount to £74 million. The Trustees have a duty to consider any request, but the Trusts are dynastic in nature and are managed as one unit. There have been no capital distributions to date other than modest payments to assist with property investment or repair. In addition, life insurance payments to protect against Inheritance Tax are a charge against capital. The Note says that, if a request for capital is made to the Trustees, they will have to consider as an important factor the vociferous opposition of the Husband. In November 2018, the Trustees were willing to consider leasing a property in London for the Wife for a term of say 20 years, to avoid possible enfranchisement, but it could not be settled on her as she is not a beneficiary. A market rent would have to be paid. The Trustees have since reconsidered their position and do not now support such an arrangement. They say they will have to seek the Court's blessing under Part 64 before compliance with any order that I make, and the children must be a party to that application. Originally, it was thought I could hear that application, but they now consider it should be heard in the Chancery Division. The Trustees are extremely respected people who will undoubtedly comply with the Trust Deed to the letter.

38. There is no doubt that Fund A generates a very significant income for the Husband every year. Indeed, the income has grown significantly in recent years due to the flourishing property market. In 2015/2016, the Husband received net distributions of £62,000 per month (£744,000 for the year) plus a one-off distribution of £1,100,000. In addition, small amounts were paid to CD (£15,000) and his mother (£48,481). In total, therefore, he received £1,907,481 net and his marginal tax bill of £1,443,877 was paid. In 2016/2017, the monthly figure was £68,000. Total distributions were £882,555 for the year and marginal tax was paid of £660,719. It is, however, clear that, during that year, income was retained in the fund, such that a large distribution of £2.5 million was paid in September 2017. This is the money that was frozen pursuant to the various freezing orders.

39. The Trust accounts for the year ending 5 April 2018 show total income of £20.5 million; gross profit of £16.7 million and profit before taxation of £12.6 million. This was approximately £1.4 million higher than the previous year. The Husband's share of this is, of course, around £3.36 million before any tax. His undistributed income at the beginning of the year was £2,561,005. His net income, after basic rate tax, for the year was £2,703,715. Total distributions (including higher rate tax) were £4,723,829. After adjustments, there was £1,087,354 undistributed which was, of course, distributed in August 2018 as noted above.

40. The forecasts for the Husband's profit share for the next five years, after basic rate tax, are:-

Year	Profit share	Net of trust tax	Net of all tax
2019	£1,948,473	£1,543,530	£1,086,060
2020	£2,226,436	£1,749,539	£1,238,940
2021	£1,689,191	£1,340,046	£ 943,455
2022	£2,176,610	£1,729,982	£1,211,536
2023	£2,598,880	£2,067,798	£1,443,784

41. I appreciate, of course, that there is much uncertainty at present in relation to the property market as a result of Brexit and other issues. Nevertheless, I consider these to be conservative figures such that I can safely take the Husband's average net income over the coming five years as being likely to be in the order of £1,185,000 per annum. It is clear that the Husband has been the driving force in relation to all expenditure throughout the marriage. It is obvious that virtually no capital has been saved. This supports the Wife's case that he has always spent everything that he has received. In one sense, this leads to a conclusion that there was, indeed, a very high standard of living. Equally, however, there has been clear profligacy. For example, the Husband spent £420,737 on private jets between May 2017 and May 2018.

The Schedule of Assets

42. Mr Cusworth QC and Mr Richard Sear, who appear on behalf of the Wife, have produced a Schedule of Assets but much of it is guesswork. They include the former matrimonial home at £2,551,100 after costs of sale; the South American property at £772,500; and the frozen money at £2,214,202. Part of this sum is definitely needed for costs such that I have been working on a figure of £1.75 million as being left after the costs have been paid. The Schedule also includes the capital value of the Husband's interest in the Trust at £74.3 million but I am satisfied that this is entirely notional. Excluding that figure, the Husband's capital assets are broadly £5.5 million.

43. They rightly exclude chattels and cars on both sides. The Wife's figure is therefore just the £215,513 in her bank accounts and her pension now valued at £41,616. I did ask whether the fact that her bank balances had increased from £114,009 at the time of her Form E showed that she had been able to save some of her maintenance pending suit. This was denied by Mr Cusworth, saying it was a question of timing, but Holman J made his order to the end of February 2019, so I consider there has been some saving. I do not say this to criticise her. It is in many ways prudent and welcome.

The respective positions

44. In opening, Mr Cusworth and Mr Sear stuck to their client's Open Proposals but they rightly rowed back from seeking a capital distribution from the Trust. The note taken of what was said is as follows:-

> *"[W] is not seeking to take capital from the trust…what she is seeking is a sensible, fair and reliable way of having an income fund made available to her which doesn't involve a lot of future litigation."*

45. They understandably complain about the Husband's lack of engagement. They assert he has "*gone off the grid*" by funnelling his income via Monaco. They say that the Husband's abuse has led to an emotional cost to the Wife and that she is in therapy. Her income needs now include the provision of a property in London and come to £352,992 per annum for herself and £119,580 per annum for the children. Having previously produced particulars for North London properties to buy at between £3.5 and £3.75 million, they now produce rental particulars in North London for four-bedroom properties between £1,950 and £3,000 per week.

46. Mr Marshall QC and Mr Gordon acting for the Husband via the Official Solicitor were, understandably, in some difficulty in putting forward positive proposals given the intransigent opposition of the Husband to any realistic provision being made for the Wife and children. They therefore concentrate on the Open Proposal made by the Husband in July 2018, even though he appears to have disavowed it since, arguing that the Wife should get nothing. They say they take issue with a good deal of the Wife's Open Proposal on the basis that it contains "*forensic exaggeration and makeweight aspiration*". They calculate that the Husband's offer of half his resources amounted to around £2.875

million. They point out that the Husband has never had a capital distribution, other than the sum of £1,050,000 in 2004 on the dissolution of one of the sub-funds in the Trust. They remind me that the Trustees have said that (a) their discretion must not be fettered; (b) they will consult other adult beneficiaries; (c) they will consider the property, finance and tax consequences of any request; and (d) the Husband's vociferously expressed wishes will be an important consideration. They remind me that the fact that the Husband does not have litigation capacity does not mean that he does not have capacity in relation to his property and financial affairs.

47. They say that the family has never lived in London. They produce property particulars for housing for the Wife, once the children are off her hands, at between £1 and £1.5 million. If she spent £1.4 million on housing, this would leave her with a Duxbury fund of approximately £1.5 million per annum which would generate around £74,000 pa. This does not, of course, cater for the next few years whilst she remains in the former matrimonial home. They argue that the Wife's spending during the marriage was £7,494 per month for herself and £5,281 per month on the property, making a total of £12,775 per month. The difficulty with this assessment is that it completely ignores the spending on her behalf paid by the Husband such as holidays and credit cards. They tell me that the CMS assessment of maintenance for the boys is not the maximum and therefore I have no jurisdiction to make a maintenance order. They are undoubtedly right about that, although I note that the Wife is appealing the assessment. It may well strike the neutral observer as odd that a man with a net income in excess of £1 million per annum has to pay less than the maximum assessment for the children. Mr Marshall's document asserts that the Husband pays the boarding school fees but it emerged in evidence that he has not been doing so and the Wife has paid out of her maintenance pending suit.

48. They argue that the Wife should not be reimbursed for AB's money that was paid to the Husband, saying AB, as an adult, should make a separate claim himself. One of many sad features of this case is that the Husband, having enthusiastically and to his great credit, taken responsibility for AB during the marriage has now rejected him fundamentally. In passing, I merely note that it is vital that I deal with as much as I possibly can in this judgment as further litigation would be disastrous for this family.

The law

49. I must apply section 25 of the Matrimonial Causes Act 1973, as amended, in deciding what orders to make pursuant to sections 23 and 24. It is the duty of the court to have regard to all the circumstances of the case. I must give first consideration to the welfare, while a minor, of the two children of the family. I must then have particular regard to the matters set out in subsection (2), namely:-

    (a) The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity, any

increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) The standard of living enjoyed by the family before the breakdown of the marriage;

(d) The age of each party to the marriage and the duration of the marriage;

(e) Any physical or mental disability of either of the parties to the marriage;

(f) The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it; and

(h) The value to each of the parties to the marriage of any benefit which, by reason of the dissolution …of the marriage, that party will lose the chance of acquiring.

50. It was made clear in the seminal House of Lords decision of White v White [2001] 1 AC 596 that there is to be no discrimination in financial remedy cases between a husband and wife. In the case of Miller/McFarlane [2006] UKHL 24; [2006] 2 AC 618, the House of Lords identified three principles that should guide the court in trying to achieve fairness, namely:-

(a) The sharing of matrimonial property generated by the parties during their marriage;
(b) Compensation for relationship generated disadvantage; and
(c) Needs balanced against ability to pay.

51. There should not be double counting. In general, an applicant should receive the highest award to which he or she would be entitled by the operation of each principle. It is accepted, in this case, that the sharing principle is not engaged, other than, possibly, in relation to the matrimonial home. There is no question that the assets have all emanated from the Estate other than the sum of £80,000 from the sale of the Wife's business. Perhaps most importantly, the very large future income stream is also clearly non-matrimonial. There is no dispute that the compensation strand is not engaged. I accept that the Wife gave up a good career to look after the children but it is clear that her award in this case will be substantially higher than anything she might realistically have earned by continuing with that career.

52. The needs strand is undoubtedly engaged regardless of the personal views of the Husband. In past cases, it has been said that the court will look to cover the reasonable requirements of an applicant, generously assessed, balanced against

ability to pay. I take the view that, in many ways, this is far too simplistic as the court must consider all the relevant section 25 factors in coming to its conclusions. These obviously include the length of the marriage (including any relevant cohabitation); the age and health of the parties; the resources; the source of the resources; the standard of living during the marriage; the earning capacity of the parties; their respective contributions; and any conduct that it would be inequitable to disregard. Needs are not to be viewed in a vacuum but by reference to the facts of each individual case. The concept of needs is undoubtedly an elastic one.

53. Mr Marshall QC and Mr Gordon on behalf of the Official Solicitor refer me to a number of cases that deal with the effect of the standard of living during the marriage on income needs going forward. I remind myself that there is a statutory requirement for me to attempt to achieve a clean break so that the financial obligations of each party towards the other can be terminated as soon as it I consider just and reasonable [section 25A(1)]. Pursuant to section 25A(2), if I was to make a periodical payments order, I would have to consider whether it was appropriate to make it for only such term as would enable the payee to adjust without undue hardship to its termination.

54. Whilst I have to consider the marital standard of living, in SS v NS [2014] EWHC 418, Mostyn J observed that "*it is a mistake to regard the marital standard of living as a lodestar. As time passes, how the parties lived in the marriage becomes increasingly irrelevant. And too much emphasis on it imperils the prospects of eventual independence."* Moylan J observed in BD v FD [2016] EWHC 594 that "*it may well not be fair for the applicant spouse to have his or her needs provided for at (the marital standard of living) either at all or for longer than a defined period (ie not for life) due, for example, to the length of the marriage".* I add that there needs to be consideration given to whether the standard of living was excessive, particularly if there was overspending.

55. I must also consider carefully the correct approach to trust assets. I have had detailed submissions from both parties as to this, including submissions from Mr Dakis Hagen QC and Mr James Weale, specialist trust counsel, on behalf of the Official Solicitor. I consider that I can deal with the matter shortly by simply referring to the well-known dicta of Waite LJ in Thomas v Thomas [1995] 2 FLR 668:-

> "*For their part, the judges who administer this juris\diction have traditionally accepted the Shakespearean principle that "it is excellent to have a giant's strength but tyrannous to use it like a giant". The precise boundaries of that judicial self-restraint have never been rigidly defined – nor could they be if the jurisdiction is to retain its flexibility. But certain principles emerge from the authorities. One is that the court is not obliged to limit its orders exclusively to resources of capital or income which are shown actually to exist…where a spouse enjoys access to wealth but no absolute entitlement to it (as in the case, for example, of a beneficiary under a discretionary trust….), the court will not act in direct invasion of the rights of, or usurp the discretion exercisable by, a*

third party. Nor will it put upon a third party undue pressure to act in a way which will enhance the means of the maintaining spouse. This does not, however, mean that the court acts in total disregard of the potential availability of wealth from sources owned or administered by others. There will be occasions when it becomes permissible for a judge deliberately to frame his orders in a form which affords judicious encouragement to third parties to provide the maintaining spouse with the means to comply with the court's view of the justice of the case. There are bound to be instances where the boundary between improper pressure and judicious encouragement proves to be a fine one, and it will require attention to the particular circumstances of each case to see whether it has been crossed."

56. In Charman v Charman [2006] 1 WLR 1053 at Paragraph [12], Wilson LJ said that *"the central question is simply whether, if the husband were to request [the trustee] to advance the whole (or part) of the capital of the trust to him, the trustee would be likely to do so"*. In Whaley v Whaley [2012] 1 FLR 735 at Paragraph [114], the Court of Appeal said that the court must look at the facts realistically. It would not be *"undue pressure*" if the interests of the other beneficiaries would not be appreciably damaged and the court decides it would be reasonable for the husband to seek to persuade trustees to release more capital to enable him to make proper financial provision for his former wife. Every case turns on its own facts, but it goes without saying that there is a clear distinction between a dynastic trust and one that has been settled by a spouse.

57. I have received detailed submissions as to a proposed method of enforcement that was advanced by the Wife at one point. It centred on the need for the Husband to make a request of the Trustees for a capital distribution and whether the Wife could achieve this via the "*Brewster Mechanism*" named after the decision in the case of Blight v Brewster [2012] 1 WLR 2841. The Official Solicitor challenges this method of enforcement as being impermissible. I do not need to deal with this as I have decided that the Wife should not have a capital distribution from the Trust, as opposed to a lump sum by instalments out of the very large income of the Trust. In fact, I note that the Husband has requested a capital distribution of £15 million which the Trustees have not finally determined. I recognise that he did so for his own purposes, but at the very least this might have been a way around the difficulty. If so, he would only have had himself to blame.

The oral evidence

58. I heard oral evidence from the Wife and from Mr K, the Finance Director of the Estate. I did not, of course, hear from the Husband.

59. The Wife gave her evidence in an entirely straightforward and honest way. She was doing her best to assist me. She has clearly been very upset by the Husband's behaviour and the damage it is doing to the children. The vast majority of Mr Marshall's careful and thorough cross-examination involved probing and challenging her reasonable needs going forward, including the need for a London home; her budget; AB's fund; her request for two expensive motor

vehicles; and the proposed reversionary litigation fund. I will deal with all these matters when I make findings of fact as to her reasonable needs. She was also asked about her earning capacity. I am quite clear that it is far too late for her to attempt to resurrect her previous career. That avenue was closed down when she sold her business. I accept her evidence that the Husband was initially supportive in her decision to train as a counsellor. I find that it was a reasonable aspiration, but I accept entirely that it is not a career that is likely to lead to a significant income. I consider her estimation of an income of between £20 and 25,000 per annum is accurate and reasonable. She did talk of a colleague who was still counselling at the age of 80 but it would not be reasonable of me to expect her to work beyond her 65th birthday. In one sense, it is a matter for her. By working, she will boost her income somewhat. It will probably be good for her own health. It will certainly be valuable to her children to see her working hard in a profession, which is in stark contrast to the position of their father.

60. There is no doubt that the position adopted by the Husband throughout this case has made the job of the court far more difficult. It has not assisted him one iota. I recognise that, by finding he lacks capacity to litigate, he has a defence to the abject failure to comply with court orders. I have not, however, found that he lacks capacity to deal with his financial affairs. By continuing to pay him vast sums of money, it is clear that the Trustees do not consider he lacks such capacity. I am therefore entitled to be very critical of the way in which he has approached the provision of funds to his Wife and children. Moreover, just because you lack litigation capacity, it does not excuse dreadfully offensive anti-Semitic rhetoric that may well constitute a criminal offence.

61. I recognise that he does appear to consider that the court is involved in the theft of his assets, but I have to apply the law of the land. It is for Parliament to decide on the law of financial remedies following divorce, which it has done by passing the Matrimonial Causes Act 1973 and amending it on a number of occasions. The courts merely apply and interpret the statutory provisions. Up and down the land, spouses share, often equally, assets that have been generated by their efforts during the marriage. Regularly this involves a party who has generated those assets sharing them with the spouse who has been the homemaker and child-carer. In many other cases, claims are made against non-matrimonial assets to cover needs. The vast majority of spouses divide their assets without complaint as they, like the courts, see it as fair. The assets in this case were not generated by this Husband. They are the product of the considerable efforts of his ancestors and their very astute advisers. Indeed, so far as the Trust itself is concerned, it is not his asset, although he is a beneficiary. I accept entirely that this makes the Trust dynastic. The income, and the modest capital accrued from that income, are thus non-matrimonial assets but to say that the Wife has no entitlement to make a financial claim against those resources to cover her needs is bizarre, illogical and just plain wrong.

62. I have decided, by the narrowest of margins, that it is not appropriate to take into account the Husband's conduct in this case. To take it into account, I would have to be satisfied that his conduct was such that it would be "*inequitable to disregard*" it. In Miller/McFarlane, Baroness Hale approved the previous categorisation of this as a requirement that the conduct be "*gross and obvious*".

In this case, I am assessing the Wife's reasonable needs. The Husband's conduct has been very distressing to her, but it is difficult to see how it has affected her reasonable needs.

63. My decision not to take into account his conduct does not, however, extend to my approach to his assets. It has been said that it is up to the respondent to financial remedy litigation to open the cupboard door and show that the cupboard is bare. If he or she does not do so, the court can draw the inference that the cupboard is not bare. As explained in Baker v Baker [1995] 2 FLR 829, this is not an improper reversal of the burden of proof. It remains for the applicant to prove his or her case. A failure by the respondent to discharge the duty of providing full and frank disclosure can, however, lead the court to draw inferences that are appropriate. I will not be unfair to this Husband. I do not propose to find that he has assets available to him about which we know nothing, although that is, of course, a possibility. But I am going to proceed on the basis that the South American property is worth the figure that the Wife asserts and that the Husband retains every penny of the £325,000 in the Monaco account at the time of his Form E and the £723,018 forwarded to Monaco on his behalf last August. He has, after all, had the additional sum of £38,400 paid to him every month by the Trustees. If he has not managed his expenditure within that figure, he has only himself to blame.

The evidence on behalf of the Trustees

64. Mr K has now given evidence on two occasions. I have the transcript of his evidence before Holman J and I heard him give evidence before me. He told Holman J that the Trustees were distributing £76,800 per month net to the Husband, albeit that orders in this case have directed half of that amount into the frozen C Hoare & Co accounts. Mr K added that the occasional one-off distributions were designed to attempt to "*smooth out*" income. In fact, it now appears that, in reality, the Trustees have really been distributing undrawn income that was, presumably, previously withheld in case income fell dramatically. It is not clear how it ever got as high as £2.5 million but, if it was not for that distribution, the Wife would not have been able to secure her freezing injunction.

65. In his oral evidence to me, Mr K accepted that the forecast income of Fund A for the year ending 5 April 2018 had been £6.774 million whereas, in fact, the actual income was £10.178 million. He made the fair point that forecasting is difficult due to items such as voids, property maintenance and redevelopment projects. I accept entirely that maintaining the Estate requires significant expenditure that may, at times, affect profit levels to a considerable extent. I am, however, satisfied that the forecasts for the years to come are conservative and that the eventual figures may well be considerably higher than those on which I intend to work, namely the figure of £1,185,000 net per annum.

66. It is right that Mr Cusworth was very critical of Mr K in relation to the evidence he gave before Holman J and the way in which the Trustees distributed the sum of £723,018 to the Husband in August 2018. I accept the submissions of Miss Scott QC, who appeared on behalf of the Trustees, that the Trustees are not

parties to this litigation and that they have obligations to their beneficiaries that they do not owe to the Wife. I acquit Mr K of any impropriety.

67. Mr K was also asked extensively about the Trustees alleged volte-face about permitting the Wife to occupy a trust property in London. I accept that the Trustees did, initially, show a willingness to consider such an arrangement and that, on the face of it, the reasons for no longer being prepared to do so are not strong. Nevertheless, I am clear that they did so in the context of the Husband's July 2018 proposal. When read carefully, this proposal was not an offer by the Husband for the Wife to have two properties. I find that he was referring to the position when the former matrimonial home was sold. In any event, I am clearly of the view that it is for me to determine what is reasonable provision for the Wife and that, if this did include a London property, there would be much to be said in favour of it not being an Estate property given the open hostility of the Husband to any such provision for the Wife.

68. Mr K told me that two of the beneficiaries have life insurance policies to cover Inheritance Tax in the event of their death. The Husband has never had such a policy. I have obviously been concerned about the Wife's security, but it is clear to me that he would not cooperate in obtaining a medical report, which would be a fundamental requirement before securing such insurance. I have come to the conclusion that there is nothing that I can do about this although it is something that I factor into my thinking when coming to my conclusions, particularly about the division of the sum of £1.75 million frozen by order of this court. Again, however, his failure to have life cover may well have a serious consequence for all three of his children if his share of the Trust assets attracts 40% Inheritance Tax without a policy being in place.

69. Mr Hagen QC cross-examined Mr K on behalf of the Official Solicitor about the future of Fund A. The Estate has been in existence for a long time. It seems pretty clear that, over the years, fresh trusts have been settled prior to the existing ones vesting absolutely. Mr K reminded me that this may not be possible any longer due to the 20% entry charge. It may therefore be that CD, EF and GH receive a very significant sum outright at some point. Mr Hagen put it to Mr K that it would be impossible to treat the other beneficiaries fairly if there was a capital distribution in favour of the Wife. There are good reasons against such a capital distribution, but I agree with Mr K that this is not one of them. It would be relatively easy to sell assets and then adjust the Husband's share of the fund. There would be CGT to pay on the sales but, as Mr K said, assets do get sold.

70. I have already indicated that Mr Cusworth is not inviting me to make an order that requires the Trustees to make a capital distribution to the Wife. I consider that this concession was entirely correctly made. Whilst I do not accept that the Husband's opposition to such a capital distribution should carry significant weight in the minds of the Trustees, I do accept that there are many reasons that would be highly likely to lead to such well advised and responsible Trustees as here refusing to exercise their discretion in favour of such a capital distribution. These considerations include:-

(a) The dynastic nature of the Trust;
(b) The lack of significant capital distributions to any beneficiary over many years;
(c) The fact that the Fund generates such a high income for its beneficiaries;
(d) That the Wife herself is not a beneficiary;
(e) That the Fund is not a nuptial settlement; and
(f) That they might then feel an obligation to make a capital distribution to the Husband himself.

71. It follows that it would be wholly wrong for me to regard the Husband as having a capital entitlement of £74.3 million (70% of Fund A) as suggested by Mr Cusworth and Mr Sear in their Asset Schedule. The value of this Fund is its very substantial income stream. Provision for the Wife in this case will have to be made from the existing assets and this income stream.

My assessment of the Wife's reasonable needs

72. There is a huge gulf between the parties as to the level at which the Wife's reasonable needs should be assessed. The Wife asserts needs of £18.662 million whereas the value of the Husband's July 2018 proposal has been calculated at about £2.875 million. I propose to deal with each of the different heads of claim in turn.

73. The first is housing. I am clear that it is appropriate for the Wife to remain in the former matrimonial home for the foreseeable future if she wishes to do so. After all, the Husband himself accepted that she should remain there during the children's minority in his proposal. I accept her position may change if she finds it too expensive to maintain or she decides to move permanently to London or difficulties with the Husband require her to move on.

74. I do not accept the Wife's claim for £500,000 to renovate the property. First, over £1 million was spent on the property only some fifteen years ago. Second, the property is going to be made habitable by the insurance works being undertaken. The Wife accepts that this reduces her claim in this regard somewhat. Third, I have no accurate evidence of what a sum of £500,000 would be spent on. The report of Savills merely says the house appears "*tired*" which suggests redecoration to me rather than significant works. I accept that some of the outbuildings are in very poor condition and require remedial work, but this work has not been done for many years and is not, in my view, essential. The figure of £500,000 provided by Savills was very much "*plucked from the air*" following the request of Mr Parry-Smith. I have decided that the Wife should have some additional money to replace furniture and tidy up once the insurance repairs have been completed. I allow a sum of £50,000 for her to do so.

75. I reject the Wife's case for a second home in London. These parties did not have a home in London for the vast majority of the marriage. Indeed, they did not have a second home in this country at any point in the marriage. There simply is not the capital available to enable the purchase of such a property. I will, in due course, assess the Wife's reasonable income need. Having done so,

it is entirely a matter for her how she spends her resources. In theory, this could include a modest rented London base although she would have to be cautious to ensure her resources did not run out prematurely. Equally, she could, if she wished, sell the former matrimonial home and move to London. Mr Cusworth submits that the equity of £2.55 million would not enable her to purchase a home in London. I accept she could not purchase a four-bedroom property in the areas suggested by her property particulars as these properties cost around £1 million more than the equity in the former matrimonial home but she could purchase a property in London for £2.55 million, including the costs of purchase. It is entirely a matter for her how she spends her resources.

76. Mr Marshall submits to me that she can, in due course, sell the matrimonial home and buy a property in the area near the former matrimonial home for between £1 and £1.5 million. He has produced property particulars that show that she could, indeed, do so but I do not accept that £1 to £1.5 million is the correct long-term level for her housing need. I remind myself that the Husband's net income is more than £1 million per annum. I assess the correct figure long term as being the equity in the matrimonial home. She can either buy a property like the ones suggested by Mr Marshall and have a small flat in London; or she can buy a larger property in London with the entire proceeds; or she can stay in the matrimonial home. All these are matters for her.

77. I do accept that she needs a new vehicle. She told me she had a Land Rover Discovery that was fourteen years' old. She also has a Land Rover Defender that the au pair uses. She told me she wanted to buy a new Vogue Range Rover and an Audi TT. The latter was for the au pair. It appears that the cost of a Vogue Range Rover starts at about £80,000. I consider this too much money. A Land Rover Discovery starts at about £45,000. I allow £50,000. It is unclear to me how much longer it will be reasonable for the Wife to have an au pair if both children are weekly boarders. In any event, an Audi TT, starting at £30,000 is not appropriate. A reliable second hand "*run around*" such as a Ford Fiesta at say £15,000 is appropriate.

78. AB is owed £250,000 by the Husband. The Husband was clear that the payment he made at the outset of these proceedings did not relate to this sum but was interim maintenance. I am of the view that it is not appropriate for there to be secondary litigation as to the money AB is owed. I accept the Wife's undertaking to make provision for AB in the sum of £250,000 out of her award.

79. AB was treated as a child of the family, but he is not the Husband's son. He has his own father although I know nothing about his financial circumstances. In fairness to the Husband, he embraced AB as a full member of the family and, as I understand it, paid his school fees and other expenditure whilst he was growing up. I do not consider it would be reasonable to expect the Husband to have to pay now for AB's University education. There are three possibilities. First, the sum of £250,000 is used in this regard. Second, AB can take advantage of the loans made available by the Government to fund his tuition fees and part of his living expenses. Third, AB's mother can use part of her award to fund his expenditure.

80. So far as EF and GH are concerned, it is matter of great regret that the Husband has abandoned them and is not even paying their school fees. I assume that, as weekly boarders at independent schools, the fees will be approximately £35,000 per annum each plus extras. Such expenditure is exactly the sort of liability that is readily taken on by Trusts such as the Estate. I recognise that the wording of the Trust Deed in this case may make it impossible for the Trustees to pay these fees without the Husband's consent. It would be monstrous if he refused to give that consent going forward. Mr Cusworth satisfied me that the Husband is paying around £3,000 per month to CD for her living expenses and rent. The Fund pays an additional sum of £15,000 to her at the Husband's direction. I do not believe it right for me to capitalise the school fees, but I am going to proceed on the basis that the Trust will pay out of the Husband's income. I very much hope there will not have to be a third-party debt order every term but, if there has to be such an order, there will be such an order and it is highly likely that the Husband will have to pay the costs on each such occasion.

81. I am also clear that I cannot capitalise the Husband's child maintenance obligation. Mr Marshall has drawn my attention to the child support regulations that make it clear that I have no jurisdiction to make child periodical payment orders, in the absence of consent to do so or a maximum assessment having been made. There is no consent from the Husband although he cannot be criticised for that as he is entitled to deal with the matter via CMEC. Equally, there is not a maximum assessment. It follows that there is no jurisdiction to capitalise such maintenance as to do so would be to fly in the face of the child support legislation. This does mean that the money that the Wife receives for the children will be modest. This fact is partially mitigated by them being weekly boarders, but they still require a roof over their heads; clothing; holidays and the like.

82. The last claim, other than for capitalised maintenance, is for the contingent litigation fund. I recognise that such a fund was provided in the case of Al-Khatib v Masry [2002] EWHC 108; [2002] 1 FLR 1053 but that was a very different case to this as the father there had already abducted the children in breach of court orders to a non-Hague Convention country. There was already a clear need for what was likely to be lengthy and costly litigation. In this case, there has been no such litigation. It is right that, when the Husband had solicitors, he did, on a couple of occasions, indicate an intention to make an application for an order that the children live with him, but he did not do so. His more recent position has been the opposite, namely an intransigent opposition to litigation. Indeed, I have found that he lacks capacity to litigate. I am not aware of any decision in which a litigation fund has been established in a case where there is neither the immediate need for litigation nor has there been previous unjustified litigation. I appreciate that, if there is Children Act litigation in the future, the Wife would be unlikely to satisfy the court that she should have legal fees funding given the award I am about to make in her favour. Equally, I accept that costs orders are rare in Children Act litigation, but I am clear that this is a case where unjustified Children Act litigation most certainly could result in a costs order given the history of this matter.

83. I realise that there is an argument that the emails already sent by the Husband to a significant number of different people, including National Newspapers, which are deeply offensive, may give grounds for proceedings for defamation if the Wife wished to do so. I do not, however, take the view that it is my job to provide her with the costs to fund such litigation via the Matrimonial Causes Act 1973. Costs tend to follow the event in such proceedings and it certainly cannot be said that the Husband is not able to pay a costs order if one is made against him. It therefore follows that the claim in relation to a reversionary costs fund fails. Indeed, I consider it would be an illegitimate extension of the existing law to permit such a claim in a case where there has been no Children Act litigation and none is immediately necessary.

84. I now turn to the question of the Wife's maintenance claim. I have found her earning capacity to be between £20,000 and £25,000 per annum. The standard of living during the marriage was very high. The Husband has an extremely large income. The marriage lasted thirteen years with approximately two prior years of cohabitation. There were two children for whom the Wife has virtually sole responsibility. This will continue for several more years. She is already aged 49. She gave up her career to look after the family. All these factors point clearly to a substantial maintenance claim and a clear finding that she cannot adjust without undue hardship to the termination of that claim in the absence of a significant capital payment. A clean break in this case is essential so her maintenance claim must be capitalised. Having considered the authorities, I am clear that her entitlement is on a Duxbury basis, namely for her actuarial life. The length of the marriage may be relevant to the question of quantum, if only to avoid the Duxbury paradox that, the younger the applicant and the shorter the marriage, the higher the capitalisation figure.

85. What is a reasonable budget for her? Mr Cusworth puts forward a figure of £352,992 per annum net for life. He does so almost entirely on the basis of the standard of living during the marriage. I have already rejected the Wife's claim for a second home in London. Second, there were undoubtedly elements of reckless spending during the marriage that should not be allowed to inflate the income needs figure. Of course, the Wife could spend in excess of £300,000 per annum but I do not consider it would be reasonable for her to do so. Indeed, I am not convinced she has been spending at that rate. I accept that financing the former matrimonial home is expensive, but I do not accept that she needs £30,000 per annum for domestic help, nor £32,400 per annum for gardening. If that was necessary to maintain the former matrimonial home, it would have to be sold in due course.

86. I have come to the conclusion that an appropriate budget for her is £175,000 per annum for the rest of her life. She needs to be careful, but it may be that her expenditure will be higher in the next few years and lower thereafter. That is a matter for her. I do not propose to reduce this figure by her earning capacity. Her earnings will merely enable her to have a slightly higher standard of living, particularly holidays.

87. A Duxbury calculation for £175,000 per annum for a woman aged 49 is £4,162,000 whereas it is £4,088,000 for a woman aged 50. I have decided to

take the figure required as being £4.1 million which is slightly below the exact actuarial figure. It follows that her overall award is a fraction over £7 million. This is on the basis that the former matrimonial home is worth a net figure of £2.55 million; her own bank accounts hold £215,000 and the necessary lump sum is £4.25 million. I do not include in my calculations her chattels or her modest pension. The lump sum is therefore calculated as follows:-

Works to the former matrimonial home	£ 50,000
Cars	£ 65,000
AB's fund	£ 250,000
Duxbury lump sum	£4,100,000
Total	£4,465,000
Less bank accounts	(£ 215,000)
Lump sum required	£4,250,000

The Husband's ability to pay

88. The Husband has not cooperated in any way with disclosure. I am entitled to draw inferences against him, but I have decided to limit those inferences. I proceed on the basis that he has the South American property at £750,000 before costs of sale and the money in Monaco at £1,048,000. In addition, he has an income of £1,185,000 net per annum.

89. I am taking the sum on deposit with C Hoare & Co as being £1.75 million after the discharge of the outstanding costs on both sides. The Husband has not cooperated. He has made it extremely difficult for orders to be enforced against his income from Fund A. I cannot ignore the sum of £420,737 he spent on private jets shortly after the separation. If he had cooperated and it was clear there would be no future difficulties in securing compliance with my order, I would have been sympathetic to releasing to him at least part of the sum of £1.75 million so that he could put such sum together with his other funds to buy a new home. But, as he has not cooperated and is highly unlikely to do so in the future, it is only right that the Wife should have the entirety of this sum as part payment of her lump sum. It follows that, once paid, she will need a further sum of £2,500,000 which will have to be paid over time. I consider a reasonable period of time to be five years. This is £500,000 per annum.

90. The Wife will be kept out of part of her money for five years. She will have received 40% of the Duxbury fund immediately. She should therefore get the following maintenance payments in addition to the lump sum by instalments:-

Year 1	£105,000
Year 2	£ 84,000
Year 3	£ 63,000
Year 4	£ 42,000
Year 5	£ 21,000

91. The Husband can easily afford such payments. The highest payment will be £605,000 in year 1. I have found his average net income to be £1,185,000, In the first year, it is projected as being £1,086,000. On this basis, he will still have £481,000. After he has paid the school fees and maintained his mother and CD, he will still have more than enough to fund a very good lifestyle, including rental payments for a suitable property. After five years, his obligations will end entirely, other than to the children.

92. However, to protect both parties, I propose to continue the order that the Wife receives £38,400 per month which is half the net monthly payments. This means that the Husband will also receive £38,400 per month. The balance will be made up in August of each year when the retained income is distributed. If there is a shortfall, it will be carried over to the next year.

93. In addition, there will be an order for transfer of the matrimonial home to the Wife and a school fees order for both children. I will make any reasonable order to secure compliance with my award to include, if necessary, secured payments and freezing injunctions.

94. There will be a clean break so far as the Husband is concerned immediately and, so far as the Wife is concerned, once all payments have been made. There will be a section 28(1)(a) order preventing the term of her maintenance order from being extended. This will not prevent enforcement of any arrears.

95. There will be no order as to costs.

Mr Justice Moor
1 March 2019