Neutral Citation Number: [2023] EWFC 130

Case No: ZZ20D64316

IN THE FAMILY COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 4 August 2023

Before :

MR JUSTICE PEEL

- -

Between :

Dmitry Tsvetkov **Applicant**

- and -

Elsina Khayrova **Respondent**

- -

- -

Deborah Bangay KC and Richard Sear (instructed by Levison Meltzer Pigott) for the Applicant

Patrick Chamberlayne KC and Phillip Blatchly (instructed by Family Law in Partnership) for the Respondent

Hearing dates: 10-14, 17-21 July 2023

- -

Judgment Approved by the court for handing down

Mr Justice Peel :

Introduction

1.
In these financial remedy proceedings the assets are, as I find, about £48 million. The Wife (“W”) seeks 50% thereof, c£24m each. The Husband (“H”) seeks a 60/40 split in his favour, such that he would receive about £29m and W about £19m. The difference between their respective positions is about £5m. The parties’ combined costs are just over £3 million (W £1,327,081 and H £1,761,488) which is 60% of the disputed sum. How, then, is it that they have been unable to reach settlement? The main answer is the extraordinary facts of the case which have thrown up innumerable computational and conduct issues. There have been no fewer than 11 court hearings, and the parties have produced a total of 21 sworn statements. No stone was left unturned; the detail placed before me was at times mind boggling. Accordingly it is, regrettably, necessary for me to narrate the background in much more detail than would normally be required.

The parties as witnesses

2.
Counsel for W pointed out that H was found to be untruthful in other proceedings in 2022 between himself and a former business associate, Ernest Magdeev ("EM"). That is indeed the case. On the other hand, he was found to be generally truthful (if not faultless) in commercial court proceedings before Cockerill J between himself and the father of EM, Rustem Magdeev ("RM") in 2020. In the end, I consider that I should judge H as I find him, untainted by what was said both for and against him by other tribunals. On the whole, I thought he was, generally, truthful to me.

3.
W started her evidence from an unpromising position as it has long been obvious that during these proceedings she has repeatedly lied to H and to the court. Her Form E, that critical foundation of any case, contained numerous material omissions. Thereafter she uttered repeated falsehoods about the whereabouts of valuable jewellery which required a variety of freezing orders, and a search order, before the truth emerged. To be fair, in oral evidence she frankly acknowledged to me that she had lied, and apologised. Despite that admission, overall I did not find her persuasive on the major factual issues which I have to determine, and on balance I preferred H's evidence.

The factual background

4.
H is 42 years old, W 36. They have two children who divide their time between the parties' homes pursuant to a Child Arrangements Order.

5.
Both parties were born in Russia and each now holds UK, Russian and Cypriot passports. H moved to the UK in 2005 and acquired UK citizenship in 2010. W moved to the UK in 2007 and acquired UK citizenship in 2013.

6.
They married in 2009. At their wedding, H was introduced through W's well connected family to RM, who he came to regard as akin to an older brother. They became close friends and business partners, in particular in connection with a business in Cyprus trading Graff diamonds.

7.
H's career started in the development of software systems, but he soon developed a skill in acting as a consultant and advisor on behalf of wealthy individuals in respect of a variety of projects. One of the businesses invested in tech enterprises in Russia and Europe. In 2010, H and his fellow investors had a falling out. An injunction freezing $3.7m of his assets was made against him in 2011, although they eventually compromised on payment by H of $300,000. I am satisfied that the experience of being subject to this action led H to develop an attuned sense of the need to protect his assets from creditors and unsympathetic business associates. As a result, thereafter most family assets were placed in W's name.

8.
As a result, H and W moved to Cyprus. There, H set up a number of companies to continue provision of advisory services. Setting a pattern for the future, the shareholdings of these businesses were placed in W's name. By 2012, H's success had enabled them to buy a villa in Cyprus and an apartment in Dubai, each legally owned by W (one via a corporate entity).

9.

H’s career progressed, and wealth was generated principally from (1) his advisory work for high net worth individuals, (2) trading in Graff jewellery, watches and Pluczenik diamonds, (3) sales of art to private clients and (4) involvement in a Russian coal mine from 2016 onwards.

10.
At the beginning of 2018, the family returned to England, living mainly in a London flat, and using their Surrey property as a weekend home. These properties, as well as others in London, were bought between 2017 and 2019, and, again, placed in W’s name.

11.
There is no real dispute that the parties enjoyed what most people would describe as a fabulous standard of living; they deployed their wealth to acquire properties in multiple jurisdictions, they acquired high end cars and expensive jewellery and art, they flew regularly in private jets, and enjoyed luxurious holidays.

12.
By 2016, the relationship between H and RM was in difficulty. A feud developed, and the consequences are being felt to this day. A dispute developed about a $10m loan which had been made by RM to H in 2014, and which H asserted, but RM disputed, had been repaid. The issue was in due course litigated, and resolved in H’s favour in the Commercial Court before Cockerill J in 2020; the detailed judgment from those proceedings is publicly reported at **[2020] EWHC 887 (Comm)**.

13.
A further dispute arose between H and EM in respect of a loan made by RM to H in 2015. The benefit of the loan was assigned by RM to EM and, although the dispute was interlinked with the claim before Cockerill J, it had to be resolved by other legal proceedings because of a clause to that effect in the loan agreement. Those proceedings resulted in an award in favour of EM dated 26 May 2022 in the sums of €2,894,118 and USD 3,335,406, plus costs. That award is enforceable through the English courts pursuant to an order of Cockerill J dated 11 July 2022. As a result of various interim orders agreed between the parties and/or made by me, H has received sufficient monies from the sale of various assets such that he has now satisfied the award in full.

14.
In November 2019, a criminal complaint in Russia was issued against H in relation to various business transactions between 2011 and 2014; H says they are trumped up charges engineered by RM. In July 2020, a Russian court issued an arrest warrant against him. Interpol received from the Russian authorities a Diffusion Notice. As a consequence H feels unable to leave this country. He cannot open or maintain bank accounts anywhere in the world. He told me that he is in fear for his life, received an Osman warning in October 2020, has been the subject of three failed assassination attempts in this country, and is required to take expensive security precautions. He is hopeful that before long the Diffusion Notice will be cancelled, thereby enabling him to travel and open bank accounts. Of particular importance to him is that he would then have the opportunity to resume his trading career which requires him to travel to meet wealthy potential clients.

15.
H provided advisory services from 2016 onwards to the owner of a highly lucrative coalmine in Russia (“Stirakia”). H had a very close personal and business relationship with this person who I suspect was something of a mentor to him; he told me they used to meet almost every day for several years. Between 2016 and 2020, H estimates that he received in excess of £100m, before expenses and tax, as a result of his involvement in this business, from which the bulk of the UK assets, art and cars were

bought. This is where the family fortune was essentially made. Quite how these sums were quantified was not entirely clear. My impression is that although H no doubt provided valuable business and management advice, there may have been an element of largesse on the part of the owner due to their close personal relationship.

16.
In June 2020, 25% of the shares in Stirakia were allotted to H. The shares were placed in W's legal name to shield them from the criminal proceedings underway in Russia, and other ongoing litigation, as part of the protective structure for family assets. W granted H a Power of Attorney on 10 June 2020. In practice, W had no involvement; she was a cipher for H.

17.
In September 2020, an offer was made for the business which it was anticipated would realise $10m for the shares in W's name. The offer did not complete. The shares were eventually sold in 2022 for $7.5m.

18.
The marriage came to an end in early September 2020 when W told H that she wanted a divorce. W's petition was issued in November 2020, and H's cross petition in December 2020. Decree Nisi was pronounced on the first attended day of this trial. H's Form A was issued on 24 August 2021.

19.
On separation, W almost immediately prevented H's access to the family bank accounts and credit cards. Unbeknown to H, in August 2020 she had transferred Cypriot properties into her mother's name which I regard as an obvious attempt to place assets beyond the reach of H (I do not accept, as W claimed, that H told her to do this). She blocked H's operational involvement in Stirakia. She secured sole access to the safety deposit box at Harrods so as to take control of the valuable jewellery therein, intended to be used by H for trading purposes. She retained the rental income, from which the mortgages had to be met. The consequence of all this was that H was shut out of the family assets, with almost nothing in his sole name. He no longer had access to family bank accounts for his personal or business use. In 2021 he accordingly set up a Dubai company, the shares of which were held for him by a trusted associate, Mr D, pursuant to a formal nominee agreement, and banking arrangements were established. The facility was abruptly withdrawn by the bank in June 2022 for reasons to which I will return. Since then, H has had no means of accessing bank accounts or facilities provided by other financial institutions. The Russia/Ukraine conflict has exacerbated the situation and prevented him from doing any meaningful business anywhere in the world. Since late 2022, he has only been able to meet his financial requirements by (i) sale of assets pursuant to agreement and/or court order in these proceedings and (ii) borrowing from Mr D. Probably as a result of these steps carried out by W, H made no contribution to the mortgages from his income, nor did he pay school fees, or any child maintenance for a lengthy period of time, or pay debts referable to the Surrey property.

20.
Since separation, H has lived at the family home in Surrey, and W at the London family flat.

The assets: starting point and issues

21.
The assets comprise:

i)
Property assets in the UK, Dubai and Cyprus. Notably the value of the property in Surrey occupied by H is worth £25m gross and the property in London occupied by W is £11.5m gross. I shall return to the mortgages secured on these, and other, properties.

ii)
Bank accounts and investments (including an EFG portfolio).

iii)
Contents (jewellery, cars, art etc.).

22.
The many computational issues fall into the following categories:

i)
The value of valuable contents and jewellery, who they belong to, and where they are situated.

ii)
Add backs.

iii)
Whether certain pleaded liabilities are genuine, recoverable debts.

The beneficial ownership of UK assets

23.
H in his Form E said that the UK property assets were "put in [W's] name to protect [them] from any possible claims made against me in the course of my business dealings by third parties". He says that notwithstanding this arrangement, he is an equal beneficial owner under what he described to me as something of a fluid arrangement whereby they are W's for protective purposes but joint for other purposes. In his first witness statement in support of injunctive relief, H said: "In or around 2011 my assets were subjected to an injunction in respect of a claim against me…… Following those proceedings and in order to protect all my wealth as far as possible from similar problems and other corporate conflicts, especially those emanating out of Russia, I have put my assets in [W's] name".

24.
W in her Form E expressly asserted that she was the 100% legal and beneficial owner of the parties' UK properties. In a letter from her solicitors dated 10 May 2022, she said that assets were placed in her sole name "to protect the assets from [H's] creditors". In her s25 statement, W changed tack and purported to accept that H has a 50% beneficial interest in each property.

25.
Ordinarily, in financial remedy proceedings, it matters little as between a husband and wife in whose name an asset is beneficially held. The court has wide dispositive powers to adjust ownership as part of its overall determination of the fair outcome. An exception to this general proposition is where a third party asserts a beneficial interest, which may require determination; I say "may", because it will depend on the overall scale of assets, proportionality and relevance. But in the ordinary course of events the court will not need to embark on a detailed analysis of beneficial ownership.

26.

In this case, there are potential tax ramifications within the context of a query being raised by and H's response to that, relating principally to periods of UK residence and the receipt of monies from Stirakia. The purchase of properties in that period may have an impact on tax liabilities.

27.
I was not invited to determine the question of beneficial ownership. I did not case manage the proceedings in order to do so, although the implications of this were touched upon at direction hearings. But I believe I can express the view that, on the face of it, there is good reason to consider that the beneficial ownership of the UK properties vests, and has at all material times vested in W:

i)
The dicta of Lord Denning MR in **Tinker v Tinker [1970] 2 WLR 331** remain good law. He said at 334D-F:

"I am quite clear that the husband cannot have it both ways. So he is on the horns of a dilemma. He cannot say that the house is his own and, at one and the same time, say that it is his wife's. As against his wife, he wants to say that it belongs to him . As against his creditors, that it belongs to her. That simply will not do. Either it was conveyed to her for her own use absolutely: or it was conveyed to her as trustee for her husband. It must be one or other. The presumption is that it was conveyed to her for her own use: and he does not rebut that presumption by saying that he only did it to defeat his creditors."

ii)
H himself says that the properties were put in W's name to protect assets from creditors.

iii)
W initially was aligned with that presentation. Her change of heart in her s25 statement may have been because of a belated realisation as to the possible tax consequences.

iv)
The parties cannot have it both ways. Either the properties belong beneficially to W to give protection from potential creditors, or they don't. A fluid approach is not tenable.

However, I make clear that this is not a formal finding binding contra mundum; it is an indication of the way in which the evidence points.

28.
These comments are directed only to the UK properties. The position with other assets (art, jewellery, chattels, cars and the contents of the safety deposit box) seem to me to be rather more nuanced, not least because some of these categories of assets were utilised by H as trade stock.

Potential liabilities

29.
There are two potential liabilities which cannot be safely calculated in numerical terms, but both of which could, in theory, run into several millions of pounds. I must decide the apportionment of the risk between the parties.

(1)
Tax

30.

In his Form E, H said this:

“The process of assimilating the information required to complete this Form E has identified that there may exist historic and latent liabilities to taxation in the UK arising in particular but not exclusively by reference to the structures through which a number of the family’s assets have been purchased and enjoyed by the family from time to time….I am in the process of instructing specialists in the UK and elsewhere to undertake a full and urgent review of the position with the intention that as soon as possible any historic liabilities can be disclosed responsibly to HM Revenue & Customs and the historic position regularised, and so that any historic or latent tax liabilities can be taken into account as appropriate for the purposes of these proceedings. “

31.
My order of 13 June 2022 includes the following recital:

“It is further recorded and agreed that each party will take advice and consider carefully what historic and latent tax liabilities they may each have, with a view to submitting their respective calculations to Her Majesty’s Revenue and Customs. Each party is to keep the other fully and promptly informed and provide them with a full copy of any such declaration.”

32.
H has instructed specialist solicitors, leading counsel and accountants to advise him on his tax position. I am told that he has instructed his advisers to open discussions with HMRC. He has not waived privilege on any advice received thus far, for what seem to me to be well founded concerns that W might make mischief with any such information. What has been disclosed openly in correspondence dated 20 April 2023 by H is as follows:

i)
There are issues about the periods of H’s UK residence, and benefits received during periods of residence;

ii)
“the cautious approach would be for our clients to assume that a fund of £20 million should be reserved from the available resources to ensure that there are sufficient funds to meet liabilities on the part of our clients to UK tax, interest and penalties for historic purposes.”

33.
H told me that a large proportion of the £100m plus from Stirakia was received in the tax year April 2017 and 2018, during which he acquired UK residence in January 2018. The extent of any potential liability depends largely on whether a split year tax basis will apply.

34.
H himself seemed to me to be confident, or at any rate optimistic, that he has a reasonable case and, sees the £20m figure as a worst case scenario.

(2)
The Magdeev litigation

35.
I have already referred to the commercial court proceedings in 2020, and the other proceedings in 2022.

36.

There are three further sets of legal proceedings between the parties and the Magdeevs, all being played out in the Cyprus courts:

i)
A claim issued in 2017, brought on behalf of the parties' son, in respect of shares acquired for him in 2014, but transferred to a third party by RM in what H says was an unauthorised and/or fraudulent transaction.

ii)
A claim issued in 2018 by H and W against the Magdeevs for allegedly spreading false and malicious allegations about H. As pleaded, the relief sought is for €320,000 special damages and unquantified general damages. A counterclaim by the Magdeevs is for €20 million in respect of alleged misappropriation and mis-selling in the course of business activities.

iii)
A claim issued in 2020 by H and W, and a counterclaim by the Magdeevs, in respect of the ownership and whereabouts of missing jewellery said to be worth $600,000.

37.
I am in no position to make any comment about the merits of the litigation. On the face of it, however, there is both the possibility of recovering monies from the Magdeevs, and the risk of judgment against H and W.

Income

38.
Since June 2022, as a result of the block on H's ability to access financial institutions, H says that he has not been in a position to earn meaningful sums of money. However, he is optimistic that before long he will be able to start trading again, probably in art. He is clever, resourceful and well connected with extremely wealthy friends and associates. In the past he has earned vast sums. He told me that he expects to be successful again reasonably quickly. He fairly agreed with my suggestion that the sums in dispute in this case are relatively minor when compared with his future prospects.

39.
W did not work during the marriage. She has achieved no success with a coffee business set up during these proceedings. There is no real indication that her next business proposition, a private members' beauty club, is likely to be financially fruitful. More promisingly, she told me that she has a job offer earning commission for a high end travel agency owned by a friend of hers. But any earnings will pale in insignificance compared to H's.

Pleaded conduct

40.
Conduct under s25(2)(g) of the Matrimonial Causes Act 1973 is to be taken into account if it is:

"such that it would in the opinion of the court be inequitable to disregard it".

41.
In OG v AG [2020] EWFC 52 Mostyn J identified 4 situations where conduct is relevant, saying as follows:

“34. Conduct rears its head in financial remedy cases in four distinct scenarios. First, there is gross and obvious personal misconduct meted out by one party against the other, normally, but not necessarily, during the marriage. The House of Lords in Miller v Miller [2006] UKHL 24, [2006] 2 AC 618 confirmed that such conduct will only be taken into account in very rare circumstances. The authorities clearly indicate that such conduct would only be reflected where there is a financial consequence to its impact. In one case the husband had stabbed the wife and the wound had impaired her earning capacity. The impact of such conduct was properly reflected in the discretionary disposition made in the wife’s favour. Mrs Miller alleged that Mr Miller had unjustifiably ended the marriage discarding her in favour of another woman. Therefore, she argued that Mr Miller should not be permitted to argue that their marriage was short. This argument was rejected by the House of Lords which held that the conduct in question, although greatly distressing to Mrs Miller, should not find independent reflection in the court’s decision.

35. The conduct under this head, can extend, obviously, to economic misconduct such as is alleged in this case. If one party economically oppresses the other for selfish or malicious reasons then, provided the high standard of “inequitable to disregard” is met, it may be reflected in the substantive award.

36. Second, there is the “add-back” jurisprudence. This arises where one party has wantonly and recklessly dissipated assets which would otherwise have formed part of the divisible matrimonial property. Again, it will only be in a clear and obvious, and therefore rare, case that this principle is applied. In M v M [1995] 2 FCR 321 Thorpe J found that the husband had dissipated his capital by his obsessive approach to the litigation, which had included starting completely unnecessary proceedings in the Chancery Division. That dissipation was reflected in the substantive award. Properly analysed, that decision can be seen as a harbinger of the add-back doctrine rather than a sanction reflecting a moral judicial condemnation.

37. In this case the sums loaned by the husband to TT will all be added back to the matrimonial pot at full value. The husband does not resist this.

38. Third, there is litigation misconduct. Where proved, this should be severely penalised in costs. However, it is very difficult to conceive of any circumstances where litigation misconduct should affect the substantive disposition.

39. Fourth, there is the evidential technique of drawing inferences as to the existence of assets from a party’s conduct in failing to give full and frank disclosure. The taking of account of such conduct is part of the process of computation rather than distribution. I endeavoured to summarise the relevant principles in NG v SG (Appeal: Non-Disclosure) [2012] 1 FLR 1211, which was generally upheld by the Court of Appeal in Moher v Moher [2019] EWCA Civ 1482. In that latter case Moylan LJ confirmed that while the court should strive to quantify the scale of undisclosed assets it is not obliged to pluck a figure from the air where even a ballpark figure is in fact evidentially impossible to establish. Plainly, it will only be in a very rare case that the court would be unable even to hazard a ballpark figure for the scale of undisclosed assets. Normally, the court would be able to make the necessary assessment of the approximate scale of the non-visible assets, which is, of course, an indispensable datum when computing the matrimonial property and applying to it the equal sharing principle.”

42.

Although **Goddard-Watts v Goddard-Watts [2023] EWCA Civ 115** and **TT v CDS [2020] EWCA Civ 1215** were cited to me, I do not think these decisions add greatly to the analysis of Mostyn J in **OG v AG**.

43.
A party asserting conduct must, in my judgment, prove:

i)
the facts relied upon;

ii)
if established, that those facts meet the conduct threshold, which has consistently been set at a high or exceptional level; and

iii)
that there is an identifiable (even if not always easily measurable) negative financial impact upon the parties which has been generated by the alleged wrongdoing. A causative link between act/omission and financial loss is required. Sometimes the loss can be precisely quantified, sometimes it may require a broader evaluation. But I doubt very much that the quantification of loss can or should range beyond the financial consequences caused by the pleaded grounds.

This is stage one.

44.
If stage one is established, the court will go on to consider how the misconduct, and its financial consequences, should impact upon the outcome of the financial remedies proceedings, undertaking the familiar s25 exercise which requires balancing all the relevant factors.

This is stage two.

45.
I have noted an increasing tendency for parties to fill in Box 4.4 (the conduct box) of their Form E by either (i) reserving their position on conduct or (ii) recounting a litany of prejudicial comments which do not remotely approach the requisite threshold. These practices are to be strongly deprecated and should be abandoned. The former leaves an issue hanging in the air. The latter muddies the waters and raises the temperature unjustifiably.

46.
In my view, the following procedure should normally be followed when there are, or may be, conduct issues:

i)
Conduct is a specific s25 factor and must always be pleaded as such. It is wholly inappropriate to advance matters at final hearing as being part of the general circumstances of the case which do not meet the high threshold for conduct. That approach is forensically dishonest; it impermissibly uses the back door when the front door is not available: para 29 of **RM v TM** **[2020] EWFC 41**.

ii)
A party who seeks to rely upon the other’s iniquitous behaviour must say so at the earliest opportunity, and in so doing should; (a) state with particularised specificity the allegations, (b) state how the allegations meet the threshold criteria for a conduct claim, and (c) identify the financial impact caused by the alleged conduct. The author of the alleged misconduct is entitled to know with precision what case he/she must meet.

iii)

Usually, if relied upon, the conduct allegations should be clearly set out at Box 4.4 of a party's Form E which exists for that very purpose.

iv)
The court is duty bound by FPR 2010 1.1 to have regard to the overriding objective:

(1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.

(2) Dealing with a case justly includes, so far as is practicable –

(a) ensuring that it is dealt with expeditiously and fairly;

(b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;

(c) ensuring that the parties are on an equal footing;

(d) saving expense; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

v)
In furtherance of the overriding objective, it is required to identify the issues and empowered to determine which issues should be investigated. At FPR 2010 1.4:

(1)
The court must further the overriding objective by actively managing cases.

(2)
Active case management includes—

(b)
identifying at an early stage—

(i)
the issues

(c)
deciding promptly—

(i)
which issues need full investigation and hearing and which do not; and

(ii)
the procedure to be followed in the case;

(d)
deciding the order in which issues are to be resolved;

vi)
The court should determine at the First Appointment how to case manage the alleged misconduct. In my judgment, in furtherance of the overriding objective and FPR 2010 1.4, the court is entitled at that stage to make an order preventing the party who pleads conduct from relying upon it, if the court is

satisfied that the exceptionality threshold required to bring it within s25(2)(g) would not be met. The court should also take into account whether it is proportionate to permit the allegation to proceed, for a pleaded conduct claim usually has the effect of increasing costs and diminishing the prospects of settlement. Finally, the court should take into account whether the allegation, even if proved, would be material to the outcome.

vii)
Of course, in some instances alleged conduct may rear its head after provision of Forms E. One obvious instance is where a party wantonly dissipates monies in the lead up to trial. Should a party seek to advance a conduct claim, this must be brought before the court as soon as possible so that it can be case managed appropriately.

viii)
Wherever conduct is relied upon, and the court permits it to be advanced at trial, it should be pleaded. It will be for the court to decide how best to manage the issue. Usually, an exchange of short, focussed narrative statements will suffice (page limits are an indispensable tool in the judicial armoury and should be deployed) but such statements must set out in particularised detail (a) the facts asserted, (b) how such facts meet the conduct threshold, and (c) what consequential financial loss or detriment has occurred.

47.
Finally, and for the avoidance of doubt, this suggested procedural route will not be necessary or appropriate where a party relies only on litigation misconduct. The court will ordinarily be able to deal swiftly with costs at the hearing in time honoured fashion.

48.
In this case, H in his Form E stated that he reserved his position. However, a number of matters came to light after the date of his Form E. Accordingly, at a hearing before me on 3 February 2023, I required H to identify conduct allegations which he relied upon. In the event, six specific heads of alleged misconduct were advanced and recorded on the face of my order and the parties then produced narrative statements directed to the six allegations to which I now turn.

Conduct (1): Preserved Jewellery

49.
Although there is some agreement as to how to approach this issue, I need to set it out in detail, not least because it affects my assessment of the parties and their veracity, and accordingly has an impact on other areas of the case.

50.
A number of investment grade diamonds, and a Patek Philippe watch, have been referred to during these proceedings as items A to H (confusingly, items F and G are sometimes referred to together as Item F only). The diamonds are difficult to sell at full value without their GIA certificates, which are in H’s possession.

51.
All the items were held in a Harrods Safety Deposit Box registered in W’s name, but to which H historically held the keys. On 21 October 2020, unbeknown to H, W persuaded Harrods that the keys had been lost and obtained a set of keys for herself.

52.

In her Form E in January 2022, W made no mention of these items. She has since said that was an oversight which I do not accept.

53.

Because of the omission in her Form E, H immediately raised the jewellery in correspondence. W replied on 20 January 2022: “This is my jewellery and it was removed to my Cyprus safe because [H] came into my Knightsbridge house and emptied everything from my safe”. There was no explanation as to how she had effected removal given that H (as far as he was aware) held the only access keys.

54.

On 28 January 2022, H obtained from Arbuthnot J a short notice preservation and inspection order against W in respect of the items. In a written statement for that hearing (and a further statement provided shortly thereafter pursuant to court order), and again through counsel, W said that she had removed the items to a safe at the villa in Cyprus. She gave an undertaking not to remove the items held there. We now know that she had not taken the items to Cyprus, and none of them were in fact there.

55.

On 14 February 2022, at the First Appointment, I made an order by consent providing a detailed mechanism for recovery of the preserved items from Cyprus. The parties’ solicitors were authorised to travel to Cyprus on 21 March 2022, attend at the villa the next day, open the safe, remove the items, transport the items to the airport, fly them by private jet to the UK, and re-deposit them in the Harrods Safety Deposit Box.

56.

On 18 March 2022, at a hearing before Moor J, those arrangements were varied to provide that the items, when confirmed to be in the Cyprus safe, should be retained there pro tem. The judge twice asked W directly where the items were, and each time she said they were in Cyprus. That assertion was recorded as a formal confirmation on the face of the order. It was false.

57.

On 22 March 2022, H’s solicitors attended at the Cyprus villa to inspect the safe. When it was opened, the preserved items were not there. She had not taken them to Cyprus and they had always been in England. W had uttered barefaced lies to H and the court.

58.

On 1 April 2022, at a without notice hearing before Sir Jonathan Cohen, H obtained a search order entitling the Tipstaff, in the presence of H’s lawyers and a supervising solicitor, to enter W’s London flat and locate and seize the items. During the search, which was carried out later that day:

i)

W was served with the order and attended at the flat. She telephoned her solicitor who also attended.

ii)

Items A, C and D were handed over by W.

iii)

W told H’s solicitors that:

a)

Item B had been removed from the safe not by her, but by H (which was subsequently shown to have been a lie).

b)
Items E, F and G were in a safe at a different property (not the villa) in Cyprus.

c)
Item H (the watch) had been handed to her boyfriend, Mr R, who had sold it.

59.
On 4 April 2022, W filed a statement in which she said:

i)
H had removed item B (as she had claimed during the search).

ii)
She had removed the other items from Harrods in July 2021.

iii)
Items E, F and G were given by her to Mr R for safekeeping (a different version to the one provided during the search). She had asked him to return them, and he refused.

iv)
She gave item H (the watch) to Mr R in July 2021, which he had sold as part of the process of setting up a joint coffee shop business.

60.
On 5 April 2022, Holman J joined Mr R to the proceedings and ordered him to deliver up any of the items in his possession or control.

61.
Mr R has produced a number of statements in which he has stated:

i)
He and W agreed in July 2021 to set up a coffee shop/florist business.

ii)
W gave him the watch which he sold for £358,000. He paid for certain personal outgoings for W.

iii)
He denied having received any other items from W, contrary to her case.

Subsequently, he was discharged as a party from the proceedings. He was not witness summonsed to court for the hearing before me.

62.
On 30 May 2022, W informed H that she had recovered item B (having previously claimed H had been responsible for its removal). She returned it, albeit it showed signs of damage to the culet. As part of his case, H suggested he should be recompensed for the damage, but the SJE was not asked to give an opinion on the impact on value of the damage, and I decline to guess what the figure might be.

63.
On 9 June 2022, W recovered what was said to be item E from Mr R and returned it.

64.

To muddy the already murky waters of this sorry tale, SJE valuers confirmed that items C (recovered in the London flat search) and E (later produced by W) were fakes.

65.

The upshot of this tangled web is that:

i)

Genuine items (i.e not fakes) A, B and D were recovered, and item B has since been sold by agreement.

ii)

Items C, E, F and G have not been recovered (in the case of C and E, the items produced by W were fakes). W says that all these items were handed to Mr R for safekeeping and he has not returned them.

iii)

Item H (the watch) was sold by Mr R.

66.

H's original estimate of the values to be ascribed to these items (nearly £18m) was overblown. They have since been valued. The value of all items except B (since sold) and H (the watch sold by Mr R) is £6,690,000.

67.

It is accepted by W that in principle these items (other than item C which she says, but I do not accept, is in the possession of H) should be added back on her side by way of reattribution. That concession was first recorded on the face of the order of 26 April 2022 and has been repeated thereafter. In my judgment, the concession was properly made, but the fact is that she has spun a web of egregious falsehoods to H and the court.

68.

I am quite satisfied that W is in possession of item C, despite her denials. I am also satisfied that W's case that she cannot recover the other items from Mr R is false. I see no reason why I should believe what she told me on this subject given the numerous lies which she has told the court. Mr R denies he holds them, and has not been required to attend court. It is notable that as part of her open proposal, W seeks a hand over of the GIA certificates to her, which would be unnecessary if she did not have possession or control of the diamonds. She has not brought legal action against Mr R. I agree that it is proper to add back the value of these items on W's side, but I do so on the basis that she either has possession of the items somewhere or that she can obtain them, not on the basis that she must bear responsibility for items which she can no longer recover.

69.

The importance of the distinction is that I am confident W can access additional resources (the missing items which are available to her), to which can be added items A and D (which have been recovered) so that the total sum on her side of the balance sheet will be £6,690,000. In other words, I have reached a conclusion which is not based on a **Vaughan v Vaughan [2008] 1 FLR 1108** addback, but rather is a finding that W continues to hold the items in her possession or control. The former is a technique of adding back monies which have been dissipated through the reckless behaviour of one party, but no longer exist. The latter is a finding of fact about ownership of items

which are in existence. The **Vaughan** addback does not create money as such; it penalises the delinquent party by notionally adding back the dissipated funds so as not to prejudice the innocent party. Here, the assets have not been dissipated in the sense, for example, that they have been extravagantly spent. They have been spirited away, but remain an available resource for distribution.

70.
I will also add back in the value of the watch (item H). It was sold for £358,000 by Mr R to a watch dealer in July 2021 without the box and documents which remain in H’s possession. It was almost immediately sold it on for $570,000 (about £440,000). H tells me it was bought for £579,020 in 2018 (£514,000 on today’s exchange rates). I accept that it could have sold at a higher figure than £358,000 had the box and documents been included; it is well known that these are a necessary part of achieving the optimum value for watches. In my judgment, this was wanton and reckless on W’s part, who stole the watch, handed it over to Mr R without H’s knowledge, and allowed it to be sold without its box and documents. I asked during the hearing for the SJE to do a valuation of the watch, with its box and certificate; they replied in cautious terms, not having been able to view it, and said that a similar watch sold in 2020 for £415,000, but since then values of such watches have gone up by 60% (which might suggest a current value of £664,000). This was not a formal valuation, and I treat it with some circumspection; as the valuer says, there are a number of unknown variables. Moreover, there is some evidence that from Mr R that he paid some monies to or on behalf of M. Doing the best I can, I propose to add back the value of the watch at £550,000. This is not entirely a **Vaughan** addback, for W tells me that Mr R owes her £400,000; thus, she should be able to recover the bulk of the monies.

71.
In his statement in support of the conduct claim, H advanced what seems to me to have been a somewhat ambitious claim, namely that the addback values should not be those ascribed by the SJE valuation, but by reference to his own estimate of what the items were worth when removed in 2021, a sum nearing £13m (almost double the SJE valuations) reflecting, he suggested, the lost opportunity for him, as a trader, to sell them at a higher value. Sensibly, in my view, he did not pursue that argument; in his evidence, H accepted that this was an “extreme” suggestion. There is no SJE evidence of the value in 2021, no evidence of formal offers to purchase, nor indeed any cogent evidence that he was contemplating a sale of these items at that time.

Conduct (2): collaboration with the Magdeevs

72.
On 14 February 2022, both parties gave an undertaking to me at the First Appointment as follows:

“Neither party shall:

a.
reveal to Mr Rustem Magdeev or any other third party unconnected with these proceedings any of the financial particulars or any of the documents disclosed in these proceedings;

b.
cause or facilitate publication in any form of the financial particulars or documents;

c.
take any steps as a result of which the financial particulars or documents are likely to become public knowledge or are reasonably foreseeable as being likely to become public knowledge; and

d.

fail to take any steps which either party may reasonably be expected to take to prevent the said financial particulars or documents from being public knowledge in circumstances in which they would otherwise be likely to do so.”

73.

The background to this was H’s concern that W might approach the Magdeevs and make mischief. He was, as it turns out, right to have been worried. It is now known that W initiated an approach to them via Mr R in September 2021 and maintained regular contact with them, or their agent, up to June 2022, including at least one videocall. Their discussions were about the Cyprus litigation, and the English financial remedy proceedings.

74.

Extraordinarily, W entered into two separate, but linked, agreements with EM in January 2022, neither of which she informed H or the court about until June 2022.

75.

On 18 January 2022, they entered into an agreement in respect of the Cypriot litigation, the terms of which were:

i)

W would discontinue her participation in the claims against the Magdeevs, and they in turn would discontinue against her.

ii)

W would withdraw her consent to H acting on behalf of their son in the alleged mis-transfer of shares litigation.

iii)

W would agree to the earrings being retained/delivered up to the Magdeevs.

iv)

W would provide witness statements for each strand of ligation to assist the Magdeevs. If she has in fact done so (she thinks she may have done one such statement), they have not been produced by her to this court.

76.

The consequence of this was to assist the Magdeevs against H in the ongoing Cyprus litigation. Whether her involvement has had any detrimental impact on H’s position in that litigation, and therefore a direct financial impact upon H, is impossible to say. There is no evidence either way. It is, however, obvious that W colluded with the Magdeevs to try and cause H damage.

77.

The next day, 19 January 2022, W entered into a formal Litigation Funding Arrangement (“LFA”) with EM. Pursuant to the arrangement:

i)

EM is entitled to see all documents in these financial remedy proceedings, which are to be supplied to him by W. The agreement records that they “share a common legal interest in sharing information”.

ii)

EM is to pay W’s legal costs up to £400,000 (W has so far received £200,000).

iii)
W must pay EM 30% of what she receives from this financial remedy litigation.

78.
The terms of the agreement are, on one viewing, highly disadvantageous to W (even punitive). W claims that she had to resort to “self help” because she was under intense financial pressure. I do not accept that presentation for one moment. She had been in in receipt of regular legal advice and representation, the bulk of the assets were in her sole legal name, it was open to her to apply to court for release of funds and she had illicitly removed millions of pounds of jewellery. Her plea of “desperation” is far fetched.

79.
It is hard to conceive that on any view she thought it sensible, or wise, to breach the confidentiality of these financial remedy proceedings. I regret to say that the steps she took were deplorable. Her undertaking given to me on 14 February 2022 was specious and dishonest, for she did not disclose the two agreements or her ongoing communications with the Magdeevs. Nor can I begin to see how giving away 30% of her award was a sensible bargain for receiving up to £400,000 of legal costs.

80.
Despite the solemn promise given to me by W, she subsequently sent a copy of H’s Replies to Questionnaire to the Magdeevs on 21 June 2022, containing, as it does, a wealth of H’s financial information. She accepted to me that she knew that document was confidential. She says she has not sent any other information although, frankly, there is no way of knowing whether she is telling the truth on that. The most that can be said is her history of duplicity does not fill me with confidence about her veracity.

81.
In June 2022, W repented and came clean to H and his lawyers who had been wholly unaware of the communications between W and the Magdeevs. She says that she has now terminated the agreements with the Magdeevs.

82.
Given that the bulk of the assets are in her name, it is likely that the final order made by me will involve her relinquishing assets to H. The wording of the LFA is to pay 30% of “the gross amount received by her”. It may be argued that she will not in fact receive anything from H; she will be the payer, not the payee. That, however, is speculation on my part. Sensibly, it is acknowledged on her behalf that any sums which she has to pay to EM by reason of this agreement must fall at her door.

83.
At about the time when W sent H’s Questionnaire Replies to the Magdeevs, H had access to only one bank, via the trading company in Dubai in the name of Mr D. Almost immediately after W disclosed the Replies, the bank told Mr D that it had received anonymous messages about activities involving third parties on Interpol’s list (presumably a reference to H) and that use of the accounts would be stopped. As a result, H lost access to his last remaining bank accounts.

84.
So, submits H, W’s actions caused the closure of H’s facilities. H was unable to meet expenses out of his Dubai bank account. On his case, he had to engage in a fire sale of assets, specifically two paintings sold in July 2022 for £1.2m when they were worth, according to his Form E, £1.35m. Thus, he says, the financial impact upon him was a loss of £150,000. I regard this all as somewhat

speculative. Even if W's conduct led to the closure of the accounts, I am not persuaded of a causative link with the sale of paintings. H accepted that many of his Form E figures for other items of jewellery and art were too high, in the light of subsequent valuations, so it seems possible to me that his estimate for the value of the two paintings was on the high side. There is no SJE evidence to assist me. H relies in part on hearsay evidence, in that he was told by the purchaser (a friend of his) that he intended to sell one of the paintings for £150,000 more than he had paid H. I conclude that H has not satisfied me of any demonstrable loss caused by W's appalling actions, although, as with many aspects of W's behaviour, it may sound in costs.

Conduct (3): Stirakia

85.

In September 2020, an oral offer was made to purchase Stirakia at a valuation which would have netted $10m for the shares in W's name. W through her counsels' opening note submitted that there was no evidence of an offer at that level, but a small clip of documents, including draft terms of sale prepared by Herbert Smith Freehills, satisfy me that the offer was indeed made. I am also satisfied these documents were sent to W at the parties' linked email accounts, which W (contrary to her evidence to me) used. I am quite sure that W was aware of the offer.

86.

H says that W blocked the sale, which fell through in about October 2020. Curiously, there is not a shred of documentation to evidence the collapsed sale and, particularly, that W was the instigator of thereof. There is nothing by way of legal documents, correspondence, emails, messages etc. from lawyers, or shareholders, or H complaining about W's actions and asking her to reconsider. There is nothing to satisfy me (i) that W did indeed block the sale and (ii) that her actions were causative of the failed sale; for example, I cannot discount the possibility that the sale did not go through for other, unrelated reasons such as the purchaser or other shareholders getting cold feet, or legal difficulties. At no point did H's solicitors, instructed on the divorce, say in correspondence that W had blocked the sale, or cost the family a large sum of money, and that her conduct would fall to be taken into account. For example, a letter from his solicitors dated 22 January 2021 simply says that "the sale did not go through" with no criticism of W's actions. H's reaction to all this seems to have been curiously muted. In his Form E, in the conduct box he simply said his position was reserved, which strikes me as surprising if in fact he considered W had prevented a sale at a substantial cost to the family a matter of only three months previously.

87.

True, in December 2020, W notified the other shareholders of her intention to sell the shares for $1.5m to a new purchaser which, on any view, would have been a considerable undervalue, although there is no evidence that a sale agreement was in fact signed. It is also clear that she terminated the Power of Attorney in H's favour and blocked company dividends. She subsequently relented from this implacably obdurate stance, and reissued the Power of Attorney to H in July 2022, enabling him to manage the shareholding and negotiate a sale. But none of this demonstrates that (i) W actively sought to block the sale between June and October 2020 and (ii) her actions were in fact the sole or primary cause of to the sale falling through in October 2020.

88.

Eventually, in December 2022 a sale of the shares was agreed at $7.5m, $2.5m below the $10m offer made in 2020. H seeks reattribution of that sum to W's side of the balance sheet, arguing that W's conduct amounted to reckless or wanton actions which led directly to financial loss of $2.5m, and

therefore falling within the **Vaughan v Vaughan** criteria. As I have indicated above, this head of claim fails for want of proof of the asserted allegation.

Conduct (4): The EFG mortgage debt

89.
The parties are jointly liable for a £23m mortgage in favour of EFG secured by way of cross collateral on (i) the FMH in Surrey, (ii) the flat in London and (iii) an EFG investment portfolio which until the end of last year funded the regular instalments from its income return. The portfolio originally stood at about £10m. H says, and I accept (contrary to W's denials), that it was agreed by the parties with EFG in late 2022 that £2m from the original portfolio value of £10m be liquidated to reduce the borrowing from £25m to £23m, followed by liquidation of the balance of £8m to reduce the overall indebtedness to £15m. The £2m was duly applied in this way. The remaining £8m was liquidated into cash, but in December 2022 W refused to allow it to be applied towards the mortgage. The monies no longer produce an income, the capital has not reduced the mortgage, and accordingly H says that about £130,000 of unnecessary mortgage interest has been/is being incurred. His case is that W should have followed through with the agreement.

90.
I am not satisfied that this reaches the high threshold of conduct. It is frequently the case during divorce and financial remedy proceedings that interim arrangements are disputatious, with issues about financial support, interim sale of assets, cashflow and the like. In this case, I was met with repeated allegations and counter allegations at almost every direction hearing in respect of interim matters. To try and unpick them all now would be problematic, and not proportionate. The breakdown of marriage regularly leads to the dismantling of the financial edifice underpinning it. The court will not usually at trial embark upon an audit of the interim arrangements from the date of issue to the date of final hearing. Sometimes, a particular aspect of the arrangements, or one or other party's acts or omissions, will leap off the page as being relevant to the overall disposition. That might (albeit rarely) lead to a **Vaughan** addback or, perhaps more commonly, might impact upon costs. The court will acknowledge the realities of life, that marital breakdown is painful and expensive. In this case, I take the view that the amount is relatively trivial in the context of £50m of assets, and W's behaviour does not reach the requisite threshold, although it may impact upon costs.

Conduct (5): the sale of a Dubai property

91.
This is no longer pursued and I need say nothing about it.

Conduct (6): chattels

92.
It is H's case that, quite apart from the preserved jewellery referred to above, W has removed other items of jewellery referred to as items 29-53. W by contrast, claims that in September and October 2020 it was H who removed most of the items from the safe at the London flat. Thus, the battle lines are drawn: H says they are in W's possession, W says they are in H's possession.

93.
Some of the items have been located. Insofar as the parties disagree about the whereabouts of other items, I prefer H's evidence. W's case somewhat collapses on this, given that in Instagram photos she is shown as wearing 6 of the items which she says were taken by H; her claim in evidence that H had

removed them, but then gave some back to her to wear was one I cannot accept (it was only mentioned fleetingly in one of her many statements, and was not put to H in cross examination). It is of note that W clandestinely gained access to the Harrods Safety Deposit Box on 21 October 2020 (about the time of H allegedly removing the items from the London safe) without informing H. And of course, she has been shown to have lied to H and the court on multiple times about the Preserved Jewellery, including making the identical (but false) assertion that it was H who stole the Preserved Items. Curiously, although W alleged in correspondence that H had removed items, she initiated no steps at court and did not even provide a list of what had allegedly been removed by H. It was only when H sued her in 2021 in the Queen's Bench Division (as it then was) for delivery up of his passport that W counterclaimed for conversion, alleging wrongful interference by H with chattels and jewellery. There was some confusion in the evidence about the combination number of the safe, but overall I am amply satisfied that H is to be preferred on this issue.

94.
I find as follows about items 29-53:

i)
Items 31 and 38 should be ignored (they have been legitimately disposed of). Items 42 (both parties agreed before trial it does not exist, although in her evidence W rowed back on that) and 43 (exchanged for another item on the list) will also be ignored.

ii)
Items 29 and 44-53 have been valued and shall be attributed to W at the agreed figure of £193,250.

iii)
Items 30, 32-37, 39-41 and 52 will be attributed to W at the agreed figure of £206,122.

Conduct: other points

95.
In closing I was surprised to hear H through counsel advance a conduct claim which ranged far beyond the six pleaded grounds. Most glaringly, he asserted that by reason of not having access to financial institutions from June 2022 onwards, he has lost income of £2.5m, which he attributes to W's conduct. That figure was, I was told, calculated by reference to an analysis of his income in the previous year and a half. This submission, along with the others raised for the first time, was untenable:

i)
It had not been pleaded by H. It did not appear in his conduct statement. If he wanted to run this argument, he was obliged to do so in that statement. The argument first appeared in closing submissions, not having been notified to W or the court.

ii)
No evidence was adduced. The calculation justifying the figure was apparently done by H's legal team by analysing bank statements, yet the analysis was not provided to me (nor, I believe, to W).

iii)
H has had ample time to prepare for this case and advance his claims. As Lewison LJ memorably said in **Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5; [2014] ETMR 26** at para [114]:

"ii.

The trial is not a dress rehearsal. It is the first and last night of the show.”

iv)
To that I add the elementary legal maxim that “S/he who asserts must prove”. Mere assertions will not do.

v)
This unprincipled attempt to introduce substantive new allegations in this way neatly demonstrates why the discipline of a properly pleaded conduct case is essential.

96.
I do not accede to H’s contention that W’s conduct should be reflected holistically in a 60/40 split in his favour for the following reasons:

i)
The conduct claim was specifically pleaded by reference to six grounds, upon each of which I have adjudicated. I do not see any justification for quantifying conduct on a broad based approach which goes beyond the loss occasioned by those six grounds; that would be a somewhat arbitrary approach.

ii)
It is based, at least in part, on matters put forward in closing which were not part of the case in opening, and upon which no evidence was adduced in writing or orally during the trial.

Computation

97.
I must now resolve the remaining computation issues.

98.
Debt to Mr D:

i)
After closure of the bank facility in June 2022, in circumstances to which I have already referred, H was unable to access financial institutions. Thereafter, Mr D met H’s financial needs personally, either by direct cash payments or giving him access to credit cards. This had been an arrangement in place for a few years but at a relatively low level. Over the course of the past year or so, Mr D has, on H’s case, met just under £1.1m of expenses on behalf of H. Mr D has confirmed this in two letters, with a supporting schedule. It is an unconventional arrangement, but the reason for it is plausible. I generally believed H in the witness box, and the sum owed, although high, is not inconsistent with the general level of expenditure of these parties. I ask myself the question; where else did H meet his expenses from in that year if not from Mr D? There is nothing to point to another resource available to him, nor was one suggested on behalf of W.

ii)
W sought to challenge the debt by suggesting that Mr D had received from H a necklace and a watch in or about 2018. The way the argument was put was inconsistent. It was suggested that (i) the combined value of the items was or should have been broadly equivalent to the loan, and were set against it such that no loan is owing or (ii) the items are in H’s possession and should feature on his side of the balance sheet; these are mutually contradictory. I accept H’s explanations about these items:

a)

He bought a necklace for £800,000 in 2018 which he gave Mr D in 2022 towards the running balance on the monies expended by Mr D on H's behalf. Mr D sold it for $220,000, as recorded in his schedule. H acknowledged the enormous loss of value, but told me that because he could not travel, he was in no position to sell it abroad at anything close to purchase price, and that he has become used during these proceedings to swallowing losses. In any event, in respect of items 29-53, the parties were content to take values at 25% of purchase costs which is supportive of the sale price of this necklace. Mr D confirmed the arrangement in his letters which carries some weight even though he did not give oral evidence.

b)

He bought a watch for $432,100 in 2015. In 2018 he transferred title of the watch to a party with whom he was litigating, as part of a compromise. Curiously, the new owner did not immediately demand handover of the watch and allowed W to continue to wear it (by agreement with H), before eventually asking Mr D to recover it in May 2020 so that it could be sold along with other stock belonging to the new owner (or his company) as part of a business sale. The watch was sold by the new owner for $130,000. W disputed this account of events, but I accept H's evidence which was supported by a contemporaneous 2018 letter from the new owner.

iii)

I will therefore include the sums due to Mr D as H's liability.

99.

Handbags:

i)

The starting point here is that W accepts she was "inaccurate" (I would term it a falsehood) when, at a hearing on 3 February 2023, she told me through her counsel that there were only some 20 handbags in existence. That untruth was repeated in correspondence on 22 May 2023. It is now known that there are on any view over 150 in her possession. Moreover, at hearings before me, W downplayed the bags, saying it would be disproportionate to have them valued. I am satisfied she well knew, as H asserted, that they had significant value, and H was right to press me at interim hearings to order a SJE valuation report.

ii)

H says the handbags were bought for trading purposes. W says they were bought by him as gifts for her. On this, I suspect W is likely to be correct. There was no evidence before me that the handbags were traded for business purposes by H; he makes no mention of that as a business activity in his voluminous evidence. They are all in W's possession and she has worn them.

iii)

The report on handbag value came in after conclusion of evidence and submissions. The total is £943,095. The list includes some handbags which W told me have been sold to friends for cash, such that the quantum of monies received cannot now be established. I will include these bags for computation purposes given the lack of evidence about what happened to them. W submits, however, that the total value to be adopted should be £797,500, on the basis that about 100 of the bags are individually worth less than £5,000. She points out that other valuations, including chattels, were undertaken on the basis of excluding items under £5,000, which favours H who will retain the bulk of the chattels at the Surrey home. I accept this submission and will include handbags at £797,500.

100.

Finally, I will deal with some smaller issues:

i)
Rugs in W’s possession are said by H to be worth £80,000 and by W to be worth £50,000. Neither party was cross examined on this. However, H’s eight rugs were valued at £10,000 per rug, which seems to me to be a fair approach for W’s five rugs. I will adopt W’s figure of £50,000.

ii)
There are agreed figures for valuable art and other items, all of which are in the Surrey home apart from three Picasso sketches at the London home. I will include the items in Surrey in H’s column, and the items in London in W’s column. The cars and coins will appear in H’s column on the asset schedule.

iii)
H told me he expects the liquidation costs of one of his former businesses will not exceed £100,000. I will include that figure as a liability of his.

iv)
I will ignore W’s debt to the Magdeevs under the LFA. Although it is legally due under their agreement, there is no evidence it is being pursued and in my view this is entirely a mess of her own making. H should not, in my view, have to be responsible for half of that debt which would be the effect of including it in the asset schedule.

v)
I will include the sum of £59,515 which is legally due to H from a friend, although there may be some doubt about when it will be recovered.

vi)
I ignore two watches with a combined value said to be £47,356. Each says that the other holds them, but neither was asked any questions and I heard no evidence on it. It may be that one of them benefits as a result, but the value is modest in the context of the case, and I do not think I can simply make a decision on a primary issue of this sort without a solid evidential foundation.

vii)
I attribute £100,000 to H’s wine. That is what he said in his Form E. The first time he suggested £50,000 was in the ES2 for this hearing. There was no written or oral evidence from him on the reduced figure. The best evidence is the sworn Form E.

viii)
I ignore H’s claimed debt for the Surrey house insurance bill; it is an expense covering the next year, not a historic liability.

ix)
I ignore W’s claimed debt for service charges on three of the London properties. This only appeared for the first time after evidence had closed. It was introduced far too late. In any event, it too relates to the future, and is not a historic liability. I will, however, have to consider interim arrangements going forward.

101.
I attach an asset schedule which shall not be include in any published judgment as it identifies specific financial instruments. I find that the total assets are **£48,518,478**, almost all of which is realisable.

Children's bank account

102.
There is a bank account with about £2.195m in it, set up in 2011 for one of the children. It is agreed that the account should be used to pay school fees, but there is a dispute as to whether it should also be used for general child maintenance which would otherwise be payable by H.

Needs

103.
There was almost no focus on needs during the case; it seems to have been tacitly acknowledged (rightly in my view) that each party's needs will be met. W wishes to remain in the London flat. H wishes to stay in the Surrey property.

104.
W's budget, stripping away mortgage instalments, is £1.344m. H's comparable budget is £1.645m of which some £656,000pa is for his personal security, put in place in accordance with police advice.

Disposition

105.
In principle, I have concluded that (i) the overall assets, including the assets denied by W as being in her possession, but which I am satisfied are available to her, should be divided as to 50/50 between the parties, (ii) they should each bear 50% of the potential tax liabilities and (iii) they should each benefit from 50% of the monetary fruits of the Cyprus litigation or bear 50% of any judgment against them.

106.
I do not agree that a 60/40 split in H's favour would be a fair outcome. I have made findings about W's conduct and the financial consequences thereof. As part of the computation stage I have added back funds on W's side to reflect those assets which, in my judgment, W holds but has not disclosed. In that way, I have accounted for W's conduct by a process of financial reattribution although, as I have already explained, my findings are more by reference to establishing W's ownership than conduct or addback in the pure sense. I have decided against H on parts of his conduct argument because of; (i) my factual findings, and (ii) some of them are minor in the grand scheme of this case. I am not persuaded that I should go on to penalise W by a 60/40 split which in any event, on the facts of this case, seems somewhat arbitrary to me, particularly as some of the conduct arguments raised in closing were not part of the formally pleaded claim. It seems to me, however, that it may be appropriate to penalise W in costs for her litigation conduct.

107.
I propose to make the following orders, conscious as I am that the specifics will need to be ironed out:

i)
By agreement reached during the hearing, upon prompting from me, H's 20% interest in a family St Petersburg flat, shall be ignored, as shall W's pre-owned property in Cyprus. Both are non-marital.

ii)
I see no reason in principle why H should not have the opportunity of remaining in the Surrey property, and W the London flat, provided that they are both removed from the EFG liability. W shall also have the two parking spaces.

iii)
I propose, in relation to the EFG mortgage, that:

a)
The portfolio be realised and the mortgage be reduced accordingly

b)
Although the balance is secured on both properties I will notionally attribute the balance of the mortgage to each property in the same proportions as the property values; Thus:

- The balance of the mortgage will be (on the figures before me after applying the portfolio) £14,515,369.

- The Surrey property represents 68.49% of the gross value of the two properties combined, and the London flat represents 31.51%. The mortgage shall be notionally allocated in those proportions.

- Each party must redeem the amount of mortgage referable to them in those proportions. H must redeem his share within 9 months. W must redeem her share within 2 months of receipt from H of the lump sum provided for below.

- If either fails to redeem their share of the mortgage as stipulated, their property will be sold.

- By this process, the entire EFG mortgage will be redeemed. It is, of course, up to each party how they make their respective payment, which might include (particularly in H's case) borrowing from wealthy friends.

iv)
The two Knightsbridge flats, which are on the market for sale, shall be sold, and the net proceeds be divided equally. I reject H's request for one of the flats to be transferred to him. The parties need liquidity, and there is a concern on W's side that she lives very near by.

v)
The other two London flats will be sold and the proceeds be divided equally.

vi)
W will have the Cypriot properties except for Azur Court which shall be transferred to H, thereby enabling him to retain Cypriot nationality.

vii)
All the Preserved Jewellery shall be transferred to, or retained by, W, together with the GIA certificates. I reject the suggestion that H should retain the certificates while W sells the items, and share in any loss or profit either below or above the attributed values. In my judgment that is logistically fraught, and difficult to enforce, given that W claims not to have some of the items. H contends that he would be able to achieve a higher sale price than the value attributed by the SJE, but the SJE valuations, which are based on including the box and certificates, are unchallenged. It is speculative to suggest that higher sale prices might be achieved. The Preserved Jewellery will be a resource for W to do with as she wants.

viii)
H shall pay W a lump sum of £5,515,132 within 9 months.

ix)
W will pay 50% of H's historic UK tax liabilities and H will pay 50% of W's historic UK tax liabilities. It is fair for W and H to share the risk equally as this arose during the marriage and they each benefited from the wealth which gives rise to the potential liability. The order shall provide:

a)
The tax liabilities shall include interest and penalties.

b)
There shall be appropriate security over each other's assets.

c)
They shall cooperate in mitigating tax, but there is no obligation on either of them to instruct an accountant jointly; that is a matter for them.

d)
W must be able to see all documents to and from HMRC in respect of H's referral, including the draft submission prior to sending it to HMRC. There must be full visibility. The same shall apply mutatis mutandis to W's referral.

e)
Each shall bear their own legal and accountancy costs of the submissions to HMRC. I do not think it is practical or fair for each to pay a proportion of the other's costs.

x)
The Cyprus proceedings brought in the name of their son shall be H's sole responsibility. He shall indemnify W. I expect W to undertake not to take any steps to prejudice their son's legal position.

xi)
In respect of the other two sets of Cyprus litigation, each will benefit as to 50% from any judgment in favour of either or both of them arising out of the Cypriot litigation. They will each be 50% liable for any judgments and costs orders against them. H shall bear the legal costs of pursuing the claim. The benefit and burden to W will fall away after 5 years from the date of final order. It seems to me that it would be unconscionable for H to carry all the risk, particularly in respect of the Magdeevs' counterclaim valued at $20m. All the litigation arises out of events which occurred during the marriage. W has benefited from H's skills and success, and cannot now relinquish what amounts to marital obligations. She is a named party to two of the sets of litigation. The fact that W has actively worked against H in this litigation strengthens my view that she must share the risk. They will both have to cooperate in the litigation, and there needs to be full visibility of how the proceedings are being conducted. They have a mutual interest in achieving the best possible results.

xii)
W must repeat her confidentiality undertaking.

xiii)
The school fees and reasonable extras will be met from the oldest child's account. The parties must set up an arrangement whereby (regardless of the name of the account holder) no payment can be

made without joint agreement. Whether the existing account can be re-designated to allow this, or the monies need to go to a new account, will require cooperation between the parties.

xiv)

H shall pay £50,000 pa per child by way of child maintenance. I consider this should be met from his own resources, not the children's account, not least because I am satisfied that he can afford it, and has an earning capacity which will be redeveloped reasonably swiftly. W will have to meet any nanny costs from that figure. These sums will start in 9 months, by when H should have cleared his mortgage liabilities. H shall also pay for the children's health insurance.

xv)

In terms of interim arrangements, I did not hear submissions but suggest:

a)

W should pay H £200,000 straight away to give him some breathing space while he arranges his finances. This is reflected in the lump sum referred to above.

b)

W and H will, until redemption of the EFG mortgage, be responsible for the ongoing mortgage interest in proportion to the capital amount notionally allocated by me to them each respectively.

c)

H shall be responsible for all outgoings at the Surrey home, and W in respect of the London flat. H shall be responsible for all outgoings on Azur Court.

d)

Any rent on the other London properties shall first be used to meet mortgages and running costs, and thereafter be divided equally. Any outgoings on the London properties pending sale shall, if not covered by the rent, be shared equally.

xvi)

There shall be a clean break upon implementation. In answer to questions from me, W said that wanted above all else to be free of any financial ties to H. I think she is right about this; to hold them together financially after what has gone on in this case would be highly detrimental to both of them. I see no justification for adjourning W's claims until the potential tax liability is known. The reason for this suggestion by W is the possible impact upon her of a significant tax liability, in circumstances where she has limited earning capacity. In my judgment that argument does not succeed:

a)

Doing the best I can on the figures, W will exit the marriage with about £24m. The worst case tax scenario currently being contemplated is £20m, of which W's 50% liability would be £10m, thereby reducing her assets to £14m. I consider that sum to be one which broadly meets her needs. Of course, it would be rather less than she says she needs but, for example, she would have (on current figures) the flat and £2.5m. The children's costs will be met in any event. She could sell the flat and purchase a cheaper property. It is hard to say that her needs cannot be fairly met with £14m, if that is what it comes to.

b)

H would be in the same position, albeit I accept he has a greater earning capacity.

c)

An adjournment would probably result in further litigation, and ongoing financial ties which would be highly detrimental to them, and it was clear from W’s evidence that that is the last thing she wants.

Costs

108.
I will deal with costs separately.

Overall

109.
In reaching these conclusions, I have taken into account all the s25 criteria and balanced them individually and together. In my judgment, the outcome I have arrived at is fair. The net effect is that each party exits the marriage with £24,259,239.

Anonymity

110.
No member of the media, or accredited legal representative, attended these proceedings as is their right under FPR 27.11. However, the question of whether the judgment should be published, and, if so, whether a process of anonymisation should take place, falls to be considered. I gave counsel notice of this before closing submissions so that they could consider it. Both sought anonymisation on behalf of their respective clients.

111.
I am conscious that in making some comments on this topic, I am treading on ground which is not entirely solid, as a result of a number of judgments of Mostyn J which have cast doubt upon the long established practice pursuant to which the starting point (and usually the end point) has been that financial remedy proceedings are not reportable, save with permission of the court, and judgments are anonymised, again subject to alternative direction of the court.

112.
Those judgments of Mostyn J are magisterial in their breadth and legal acuity. They deserve the utmost respect. I am sure that I do Mostyn J an injustice by attempting to summarise his main conclusions as follows, conscious as I am that my comments cannot begin to give even the merest sense of the intellectual rigour, learning and analysis which he has displayed:

i)
The practice of confidentiality and anonymity in FR proceedings is borne of three main foundations:

a)
The fact that by FPR 27.10, financial remedy proceedings (along with almost every other category of family proceedings) “will be held in private”.

b)
The implied undertaking of confidentiality explored by the Court of Appeal in **Clibbery v Allen [2002] Fam 261** and **Lykiardopulo v Lykiardopulo [2011] 1 FLR 1427**.

c)
The Judicial Proceedings (Regulation of Reports) Act 1926.

ii)
Brick by brick, Mostyn J has sought to dismantle the legal basis of each foundation.

iii)
It is not a contempt of court to publish an account of what has taken place in a family case heard in private or to publish a delivered judgment.

iv)
The starting point is that the media/legal bloggers are entitled to report.

v)
Per **Xanthopoulos v Rakshina [2022] EWFC 30** at para 128:

“The fallacy lying at the heart of current practice, which seems to be ingrained, is that the wrong question is invariably asked when it comes to anonymising a judgment … The correct question is not:

"Why is it in the public interest that the parties should be named?"

but rather:

"Why is it in the public interest that the parties should be anonymous?"

vi)
The naming of parties, including in any delivered judgment, is an essential ingredient of open justice.

vii)
What is required in every case where anonymity is sought is an undertaking of the intense balancing exercise between Articles 8 and 10.

113.
Thus far, it does not appear that his approach, whereby he has published judgments unanonymised, has been routinely followed by other judges of the Division, myself included. That is not to say that he is wrong. He may well be right.

114.
However, I tentatively take the view that:

i)
As I understand it, in none of the cases before Mostyn J were these issues of principle argued. Insofar as there was any argument between the parties, it was brief and addressed the merits of anonymisation i.e the balance between Articles 8 and 10, rather than any, or any detailed, submissions about the principles underlying the practice of confidentiality and anonymity in financial remedy proceedings.

ii)
Mostyn J describes the decision in **Clibbery v Allen** as obiter, in that it concerned publication of proceedings under Part IV of the Family Law Act 1996. Nevertheless, the judgments of Dame Elizabeth Butler-Sloss P and Thorpe LJ comprehensively considered the broader issue of publicity in family proceedings including financial remedy proceedings. And **Lykiardopulo**, also heard in the Court of Appeal, was not obiter; the appeal concerned ancillary relief proceedings (as they were then termed) and the same conclusion was reached as to the non-reportability of financial remedy proceedings absent court order.

iii)
I repeat that I make no comment on whether Mostyn J is correct or not. But in the circumstances, my provisional view is that I should follow the decisions of the Court of Appeal. In my tentative opinion, it

is for a higher court than mine to decide this issue, certainly unless and until I hear full and detailed argument which addresses the hugely important thesis of Mostyn J. I have had no meaningful submissions on this topic, either in this case or in any other case in front of me, since Mostyn J first set out his considered position.

115.
The Farquhar Group published a report on this very issue in April 2023. It is, if I may say so, extremely well researched and comprehensive. It makes suggestions as to how (whatever the default staring point) the interests of transparency can be served in financial remedy proceedings while at the same time preserving the confidentiality of the parties and their sensitive financial information; essentially striking what the group considers to be a fair balance between Article 8 and 10. The group did not opine on whether Mostyn J's analysis is correct, nor do its recommendations carry the weight of law. It may be that in due course Presidential guidance will be issued. But at the risk of repetition, my view is that a higher court will at some point probably need to cast a fresh eye on this issue.

116.
All that said, whether the starting point is as per the long established practice (i.e non reportability unless the judge orders otherwise) or as per the thesis of Mostyn J (ability to report unless prohibited by the court), if the court is considering whether to permit or prohibit (as the case may be) reporting, it will need to carry out the **Re S** balancing exercise.

117.
Even if (contrary to the thesis of Mostyn J) the starting point of non-reportability is as set out in **Clibbery v Allen** and **Lykiardopulo**, there are certain categories of case where publication is more likely to take place:

i)
Where there has been litigation misconduct; **Lykiardopulo** was just such a case.

ii)
Where anonymisation would be effectively impossible because of the prominence of one or both of the parties, as in **McCartney v Mills McCartney [2008] 1 FLR 1508**.

iii)
Where material in the financial remedy proceedings is already in the public domain, as in **Crowther v Crowther [2021] EWFC 88** where the case had travelled up to the Court of Appeal on a contested freezing injunction which had been heard (as is the practice in the Court of Appeal) publicly.

iv)
Where one or both parties court publicity.

118.
In the case before me, in my judgment all of these categories apply to a lesser or greater extent. The litigation misconduct of W is of the utmost gravity. It is in the public interest to be aware that one party has abused the system, and repeatedly lied, eating up valuable court time and resources in the process. Much is already known about the circumstances of this family from the detailed judgment of Cockerill J in 2020. Proceedings about the parties' chattels found their way to the Queen's Bench Division in 2021 and attracted some publicity. Similarly, a court dispute with a garden installation company was reported in the national press in 2022, including some of the more lurid features of this case (for example, H was described as "on the Kremlin's most-wanted hit list", and the reporting

included the details and photographs of the Surrey house). The fact that there have been three attempts on H's life in this country is, in my view, a matter of public interest. H gave revealing interviews to the Daily Telegraph in 2020 and the Daily Mail in March 2022 about his business dealings, Russian litigation and general wealth. I also take the view that the public is entitled to know that H has not paid a penny of UK tax, nor even filed UK tax returns since his return to this country in January 2018; this is despite the parties being citizens of this country and resident here, having children who are educated here and owning multiple properties here. Finally, it is, in my view, hard to see how any attempt at anonymisation can realistically work.

119.
I therefore intend that this judgment will name the parties. I will entertain submissions as to whether any particularly sensitive aspect of this judgment should be redacted or amended for public consumption.