K v K (FINANCIAL RELIEF: MANAGEMENT OF DIFFICULT CASES) [2005] EWHC 1070 (Fam)

Family Division

Baron J

17 May 2005

Financial relief – Costs – Disproportionate costs – Litigation embittered by failure to disclose assets – Management of cases

Financial relief – Divorce – Failure to disclose assets – Management of cases – Video evidence – Joint experts – Chattels – Disproportionate costs

The wife sought full ancillary relief from the husband after the breakdown of a marriage which had lasted over 30 years. The major issue between the parties had been the true level of the assets. The husband failed to give proper disclosure of his assets in his Form E, ascribing a nil value to substantial assets said to be held in a trust, and positing huge debts which resulted in an estimated 'minus £2m' total assets. It had become clear that the husband was throughout the sole legal and beneficial owner of all the relevant assets, none of which had ever been placed in the new trust structure, and that the debts were largely illusory. The assets were, in fact, in the region of £6m. The husband had also deliberately engineered delays, not least by changing his lawyers frequently, and had made various threats against the wife, claiming, for example, that he would spend as much as possible while the proceedings were in train. In response the wife had litigated ferociously, putting the husband on the defensive and creating a vicious circle. The hearing date was eventually fixed with 11 months' notice on the basis that the husband would be in attendance, but without prior application the husband announced that he was staying in Cuba, and that he wished to give evidence by video link. Arrangements were made by the court, but in fact it emerged that no link had been established, and that such a link was not viable because Cuba did not have the relevant facilities. The husband gave evidence by telephone. The costs of approximately £930,000 represented some 15% of the assets.

Held – awarding each party just over £3m –

(1) This type of case should be managed by an allocated High Court judge from the outset. Obtaining disclosure was pivotal, and this demanded continuity, combined with the expertise of judges with specialist knowledge. In some cases, continual orders for disclosure could be counter-productive and it was better to have an oral hearing, which might, in this case, have foreshortened years of litigation (see para [22]).

(2) It was the duty of solicitors for the party who wished to give evidence by video link to ensure (and have evidence to that effect) that the link had been tested and was viable. There had been a manifest failure in this case which had put the wife at a severe disadvantage (see para [29]).

(3) Solicitors and counsel must not allow the problematic issue of division of chattels to be forgotten. As a matter of practice, division of chattels must be accomplished prior to trial, with a clear schedule denoting the destination of items, in order to ensure that all outstanding issues were resolved at the final hearing. If parties could not agree, then a *Scott* schedule must be completed with items marked as agreed or remaining in dispute, plus a short note giving the reasons why any particular item was sought. In this case the parties had agreed that they would each draw up a list of their favourite items in descending order and that they would make an alternate choice until their respective lists were exhausted. Any unclaimed items would be sold and the proceeds divided. If one party thereby obtained more than a 50% share in terms of

value, then recompense would be made by a set-off or equalising payment (see paras [32], [33], [34]).

(4) The general practice in the Family Division should be that only joint valuations were acceptable and one side's refusal to co-operate could not be circumvented by unilateral action, but should be dealt with by an application. Notwithstanding CPR r 38.8, in matrimonial cases in which emotions often ran high, it was prudent to act co-operatively and, therefore, jointly (see para [39]).

Statutory provisions considered

Matrimonial Causes Act 1973, s 25
Inheritance (Provision for Family and Dependants) Act 1975
Civil Procedure Rules 1998 (SI 1998/3132), rr 32, 33, 38.8, Annex 3

Cases referred to in judgment

J v V (Disclosure: Offshore Corporations) [2003] EWHC 3110 (Fam), [2004] 1 FLR 1042, FD
Lambert v Lambert [2002] EWCA Civ 1685, [2003] Fam 103, [2003] 1 FLR 139, [2003] 4 All ER 342, CA
OS v DS (Oral Disclosure: Preliminary Hearing) [2004] EWHC 2376 (Fam), [2005] 1 FLR 675, FD
Polanski v Conde Nast Publications Ltd [2005] UKHL 10, [2004] 1 WLR 387, [2005] UKHRR 277, [2005] 1 All ER 945, HL
Practice Guide for Instructing a Single Joint Expert (12 December 2002) [2003] 1 FLR 572
White v White [2001] 1 AC 596, [2000] 3 WLR 1571, [2000] 2 FLR 981, [2001] 1 All ER 1, HL

Nicholas Mostyn QC and *Rebecca Carew Pole* for the petitioner
Bruce Blair QC and *Richard Todd* for the respondent

BARON J:

[1] This is an application by Mrs K (to whom I shall refer as the wife) for full ancillary relief arising upon the breakdown of her marriage to Mr K (to whom I shall refer as the husband). The marriage took place on 10 December 1969 and lasted, therefore, in excess of 30 years.

The children of the family

[2] The parties have two daughters, namely L, who was born on 24 October 1975, and J, who was born on 14 March 1979. Both women are independent. L is married to a successful businessman and has three young children, whilst J (who has been plagued with emotional problems) is now in full-time employment. The parties generously provided each girl with a home of their own. Thus, L has a property in North London which is worth in excess of £500,000 (and is subject to a mortgage of some £170,000), whilst J has a mortgage-free flat in Knightsbridge which is worth in excess of £300,000. The daughters are also the owners of a French company which owns a flat in the South of France. This property is worth some EUR 1,200,000 (£827,500 at a conversion rate of EUR 1.45) and is subject to a loan in favour of the parties worth £512,000 inclusive of compound interest at 6%. The net equity in the property (after the payment of costs of sale and French taxes) is about £200,000 (perhaps a little more). Prima facie, therefore, the girls' interest totals some £100,000 each. For much of the trial the true ownership of this

apartment was a matter of heated debate. It was the wife's case that, in reality, the flat belonged to the husband and had only been placed in the girls' names for tax reasons. She pointed to the following facts in support of her contention: (i) the property had been found and chosen by the parties as their holiday home; (ii) they had always used it as their home without reference to the girls; (iii) the husband had a power of attorney which enabled him to do as he wished with the premises; (iv) there were many documents in which he (and others) referred to the apartment as belonging to him; and (v) such was his character that, even if the girls were legal owners, the husband would extract the funds from them as soon as this case was over. The husband asserted that (i) the flat had been given to the girls from the outset subject to his ability, pursuant to the power of attorney, to use/operate it for as long as wished and (ii) that the wife had been aware of these facts from the outset. The girls were drawn into this litigation as a result of these polarised positions. In 2004, in accordance with their mother's wishes, they attended an independent solicitor, who wrote a letter in which they acknowledged that the flat had been placed in their names only for tax reasons. However, shortly before this trial, in accordance with their father's wishes, they signed affidavits in which they recanted their previous positions and stated that they regarded the South of France property as belonging to them absolutely. They were due to attend court to be cross-examined on the veracity of their statements.

[3] This vignette (about a relatively small amount of capital in the context of these parties' wealth) indicates the ferocity with which this litigation has been fought and how it has caused a haemorrhage in family relationships. I cannot begin to imagine how much money and legal energy has been spent in pursuit of this issue.

[4] The documents proved that, from the outset, the children had been the legal owners of the apartment. Mr Mostyn QC (on behalf of the wife) asserted that, although there was no application to set aside the original transaction, I should ride roughshod over this point and deal with the flat as if it belonged to the husband. He pointed to the case of *J v V (Disclosure: Offshore Corporations)* [2003] EWHC 3110 (Fam), [2004] 1 FLR 1042 (the facts of which are wholly different from this case). On an analysis of the documents, I was clear that the most that these parents had was the right to (i) repayment of the loan and (ii) use the flat for so long as they wished. Moreover, it is not for the court to override established legal rights unless the individuals who hold them are joined to the proceedings and are represented. The prospect of these 'children' having to give evidence (one of whom is emotionally vulnerable) seemed to me to be undesirable and should be avoided. Consequently, I suggested that the parties might consider a formula whereby the property was sold, the loan repaid with the net equity being paid to the daughters upon the basis that, were they to decide to make funds available to one parent, they would make the exact same sum available to the other. Eventually, this formula was agreed and I will accept the formal undertakings from L and J.

[5] There seemed to be a tacit assumption at the beginning of this case that L's outstanding mortgage should be deducted from the parties' assets before division. But this does not seem appropriate in the overall circumstances of this case and I decline to follow that route. L can use her share of the proceeds of sale of the South of France property to reduce her mortgage if she wishes.

As the daughters appear to have 'sided' with their father more recently, and subject to any further submissions from counsel, I intend to provide that the wife's 50% share of the loan will be paid to her from other assets – so as to enable the husband (who still holds a power of attorney) and the girls to sell the French property in their own time.

[6] The husband has asserted that he 'owes' his daughters a significant amount of capital because, when his father died (intestate), he promised that these funds would be paid to the girls when they were 30 years old. That inheritance came into being in about 1989 and was intermingled with the husband's own funds. By 1999 it was said to be worth some £117,000 and it was suggested by the husband that it should be paid to the girls. I reject this argument. These young women have been treated very generously to date and the capital which they now have represents such sum as may have been due from their paternal grandfather.

The open positions

[7] The wife seeks an equal division of the assets which have been accumulated during this lengthy marriage. Until very recently this point was not conceded by the husband as he sought a 55%–45% split in his favour. The basis for this differential being his alleged wealth at the commencement of the marriage. Commendably, this point was not pursued before me and it was conceded that the assets should be divided equally.

[8] However, despite this concession, the trial has taken some 5 days because there has been a huge and acrimonious dispute about the true level of the assets.

[9] Overall, this litigation has lasted a number of years and was originally due to be heard in June 2004. But, at the last minute, it had to be adjourned because the husband was suffering from a psychiatric condition which rendered him unfit to give instructions to his legal team. The opening submissions prepared by Mr Mostyn for that hearing state, and I quote: 'On W's case the assets amount to some £6.2m. There is no earned income in this case: the parties are living on their capital. H has set up a network of trusts and companies to hold his wealth and to disguise his ownership'. Despite this earlier assertion in 2004, Mr Mostyn has sought to show that the assets should now be regarded as greatly in excess of this sum because: (i) monies have gone missing from the sale of the former matrimonial home in Spain; (ii) monies have gone missing from the sale of a flat in Basil Street, London and (iii) the husband has spent excessive sums – particularly in relation to consorting with other women/prostitutes. He also made the point that some US$600,000 had been drawn in cash by the husband after June 2004 for which there seemed to be little proper explanation, at least so far as some US$425,000 was concerned.

[10] Mr Blair QC informed me that he was surprised by these assertions (save for those in relation to monies spent on other women and recent spending) as they had never been made in the written documentation supplied. He was highly critical of what he termed these 'Sunday' musings by which he meant assertions which had only arisen in the course of final weekend preparation. I accept that the submissions were not advertised but, nevertheless, I thought it right to permit the investigation to proceed.

[11] This marriage has been unhappy for some considerable period of time. The first breakdown came in October 1998, when the wife filed a petition for

divorce and launched an application for ancillary relief. In consequence, the husband filed a Form E. On that occasion, although a decree nisi was pronounced, the parties reconciled and the decree was set aside by consent.

The Form E discrepancy

[12] The rapprochement was short lived and by 2002 the wife had issued a second set of proceedings. In the light of this the husband filed a second Form E. A comparison of the two documents shows a huge disparity.

[13] The table shows:

	Form E 31 Mar 99	**Form E 21 Mar 03**
Former matrimonial home in Spain	285,000	
Warehouse in Spain	45,000	37,525
Basil Street property	405,000	
Former matrimonial home in Eaton Sq	1,900,000	
Bank accounts	169,958	1,758
Ogier Nominees portfolio	3,623,377	413,712
Insurance claim	9,189	
Chattels	41,600	183,000
Cash		3,000
Liabilities		
Credit cards	(1,146)	(28,713)
Money owed to children	(117,100)	(172,516)
Debt due to Zhejiang	(223,600)	(225,876)
Spanish customs fines	(307,370)	(447,370)
Building costs Eaton sq	(200,000)	
Anticipated Spanish fine	(312,000)	(228,759)
Mortgage LK Trust		(306,000)
Hambros loan		(200,000)
RS Trust charges		(21,067)
Coutts o/d		(20,468)
Sundry debts		(41,157)
Spanish back taxes		(1,031,418)

RT Trust	0	
RS Trust		0
TOTAL	5,317,908	(2,084,349)

[14] The reason for this surprising difference was the failure by the husband (and his then legal team) to include properties/a portfolio supposedly held in an entity called the RS Trust. Although the existence of the assets/properties was set out within the body of the Form E, a nil value was ascribed to them. In addition, huge debts were posited as due. This defective presentation is most regrettable because, even if assets had been held through numerous entities, the courts of the Family Division are accustomed to piercing the corporate/trust veil where the husband is, in reality, the alter ego of the relevant entities. In this case, the presentation is even more surprising because it is now clear that at the time the second Form E was sworn the husband was the sole legal and beneficial owner of all the relevant assets because none had been placed in this new trust structure.

[15] The conclusion which I draw is that the husband deliberately and foolishly decided to give an untruthful presentation. It was deliberate because, although the assets were included in the Form E, their proper ownership was obscured. It was foolish because this wife had been party to many (if not all) the financial discussions with professionals over the years and knew that the husband was the true beneficial owner of the assets. Moreover, the debts were largely illusory.

[16] The incomplete presentation meant that the wife's legal team perceived that they had a 'battle on their hands' because they had to prove that the husband had valuable assets and was not worth the 'minus £2m' as stated on the Form E. The wife had assembled a truly expert team. Her solicitor is known to specialise in cases which call for the most vigorous and rigorous investigation. A questionnaire was settled and the proceedings began in earnest. As the wife did not trust her former spouse, she took the precaution of copying a number of his documents. She did a very thorough job. She rummaged through dustbins and took documents from her husband's pockets. When he was no longer living in the former matrimonial home, she had the locks on his study changed and this gave her access to more documents. The *Hildebrand* bundle was substantial. The index shows that the collected documents were passed to the husband's solicitors on no less than eight separate occasions over a number of months. Mr Blair (on behalf of the husband) described the wife as 'drip feeding' documents. Two further *Hildebrand* documents were only made available on the first day of the trial. The husband and his team called this 'litigation by ambush'. The wife's excuse is that she found the documents over time and made them available as soon as practicable. But I am not convinced by this excuse and I consider that there was a measure of tactics afoot. I ordered that no further documents were to be 'disclosed' from this source during the course of the trial unless made available by next day.

[17] Despite this, I have little doubt that the wife believed that she had no alternative but to pursue this route because the husband did not make the litigation process easy. She told me, and I accept, that he stated to her that he would give her 'five years of shit' and spend as much as he could whilst the

proceedings were in being. He had no less than five solicitors – each one a renowned expert in the field. His frequent change of lawyer led to a lack of continuity and a lack of careful preparation. Moreover, the change in personnel led to delays, applications to adjourn hearings and an inevitable escalation in costs. I do not know the reasons why the husband altered his legal team so frequently, but I have no doubt that it stalled the smooth process of the case. It is the wife's case that the husband failed to give a clear picture of his assets, failed to comply timeously (or, on occasion, at all) with the disclosure process and acted unreasonably. Appendix 2 to this judgment is a record of the husband's relevant litigation conduct. It is clear, and I so find, in accordance with that schedule, that the husband did not assist the court process.

The litigation costs

[18] The total bill is some £930,000 in the round. This, in the context of assets currently worth just over £6m. Accordingly, the costs represent about 15% of this family's worldly wealth. This is a tragedy particularly as I am not convinced that the sums in issue, in reality, ever amounted to anything approaching £1m. The wife's costs total £442,000 (of which she has paid £246,000) and the husband's costs total £487,800 (of which he has paid £393,000). Thus, some £300,000 still remains due. It has been agreed by counsel that it is sensible to take this sum out before considering the asset base.

[19] During the course of the trial, I felt that many of the submissions were being made as a basis upon which to launch applications (after judgment) as to the allocation of costs. I am not surprised because these costs are disproportionate and have led to a permanent and wasteful diminution of family assets. This, in turn, will affect the parties' overall domestic economies for years to come.

[20] This case is an object lesson for all. If a husband does not give proper disclosure, makes threats and causes problems/delays, then the result will be a wife who feels that she has no alternative but to litigate with 'all guns blazing' – taking documents, taping telephone calls, employing private detectives and the like. This strategy will make a husband feel beleaguered so that he becomes more defensive and difficult. It is a vicious circle.

[21] During his evidence the husband presented himself as a victim. He said that his wife had effectively threatened that he would be arrested if he did not pay her such sum as she considered appropriate. He also considered that her solicitor had harried him for the last 3 years. The latter issue resulted in a personal loathing between the husband and the wife's solicitor with abuse being hurled between them during one particular telephone call. All this is so unnecessary. I have little doubt that the husband's feelings of being harassed are genuine, but I have to state that he brought much of it upon himself. His initial behaviour (as outlined in Appendix 2) meant that the downward spiral of action/counter-action was almost inevitable; as was the upward spiral in costs. I do not consider that litigation should be conducted in this way.

The management of difficult cases

[22] In my view, this type of case should be managed by an allocated High Court judge from the outset. These cases are demanding, and obtaining disclosure is often pivotal. This demands the expertise of a judge with

specialist knowledge of financial cases (which, to my mind, can only be acquired by many years of practice in this particular field). If interlocutory applications are dealt with by several district judges (as in this case some of whom are deputies) then there is no continuity. I consider that if I (or one of my fellow judges) had been able to manage this case from the outset then the crucial issues would have been highlighted. In some cases continual orders for disclosure can be counter-productive and it is better to have an oral hearing, as Coleridge J ordered in *OS v DS (Oral Disclosure: Preliminary Hearing)* [2004] EWHC 2376 (Fam), [2005] 1 FLR 675 at an early stage or deal with the case in some other imaginative way. If an oral hearing had been used in this case it may have foreshortened years of litigation, ill-feeling and huge costs.

Evidence by video link

[23] When this matter was adjourned in June 2004, I made a raft of orders to ensure that there would be no further adjournments. Accordingly, it was clear to all that this case would be heard in May 2005 (which was the earliest date that could be re-fixed allowing for counsel's convenience). Over the intervening 11 months there were a number of applications for directions (and the like) as the chronology at Appendix 3 makes clear. The last application took place on 4 April and, although the husband was not in attendance, it was clear from the submissions made on his behalf that he was going to attend the trial. However, on 29 April 2005, his solicitors indicated that he intended to remain in Cuba and was seeking to give his evidence by way of video link in accordance with the principles set out in *Polanski v Conde Nast Publications Ltd* [2005] UKHL 10, [2004] 1 WLR 387, [2005] UKHRR 277.

[24] I was referred to CPR rr 32 and 33, plus Annex 3, which set out applicable video conferencing guidance. It is clear from the guidance that 'a judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving but as whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. In particular, it needs to be recognised that the degree of control a court can exercise over a witness at a remote site is or may be more limited that it can exercise over a witness physically'. The guidance makes it clear that the court's permission is required and this permission should be sought at an early stage to enable the other side to make effective objection if they so wish.

[25] In fact, no prior application was made and the issue was only ventilated on the first day of the trial. Basically, the husband asserted that: (i) he was a fugitive from justice in the USA and Spain (see below for the precise circumstances); (ii) he had been threatened by the wife that she would ensure he was imprisoned unless he paid what she regarded as a fair sum and could not return to London; (iii) his passport has been stolen as result of which his travel documents had been cancelled and he was too afraid to go to the US Embassy to collect new ones. From this latter point I gathered (as he was already abroad) that he must have secured another set of illicit travel documents. In the light of these facts, it was made clear that he was not going to travel to England to give evidence, whatever order the court made.

[26] Mr Mostyn submitted that the husband had, by his actions, circumvented proper procedure. I agree. But he was realistic enough to accept that, in the circumstances, evidence by video link was better than having no

opportunity to cross-examine the husband. Thus, the application proceeded by consent. Arrangements were made for the court bundles (all 15) to be taken to Cuba. Representatives from both firms were sent to ensure 'fair play'. I cannot imagine the additional costs engendered but I have no doubt that they will be itemised.

[27] Mr Blair informed me that all necessary arrangements had been made through the Bar Council and the evidence would be taken there on 11 and/or 12 May 2005. In fact, the Royal Courts of Justice have a state-of-the-art video conferencing suite in Court 38 and, as this was available, it was thought more appropriate for this facility to be used. The court staff were able to use the information/links that seemingly had been established through the Bar Council.

[28] In fact, no link had been established. It became clear that no link was ever going to be viable because Cuba did not have the relevant facilities/lines. I caused the husband's solicitors to document the steps that they had taken to ensure the link was available. Their letter asserts that the fault lies with the Bar Council. I sought an explanation from this source. Their letter indicates that they did their best but the link was not viable because of technological problems.

[29] I am of the clear view that it is the duty of the solicitors for the party who wishes to give evidence by video link to ensure (and have evidence to that effect) that the link is has been tested and is viable. There was a manifest failure in this case and this put the wife and her team at a severe disadvantage.

[30] The best solution that could be devised was a telephone link. The court was treated to the unedifying sight of experienced Silks standing by a 'squawk box' in order to enable the call to be made. Reception was adequate but I was not able to see the husband's demeanour whilst giving evidence. Moreover, there was a tendency for the protagonists to shout. For extended parts of the husband's evidence emotions ran high.

[31] If the application had been made in good time then all this could have been avoided and I consider that the fault lies entirely with the husband. In so far as this method of his giving evidence has caused any prejudice, I shall give the benefit of the doubt to the wife.

Valuable chattels

[32] These parties have collected many valuable antiques which a recent joint valuation shows to be worth some £330,000. In my experience, the division of chattels can often be problematic, particularly where items of sentimental value are concerned. Consequently, I was surprised that no steps had been taken in this case to resolve this issue (or even narrow it) prior to the commencement of the trial. This is an all too frequent occurrence. I believe that it is important that all outstanding issues are resolved at (and I emphasise this phraseology) the final hearing. The costs in this case are enormous and the prospect that there might have to be another round of litigation dealing with chattels is unacceptable. Solicitors must not forget chattels. As a matter of practice, the division of chattels must be accomplished prior to trial (with a clear schedule denoting the destination of items). If the parties cannot agree, then a *Scott* schedule must be completed with the items marked as agreed or remaining in dispute. The schedule should set out, in very short form, the reasons why any particular item is sought.

[33] In a case with leading counsel, the task of finalising chattels can, mostly, be delegated to the juniors. But, in the final analysis, it is counsel's responsibility to ensure that chattels are not forgotten.

[34] In this case a schedule was drawn up at my direction and the parties agreed that they would resolve the issue by each drawing up a list of their favourite items in descending order. They would then make an alternate choice until their respective lists were exhausted. Any items unclaimed would be sold and the proceeds divided. If one party obtained more than a 50% share in terms of value then recompense would be made by a set-off or equalising payment.

[35] There is one item of jewellery which the husband seeks. It is a 5-carat diamond solitaire (currently in a pendant) which he termed his mother's 'wedding ring'. The wife accepts that the stone belonged to his mother but asserts that it was not her wedding ring but rather was rescued by her from the rubble of a fire having been part of an antique. She says that it was given to her by her mother-in-law. I consider neither party is telling the whole truth about this item. But, as there is no doubt that it belonged to the husband's mother, it should be returned to the husband on the basis that he gives value for it. The pendant is valued at £4,500 and this sum should be paid for it. This will enable the wife to buy a replacement item at auction if she wishes. For the avoidance of doubt, the overall value of her jewellery will be taken into account in the final 50/50 split of the assets.

[36] The husband also offered the wife the sum of £65,000 for an 8-carat diamond which is valued at £48,000 (which he considers is a serious under-estimate). She does not wish to sell it and so she will keep it at the latter value.

[37] There was a dispute about the manner in which the jewellery was valued. The court directed a joint valuation. This was carried out but in a manner which did not permit a representative from the husband's advisers to be present. The husband asserts that the joint valuation is too low and some pieces are missing. He has been left with a sense of unfairness.

The instruction of joint experts

[38] In addition to this perceived difficulty, there was an order for property to be valued on a joint basis. This was done, but the wife's solicitors sought updated values from the joint valuer and wrote directly without reference to the husband's team. This is not acceptable. When a joint valuer is appointed, then all communications should be on a joint basis (unless the parties otherwise agree in writing). Indeed, representatives from both sides (or neither) should be able to be present when valuations are undertaken (unless the parties otherwise agree in writing). If one party seeks to circumvent this simple methodology there will inevitably be a sense of unfairness, even if the resulting valuation is beyond reproach.

[39] The general practice in the Family Division should be that only joint approaches are acceptable and if there is non co-operation from one side, then this cannot be circumvented by unilateral action but should be dealt with by an application. I am aware of the terms of CPR r 38.8 but it seems to me that in matrimonial cases, where emotions often run high, it is prudent to act co-operatively and, therefore, jointly. Moreover the *Practice Guide for Instructing a Single Joint Expert* (12 December 2002) [2003] 1 FLR 572, subr 9, appears to confirm that in family cases supplementary instructions

should not be given 'unless the other party has agree or the Court has sanctioned them'.

The factual matrix

[40] I will now set out the relevant facts as I find them. For the avoidance of doubt, insofar as the matters set out differ from the evidence of the husband or the wife, this is because I have preferred the evidence of the other or because I consider that the documents produced confirm my finding of fact.

[41] The husband was born in the USA on 29 August 1936. He is a US citizen. He left school when was about 14 years old and worked with his father who had two retail shops in Miami selling antiques and linen. The husband became the company secretary when he was 17 years old. It seems that at least one of the shops burned down and a fraudulent insurance claim was made. The husband and his father were implicated. After investigation, criminal proceedings were instituted and, after due process of law, the pair were convicted. Each received sentences totalling 20 years but they were able to remain at liberty whilst appeals were launched. This process took over 10 years. When the appeals proved to be unsuccessful, the husband and his father determined to avoid justice. Thus, new identities were obtained and the father/son left the USA on forged documents. The US authorities never caught up with them.

[42] In about 1965, the husband made his way to Spain where he determined to set up in business and became a commercial success. At the outset of this litigation the husband asserted that, when he left the USA with his father, they had some US$450,000 between them. I do not accept this evidence. There is no suggestion that they were able to purchase expensive assets at this time. To my mind, this fanciful assertion was simply an attempt to gain a 55% split in the current asset pot.

[43] The husband's first venture was a nightclub. He leased premises and built up the venue from scratch. It was an immediate success and was made glamorous by the numerous celebrities who attended on a regular basis. The husband took a lease on a second property which he opened as a second club.

[44] The wife was born on 26 June 1947 in England. She went to school locally and left when she was about 16 years old to pursue a career in modelling. She met the husband in September 1968, when she was 21 years old. The attraction was immediate but the romance really commenced in the summer of 1969. They began to cohabit and married on 10 December 1969. At the date of the marriage, the husband was probably worth some US$50,000. He was certainly not worth the US$500,000 which, I find, he alleged as part of his attempt to achieve the 55% split as referred to above. The wife did not know of his murky past. She only discovered it some 4 years after the marriage when the secret was revealed in a letter from the husband's sister.

[45] In about 1970 the wife's father gave her a property on Eccleshill Road – although she was not able to access the capital as he continued to live in it. In 1987, when this property was sold for about £25,000, the monies were used towards the purchase of a flat in Knightsbridge.

[46] In 1972 the husband decided to change course. He sold his first nightclub and did not renew the lease on the second. Instead, he started importing souvenirs to Spain from the Far East. This was relatively successful but, in about 1975, he bought a batch of colourful Hawaiian shirts and

discovered not only that they sold well, but that the product was extremely profitable. This led him to diversify into selling garments. From all accounts he was a successful businessman. He continued to source goods in the Far East and travelled, frequently accompanied by the wife. She assisted in a general way with fashion input, but I have no doubt that he was the commercial brains behind the increasingly successful business. He told me, and I accept, that he worked very hard – often 7 days a week and late into the night. I commend him for his diligence and financial skill.

[47] His business was successful and I have received no evidence which suggests that it was run in a corrupt manner. In fact the wife, who has been highly critical of the husband in so many ways, told me that she believed that (apart from one incident) the husband had conducted his business honestly and had paid all his taxes – both personal and business. I accept that evidence.

[48] The incident relates to the importation of goods (via Holland) in contravention of a quota. It seems that goods from China were restricted in this way and, to avoid the difficulty, the husband declared incorrectly that items had been purchased in Bhutan. This deception led to the goods being impounded and the husband being prosecuted. Consequently, no profit was made from this dodgy dealing. At the outset of this litigation the husband asserted that he had a personal liability for a fine in respect of this transaction which might be in excess of £300,000, plus interest of some £140,000. I do not consider that this was ever a personal liability. It was presented as such, in another foolish attempt to reduce the assets available for division upon divorce.

[49] The husband is, apparently, still fighting the criminal proceedings which were taken by the Spanish authorities. There was a recent hearing in Barcelona, but he failed to attend and I doubt that he will participate in the future. Apart from this incident (from which I am clear no monetary profit arose), I am satisfied the Spanish business was properly conducted.

[50] In addition to the phantom personal debt, the husband also asserted that his Spanish accountants were concerned that he might have liability for individual and company tax of EUR 1,490,000 (viz about £1m). The husband was repeatedly asked to give full particulars of this debt but failed to produce any reliable evidence about this aspect of his case. When the matter came before me, the assertion was not pursued. I am clear that no such tax was due because, as I have already found, taxes were paid. This was simply another attempt to seek to reduce the assets which fell for division. It was not founded in truth or reality.

[51] I find that all the family assets which appear in the asset schedule at Appendix 1 to this judgment have emanated from a legitimate source on which all relevant taxes have been paid.

[52] Whilst the husband was busy building up the business, the wife was equally busy at home. In 1975 L was born, followed by J in 1979. The wife cared for the family. I am in no doubt that, over this lengthy marriage, each partner made equal, albeit different, contributions. The children went to boarding school in England.

[53] In 1987 the parties bought the property on Basil Street, London (with the wife making the financial contribution outlined above). The property was owned through a Guernsey Trust (called M) and its underlying company (M Holdings Ltd).

[54] The parties had a good lifestyle, but they do not appear to have had access to great wealth because the real capital was locked in the business. It is plain that they had a good home in Spain and a flat in a fashionable part of London. They educated their children privately and, no doubt, enjoyed good holidays. But they did not live a ritzy or glitzy lifestyle.

[55] Their ability to spend more freely came in about 1998 when the husband decided to retire and was able to liquidate his business. Thus it was that the South of France property was bought for £400,000. The purchase was funded by a loan from the 'RT' Trust (which was set up by the husband). This holiday home was only bought after nearly 30 years of marriage and when capital was extracted from the business on the husband's retirement. This is a useful pointer which supports my earlier finding that the business was conducted properly.

[56] With retirement looming, the parties decided to make their main home in London, probably because their children were based in this city. The parties looked for a new home. They found a grand maisonette on Eaton Square, London SW1. The husband took advice from experts to ensure tax-efficient structures were in place. On the 24 June 1998, the 'RT' Trust was settled. The trust owned an underlying company called 'W' Holdings. This entity was registered in the Bahamas. A substantial portfolio was also placed in 'W' Holdings. I am clear that the settlement and company were funded by the husband's capital. Accordingly, he was beneficially entitled to all the assets that were held in the offshore structure.

[57] On 30 June 1998 Eaton Square was purchased through 'W' Holdings. A great deal of money was spent on its refurbishment (estimates suggest about £500,000). It took some 2 years to remodel the apartment and during that time the parties continued to live in the Basil Street property. I have no doubt that these properties were their principal private residences, even though they were held by offshore entities. They should, therefore, be exempt from capital gains tax (save perhaps for a very short period of overlap which the parties' accountants can determine if applicable).

[58] Monies were remitted to England to fund expenditure. The husband is/was a foreign domiciliary and so he was able to make use of the tax breaks which that encompasses. Provided that no income or capital gains were remitted to England, then no UK tax was due or payable. At the outset of this litigation, the husband claimed that he had a huge potential tax bill. It was going to be quantified by his accountant but, in the event, nothing materialised. I consider it likely that this debt was put forward to reduce the asset pot. The husband does not appear to have filed a tax return and so I am left to assume that no taxable funds were remitted.

[59] In fact, there was an elaborate arrangement in place for the remittance of funds. Ms Carew Pole prepared a schedule which showed capital from the portfolio (in dollars) was sent to TTT Moneycorp (TTT) where it was converted into sterling and was frequently withdrawn as large slabs of cash. In addition, dollar bills were often taken into TTT and changed into sterling. The husband told me that TTT was used because they gave a very favourable rate of exchange. The cash was kept in a safety deposit box and/or was used for expenditure. Some was paid into an account with Coutts. Both the husband and the wife were accustomed to dealing with large amounts of cash. Usually cash transactions denote a dubious source but, in this case, the funds can be traced to the legitimate proceeds of the husband's business and/or the sale of

the parties' former matrimonial home in Spain. Thus, whilst unusual, on the evidence which I have, I acquit the parties of wrongdoing in bringing funds into the UK in this way.

[60] Despite the purchase of Eaton Square and a new home in France, by 1998 the marriage had become increasingly unhappy. The wife commenced divorce proceedings in October 1998. The decree nisi was pronounced on 12 March 1999. The parties were reconciled and by June 1999 the decree had been rescinded by consent.

[61] The parties' home in Spain was finally sold in 1999. It had been owned by an entity called 'PM' SA which, in turn, was owned by GW Holdings (registered in the Bahamas). The husband was not connected in any obvious way to either company but he was the beneficial owner of both. The house had been on the market for a considerable period. The wife told me that she believed that the proceeds of sale were less than a £1m. The husband asserts that it was sold for a total of Ptas 185m, of which part was designated as the property (Ptas 55m) but the bulk was payment for contents (Ptas 130m). Mr Mostyn submitted that the destination of the proceeds of sale was unclear. He pointed to the fact that (i) the destination of Ptas 55m (which appears on the formal Escritura) is not proved and (ii) the EUR 360,000 (said equivalent to Ptas) is from a MLIB Euro Call Account (per a document produced during the trial) which is not direct proof that this sum originated from the sale of the property. He points to the fact that EUR 781,315 cheques (the contents payment) were written to blank payees without demonstrating their source. He concludes that the fact that these large sums were available at the time that the Spanish home was sold is co-incidental and no nexus has been established. He considered it likely that the husband has secreted or squandered part of the proceeds of sale. He further asserted that the husband has had ample opportunity to trace the proceeds but failed to give any proper explanation. These submissions might have been good but for the fact that the wife's advisers had, in questionnaire, asked specific questions about the proceeds of sale, their destination and use but had decided that they would not press for any detailed explanation. A *Scott* schedule of disclosure deficiencies (which is part of Deputy District Judge Gilbert's disclosure order of 4 January 2004) shows that the husband's answer was 'The respondent has made inquiries of the Spanish lawyer who handled the sale who are trying to locate records'. He produced some documents but the court was informed that the wife's advisers required 'No further action'. Mr Mostyn asserts that the husband was so unco-operative in relation to disclosure that it was decided to pursue this matter at trial. To my mind that is totally unsatisfactory. Documents relating to property sales are held by solicitors and so, quintessentially, will be available. If this allegation was active then it should have been pursued. When the lacuna was raised before me, the husband's solicitors obtained a number of documents but, of course, they were disadvantaged because of lack of time. The documents did not show how the funds were deployed, but it would be unfair to draw inferences against the husband in this regard. He told me (and I accept) that the Spanish conveyancing was undertaken by a lawyer known to the parties. If he had been seeking to hide the proceeds of sale I have no doubt that he would have been more subtle. He said that the funds were added to his known assets and I accept this evidence.

[62] The same type of allegation was made in relation to the proceeds of sale of the Basil Street property. Once again, I note that the relevant questions

were asked but the *Scott* schedule simply records 'No further action'. The issue was raised by Mr Mostyn in opening. The husband's advisers obtained the conveyancing file (on the fifth day of the trial) which showed that the sale proceeds (being some £545,000 less costs) were paid to known sources. About half of the net proceeds (£265,500) was paid to an entity called the K family settlement which purchased J's flat in Knightsbridge. The remainder was paid as to £25,000 to Coutts, £225,000 to Lawrence Graham (family advisers known to the wife) and £18,700 to SG Hambros (M Holdings Account). As a result, I am not prepared to make any adverse finding against the husband in relation to the proceeds of sale of that property.

[63] The parties moved into Eaton Square in early 2000. By this time it had been lavishly appointed and the parties had spent a great deal on antiques. Their lifestyle was very expensive and I am convinced that capital was being eroded at an alarming rate.

[64] In mid 2001, Messrs Lawrence Graham advised the husband (in the wife's presence) that the RT Trust and underlying entity were not tax-efficient. They suggested a new structure. The RS Trust (RS) was set up in September 2001. The proposal was that all the assets would be transferred into the husband's sole name and thence to RS and two underlying companies (one of which would own property and the other the portfolio).

[65] By this time the marriage was in serious trouble. The husband was consorting with other women at unsavoury establishments; he was drinking heavily and was spending a good deal on these activities. The wife's case is that he has squandered huge sums in pursuit of various sexual conquests. It is submitted that this behaviour amounts to conduct that it would be inequitable to disregard. Expenditure on the seamier side of life may call for moral condemnation but it does not, of itself, call for 'add back' unless it can be quantified. Mr Mostyn promised a schedule but informed me that it had proved impossible even to give a 'guesstimate' of the funds allegedly squandered. I accept that the husband did become close to various women and was smitten with one. He paid many of her expenses and set her up in a flat. However, I cannot begin to estimate the monies 'wasted' in pursuit of her favours. I will not add back anything in relation to this type of expenditure because it is not sufficiently particularised.

[66] The final petition was launched on 16 December 2001. The course of the proceedings is documented in the chronology at Appendices 2 and 3.

[67] There has been complaint that the husband spent excessively during 2003 until October 2004. The schedule prepared by Ms Carew Pole shows that during this period some US$1.77m (virtually £1m) passed from the husband's offshore capital sources to the UK. Of course, about £400,000 has been spent on the husband's costs (the wife paid her bill by selling her own portfolio), L's mortgage has been reduced (by some £150,000 odd) and the parties' general outgoings have been high. However, it does seem to me that the husband has not been able to account for the use of all those monies and expenditure at this rate (viz: about £225,000 pa) appears to me to be excessive, given the asset base and lack of income.

[68] As an example, I was particularly interested in two recent deductions – namely US$250,000 on 21 May 2004 and US$350,000 on 1 October 2004. A total of US$600,000 (say £325,000 at US$1.85). The wife's advisers accepted some monies were spent on costs, but some US$425,000 remained 'unaccounted'. During the course of his evidence, the husband prepared a

breakdown which revealed (for the first time) that he had set aside some US$100,000 in order to pay L's mortgage. The breakdown (wrongly prepared on the basis that only US$405,000 needed to dealt with) asserted that the remaining funds had been used for flats and hotels (£84,000): living expenses (£16,500): entertainment £6,500: staff costs £6,600: clothing £18,600: shoes £2,400: home furnishings (presumably abandoned) £3,800 and a small amount of cash. If this schedule is correct, it is evidence of an unacceptable level of expenditure and there can be little doubt that the husband's attitude to money has been misplaced. I recall the wife's evidence (which I accept) that he said he was going to spend and, as I find, waste money whilst the litigation continued. It is impossible to be precise about the level of excessive expenditure. In the final analysis it is a matter of general impression and feel. Doing the best that I can, and seeking to be fair, I consider that the overspend to be added back amounts to some £150,000.

The parties as witnesses

[69] The wife is an elegant woman with a great sense of style. On the whole I found her to be an honest witness. She struck me as a determined individual who was more than a match for the husband. She has had to work extremely hard to prove her case and she has succeeded in showing that his original presentation (per the 2002 Form E) was bogus. I have no doubt that her long-term needs will be met by one half of the net family assets.

[70] The husband has a history of dishonesty. However, during the marriage, he worked hard for his family and accumulated a small fortune. But he was entirely disillusioned when the wife decided to divorce him and was unwavering in his attempts to minimise his assets. The 'battle' became personalised and he lost sight of his wife's entitlement under law and his own obligations. His evidence was, at times, very emotional and I consider that he lacked perspective. I accept his evidence that he did his best for his family throughout the marriage and did not hide the proceeds from the Spanish house or Basil Street flat. Save as is apparent in my findings, where his evidence differs from the wife I prefer hers. Specifically, I do not accept that she threatened (blackmailed) him about his past unless he paid the sum she sought. There was a suggestion that the husband had made a false insurance claim relating to the loss of a pair of the wife's earrings. I make no findings about this incident as I do not consider it relevant to the outcome of this case.

The assets

[71] In the final analysis there was little between counsel as to the family assets – save for 'missing monies' and the question of 'add back' upon which I have already ruled. Each produced schedules. There was a debate as to the value of a warehouse property in Spain (owned by an entity called PMA). The final valuation which was produced (EUR 192,324) was in issue. But, to my mind, its precise value is not relevant because it is to be sold and the net proceeds divided equally. (Counsel will address me on who is to have the conduct of that sale.) There is also an apparent dispute about monies in the Hambros joint account (£22,490) once again the credit/debit will be divided equally.

[72] The assets as I find them are in Appendix 1.

The law

[73] It is my duty to apply the provisions of the Matrimonial Causes Act 1973 (the Act) so as to produce a fair outcome. In particular, I have to take into account all the matters which are set out in s 25 of the Act. This case falls squarely within the aegis of *White v White* [2001] 1 AC 596, [2000] 2 FLR 981 and *Lambert v Lambert* [2002] EWCA Civ 1685, [2003] Fam 103, [2003] 1 FLR 139. I remind myself of the following passages which clarify the task which I must perform.

White v White

Per Lord Nicholls of Birkenhead:

> 'Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely. As Butler-Sloss LJ said in *Dart v Dart* [1996] 2 FLR 286, 303, the statutory jurisdiction provides for all applications for ancillary financial relief, from the poverty stricken to the multi-millionaire. But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering para (f), relating to the parties' contributions. This is implicit in the very language of para (f): "… the contribution which each has made or is likely … to make to the welfare of the family, including any contribution by looking after the home or caring for the family". If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the homemaker and the child-carer.
>
> A practical consideration follows from this. Sometimes, having carried out the statutory exercise, the judge's conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge's decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination.'

Lambert v Lambert
Per Thorpe LJ stated:

> 'I fully agree that [attempting to assess contributions which are intrinsically different and incommensurable] … encourages a vain endeavour to recreate historic situations, choices and failings which in the context of a long marriage can never be recaptured fully or accurately. I share the views of District Judge Million cited by Coleridge J in *H-J v H-J (Financial Provision*: *Equality)* at 421A. I fully agree with the views expressed by McLaughlin J in the case of *M v M (Financial Provision*: *Valuation of Assets).* I do not consider that the approach which has been adopted by Coleridge J amounts to an impermissible judicial stride towards a presumption of equality. A distinction must be drawn between an assessment of equality of contribution and an order for equality of division. A finding of equality of contribution may be followed by an order for unequal division because of the influence of one or more of the other statutory criteria as well as the over-arching search for fairness.
> [39] A formula for the equal division of assets on divorce is justly criticised for producing crude and unfair outcomes. It might be unfair to the one who inherited those assets years before the marriage. It might be unfair to the one who needs all the available assets to provide a secure home for the children. However a formula for the equal division of whatever surplus there may be having made fair provision for the assessed needs of each of the parties before the court would produce a fair outcome in many test cases.'

He continued:

> 'Parties who share the perception that equality would be fair to each of them never get to trial. The notion that the judge who orders equal division despatches the parties from the judgment seat without a sense of grievance and with a sense of being equally valued may instance a piece of judicial wishful thinking. I am however in full agreement with the approach expressed in his following paragraph to cases that broadly equate with the case that he there decided.
> [41] Equally the warnings which he, as an experienced specialist amongst specialists, expresses in para [34] of his judgment in *G v G (Financial Provision: Equal Division)* must be heeded. Where a family has accumulated a fortune almost too large to dissipate, it might be thought that an expensive and contentious trial would be an unlikely necessity. But all who specialise in this field know that it is not so and accordingly there is a tendency for the case to escalate as it proceeds, each tactical development attracting at least another in response. Therefore if the decision of this court in *Cowan v Cowan* has indeed opened what Coleridge J describes as a forensic Pandora's box, then it is important that we should endeavour to close and lock the lid.'

[74] Unfortunately, whatever the strictures of the Court of Appeal, parties who wish to 'fight' will still endeavour to find issues over which to litigate. In this case the total assets 'in the pot' was an obvious target. It was the husband

who began the process by seeking the deduction of 'bogus' debts and a claim to a greater share. The wife was quick to take up the baton with an 'add back' in respect of (unquantified) expenditure relating to conduct which, it was asserted, was impermissible and 'missing' monies.

[75] The s 25 criteria are as follows:

(a) Income, earning capacity, property and other financial resources

Neither party works. The husband is retired and the wife has not been in gainful employment for the bulk of the marriage. There is no earned income. The assets are as set out in the schedule at Appendix 1. The parties will have to use this money to provide for their housing and will have to invest/deplete capital in order to provide an income.

(b) The financial needs, obligations and responsibilities which each has for the foreseeable future

Each party has broadly similar needs. The husband is some 10 years older than the wife and, accordingly, has a shorter life expectancy. Mr Mostyn suggested that, as a fugitive from justice, he could only live in certain (for that read cheaper) countries. I do not accept that submission. After a lifetime of work, this husband should have the use of 50% of the matrimonial assets – wherever he is. As an equal division of the assets will cater for the needs of each party, neither advocate chose to concentrate on particular needs. Consequently, neither emphasised their client's future housing needs or took me to an annual budget.

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

For most of the marriage the parties lived in Spain where the husband ran a successful business. They lived in a property worth between £800–£1m net. The husband earned a good income and, in consequence, the family had a fine standard of living. They sent their girls to boarding school in England – hence the second small home in Knightsbridge. The husband retired in about 1998 and liquidated his business. This enabled the family to have access to the capital which, until that time, had been locked in the business. In 1998, they purchased a holiday apartment in France (held in the girls' names). The husband then set up a number of offshore structures to seek to protect the family's wealth as the parties had decided to live in London on a full-time basis. They bought a grand apartment in Eaton Square and refurbished it. They began to live in it from early 2000, but this lifestyle was short-lived because the final petition was filed some 3 years later.

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

The husband is approaching 69 years old. The wife is nearly 58 years old. The marriage lasted 33 years.

(e) Any physical or mental disability of either party

Not applicable to the division of the assets, although the husband has a history of mental health problems. It seems that many years prior to the divorce he suffered a breakdown from which he made a complete and quick recovery. He

was very ill in June 2004 but, once again, made a speedy recovery. The wife considers that that illness was feigned but I acquit him of that accusation.

(f) The contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home and caring for the family

After a marriage of this length the contributions are equal although different and incommensurable. The parties started with very little in financial terms and both worked hard. The wife was a caring wife and mother for many years. The husband was a canny businessman. It would be churlish to find other than that the parties made equal contributions to the welfare of the family. I have no doubt that the husband worked very hard and was a good provider. He was generous to his family and wanted his wife/children to have a good lifestyle. The wife was wholly supportive until the marriage foundered. She was included in financial discussions and was involved in making decisions about the family's well-being.

(g) The conduct of the parties insofar as it would be inequitable to disregard it

Save as to the expenditure to which I advert in para [68] above, there is no matrimonial conduct which is relevant to the disposal of assets. There is litigation misconduct by the husband – which is outlined in Appendix 2.

(h) The value of any pension which will be lost upon divorce

Not applicable.

Conclusion

[76] I am satisfied that the assets which fall for division are those set out in the schedule. The wife will receive 50% of those assets. This is fair in the context of this case and I state clearly that in receiving this award there is no gratuitous element. She has earned her share of the assets, part will be used for housing and the remainder will be a notional *Duxbury* fund which will provide her with the means to budget for the remainder of her life. In short, the award represents full valuable consideration. The total sum that each party will receive is £3,082,250 (rounded). This will be made up of cash and chattels.

[77] The wife wishes to retain Eaton Square as part of her award. It was transferred to her by me, as an interim measure, when the trial was unavoidably delayed in mid 2004. My sole reason for the transfer was the husband's suicidal ideation and the fact that he was domiciled offshore. Thus, if anything untoward had occurred, the wife would have found it difficult to pursue a claim under the Inheritance (Provision for Family and Dependants) Act 1975. The transfer was always without prejudice to the outcome of the trial. In fact, the property has increased in value by some £700,000 since June 2004. It is the wife's case that, had the trial taken place on that occasion, she would now own that flat and would, therefore, have the benefit of that increase. The logical flaw in that argument is that it is likely that an order for sale would have been made in any event. She accepts that a sale is inevitable but she wishes to chose her own time and she is concerned that the husband will interfere with the process. I do not accept these points. The flat must be

sold as soon as practicable at the best market price and the wife will have sole conduct of the sale on the basis that all correspondence is copied to the husband and that he is kept fully informed of all offers and counter-offers. The property in Spain will also be sold and the proceeds divided.

[78] There will be liberty to apply.

[79] Indemnities will be given as agreed. Given the terms of this judgment, there is no necessity to retain a fund in respect of UK tax. However, a sum will be retained in a nominated account (to be held by the parties' solicitors) in respect of such order for costs as I may make.

Appendix 1

Assets

May 2005	**Properties sold**		**Notes**
	South of France = children's Chattels divided 50/50		
H Assets	**Wife**	**Husband**	
Spanish warehouse	**18,763**	**18,762**	To be sold and proceeds divided
Bank accounts			
SG Hambro portfolio/accounts		**4,535**	
SG Hambro Euro account		**239,780**	
Petrus Schendel painting	**0**	**0**	
W Assets			
Share portfolio	**sold**		used for costs and living
Jewellery	**101,700**		per joint valuation – H to buy ring for £4,500
SG Hambro current a/c	**0**		
RT Trust/H's assets			
Former matrimonial home on Eaton Sq	**1,600,000**	**1,600,000**	Flat to be sold as soon as practicable

Merrill Lynch account		**1,931,123**	To be divided
Other			
South of France property	**0**	**0**	
Estate agents' fees	**0**	**0**	
CGT liability	**0**	**0**	
H's because of RT Trust loan		**512,000**	W's share to be paid out immediately from other assets
Eaton Sq chattels	**165,655**	**165,655**	Divided in specie/balancing payment
SG Hambro joint account	**0**	**0**	
H Liabilities			
Mortgage LK Trust		**0**	
Anticipated Spanish legal fees		**0**	
Hambros loan		**0**	
Credit cards		**0**	H's cash funds US$28,000 in Cuba cover the debt
Money owed to children		**0**	
Spanish customs fines		**0**	
RS Trust charges		**(3,139)**	
Coutts account		**1,608**	
Eaton Square charges		**(3,000)**	
French flat expenses		**0**	
Personal loan Merrill Lynch		**0**	
Sundry debts		**0**	
Spanish back taxes		**0**	

UK tax		**0**	Indemnities will be provided
Unpaid costs	**(196,000)**	**(94,958)**	Per agreement unpaid costs deducted
Add back		**150,000**	Per para [68]
W Liabilities			
Debts	**(47,951)**		
Total	**1,642,167**	**4,522,366**	
		6,164,533	**50% £3,082,267**

Appendix 2

Chronology of H's litigation conduct

1998	H instructs DP of W to act for him in the 1998 proceedings. H subsequently changes to new solicitors (LW of M)
20 December 2002	W solicitors serve M with new proceedings
10 January 2003	LW of M is no longer instructed to represent H
23 January 2003	H instructs FH of H H attempts to have the first appointment fixed for 21 March 2003 adjourned because he says his Form E will not be ready. H files an answer in the main suit admitting irretrievable breakdown but denying W's behaviour particulars. The suit is subsequently compromised on W amending her petition
10 March 2003	W applies for an order that H file his Form E by 18 March 2003
11 March 2003	H applies for an adjournment of the first appointment which is fixed for 21 March 2003
14 March 2003	District Judge Berry grants H's application for an adjournment in a limited way (ie for one week) and orders H to produce a Form E within 7 days
	On 14 March (ie one week before first appointment due to take place) H has not filed a Form E
	H ordered to pay W's costs
28 March 2003	First appointment. District Judge Segal gives directions including provision for answers to questionnaire and joint valuations of former matrimonial home and South of France properties.
31 March 2003	H swears his Form E

29 May 2003	H solicitors first indicate that H answer to questionnaire may not be complete by the due date (20 June 2003). H accuses W of intercepting his mail and alleges this will be the reason his answer is late
25 June 2003	H affidavit in support of a *Hildebrand* application for an order that W be restrained from intercepting, opening or dealing in any other way with his post
27 June 2003	H issues his *Hildebrand* application
July 2003	H unilaterally instructs valuations of former matrimonial home
1 July 2003	H serves his answer to questionnaire one day late but it is regarded as deficient by W's advisers and H's response to numerous questions is that the information is 'to follow'. H alleges that most of the deficiencies are W's fault and repeats the accusation that W has been intercepting post. H solicitors give an assurance that all 'other' deficiencies are in hand and replies and/or documentation will be copied to W solicitor as soon as they become available
15 July 2003	W solicitors > H solicitors setting out deficiencies in H answer to questionnaire
5 August 2003	W affidavit in response to H *Hildebrand* application **H tells W he will give her 'five years of shit' and spend as much money as he can during the proceedings**
15 August 2003	Deputy District Judge Solomons lists H's *Hildebrand* application before a High Court judge, t/e 2 hours on a date to be fixed (30 September 2003)
27 August 2003	District Judge Maple orders H to answer the outstanding questions from W's questionnaire (that he was ordered on 28 March 2003) by 30 June 2003 If H is to maintain that he cannot answer any such questions or produce documents, he must be 17 September 2003 file an affidavit explaining himself **H ordered to pay W's costs** H serves further disclosure on W
? September 2003	H second (undated) *Hildebrand* Affidavit
26 September 2003	H's *Hildebrand* Application is adjourned to the financial dispute resolution listed on 16 October 2003 for directions The *Hildebrand* application is not pursued and no order in respect of it is made on 16 October 2003 (or subsequently)

30 September 2003	H serves further disclosure on W
? October 2003	W second (undated) *Hildebrand* Affidavit
2 October 2003	W solicitors write setting out deficiencies
6 October 2003	H serves further disclosure on W
7 October 2003	H changes to new solicitors (JL of L) about a week prior to the financial dispute resolution Immediately the new solicitors request an adjournment of the financial dispute resolution
16 October 2003	Financial dispute resolution in front of Johnson J adjourned. Johnson J gives directions, including that H respond to W solicitors schedule of deficiencies and that parties exchange affidavit evidence by 16 January 2004.
20 October 2003	H previous solicitors (H) have to apply *ex parte* to have themselves taken off the record and H is ordered to pay their costs.
12 November 2003	H sworn affidavit (due on 17 September 2003) explaining his reasons for not complying with the orders for disclosure
24 December 2003	H serves further disclosure on W
2 January 2004	W solicitors write again setting out deficiencies and giving notice of intention to apply for an order seeking a response to the deficiencies.
5 January 2004	Deputy District Judge Gilbert orders H to answer the deficiencies contained in the *Scott* schedule **H ordered to pay W's costs**
15 January 2004	W's s25 affidavit sworn and ready for exchange.
19 January 2004	H solicitors raise the issue of obtaining specialist advice re. H's tax debts for the first time. H solicitor raise the spectre of US tax liabilities
22 January 2004	H serves further disclosure on W
27 January 2004	At the adjourned financial dispute resolution in front of Johnson J, H applies to adjourn the final hearing for the first time on the ground of the need for accountancy evidence. Johnson J dismisses H's adjournment applications. Johnson J gives various directions re. joint valuations of and allows H permission to file an accountant's report by 1 April 2004 . **H ordered to pay W's costs**
26 February 2004	Firm L no longer represent H H's s 25 affidavit is one month late.
24 March 2004	W solicitors write that disclosure is deficient W's application for an order that H comply with order of 5 January and specifically deficiencies set out in a *Scott* schedule.

31 March 2004	H instructs new solicitors for the *fifth* time and MR come on the record as acting for him MR immediately say that they are unable to comply with 1 April 2004 deadline for filing H's accountant's report and seek an extension of time
7 April 2004	District Judge Million makes yet another order against H to deal with the deficiencies in his disclosure. H is given an extension of time for his accountant's report to 5 May 2004 and otherwise de-barred from relying on any such evidence. **H ordered to pay W's costs**
29 April 2004	H serves further disclosure on W
5 May 2004	W solicitors again set out deficiencies
10 May 2004	H serves further disclosure on W
14 May 2004	H's second application for an adjournment of the final hearing because, inter alia Mental Health Accountancy evidence (again) Time estimate inadequate H's 'criminal trial' for customs offences in Spain
19 May 2004	Ryder J dismisses H's application for an adjournment on all grounds
24 June 2004	H in hospital in Windsor and is unable to attend the final hearing
June 04 – mid 05	H's solicitors write over 100 letters on various points in 220 days
9 May 2005	Trial begins. H is absent (having moved to Cuba in about January 2005). H blames W for his absence because he considers that she is responsible for information being given to US authorities which mean that he does not have travel documents and risks arrest in UK (with possible extradition to USA) H seeks permission to give evidence by video link.
11 May 2005	Video link not available
12 May 2005	Video link not available. H gives evidence over the telephone

Appendix 3

Chronology of court proceedings

16 December 2002	**W petition** (behaviour)
18 December 2002	**W Form A**
2 May 2003	**W amended petition** (behaviour)
23 January 2003	**H answer**
25 February 2003	**W Form E**

14 March 2003	**Order: District Judge Berry** H to file and serve his Form E by 12 noon 21 March 2003 first appointment on 21 March 2003 re-listed for 28 March 2003 H to pay W's costs
21 March 2003	**H Form E**
26 March 03	**W files questionnaire.** There are 79 questions for H to answer
28 March 2003	**Order: District Judge Segal** Proceedings transferred to High Court Financial dispute resolution (½ day) Single joint experts if values not agreed: Property on Eaton Square, London SW1 South of France property Reports by 30 June 2003 W to answer H's questionnaire by 30 April 2003 H to answer W's questionnaire by 30 June 2003 Costs in the application
2 May 2003	**W answer to questionnaire** **W serves on H a bundle of documents, now marked '*Hildebrand* I'**
25 June 2003	H *Hildebrand* affidavit
30 June 03	Date for H to serve his answers to questionnaire
1 July 2003	H answer to questionnaire
15 July 03	W serves another bundle of documents on H marked '*Hildebrand* II'
1 (14?) August 2003	W applies for answers to Questionnaire
5 August 2003	W *Hildebrand affidavit* in response
26 August 2003	**DN**
27 August 2003	**Order: District Judge Maple** H to answer outstanding questions on W's questionnaire by 17 September 2003 Insofar as H maintains he cannot answer any questions/produce documents, H to file and serve an affidavit explaining the reasons by 17 September 2003 H to pay W's costs
27 August 2003	Further disclosure from H
? September 2003	H second (undated) *Hildebrand* Affidavit
1 September 2003	H undergoes surgery
17 September 2003	Affidavit approved by H (although not able to be formally sworn until 12 November 03).
30 September 2003	**Order: Bennett J** Financial dispute resolution listed on 30 September 2003 adjourned by consent to 16 October 2003 Costs reserved

30 September 2003	Further disclosure from H
? October 2003	W second (undated) *Hildebrand* affidavit
6 October 2003	Further disclosure from H
October 2003	H instructs new solicitors
16 October 2003	**Order: Johnson J** Financial dispute resolution adjourned to first date after 16 January 2004 before Johnson J (½ day) Final hearing be fixed t/e (incl. judicial reading time) 4 days H to deal with the deficiencies, answer the questions and provide the information and documents specified in the letter of ST dated 6 October 2003, by 11 December 2003 Valuers of property on Eaton Square, London SW1 meet as soon as practicable and endeavour to agree a valuation Single joint experts to value: South of France property; and contents (incl. paintings) of Eaton Square and W's jewellery (items worth more than £1,000) Costs reserved to the final hearing (amendment made under the slip rule of 27 January 2004
17 November 2003	**H's affidavit**
24 December 2003	Further disclosure from H
5 January 2004	**Order: Deputy District Judge Gilbert** H to answer W's questionnaire as set out in the *Scott* schedule Informal translations of all Spanish documents in the first instance H to pay W's costs
7 January 2004	[Name given] affidavit Filed on behalf of W re W's contributions to H's business Experts agree value of property on Eaton Square, London SW1 at £2,600,000
15 January 2004	**W s 25 affidavit**
22 January 2004	Further disclosure from H

27 January 2004	**Order: Johnson J [A–16]** Upon H undertaking not to cause any sum to be sent to his Spanish accountants/any other destination in relation to debt he alleges he owes in Spanish taxes/fines/equivalent liabilities without 14 days' notice in writing to W's solicitors; and Upon W's undertaking in damages H's application for adjournment of final hearing fixed for 28 June dismissed (H asks for this to be formally recorded in the order as he suspects that the wisdom or not of the need for an adjournment will be raised again). Within 14 days, joint letters of instructions to the following single joint experts: Bentley Skinner to value W's jewellery (£1,000 and above); and Bonhams to value the contents at Eaton Square (£1,000 and above); and [name given] to value South of France property. Time allowed for parties' affidavits extended to 26 February 2004 H has permission to file an accountant's report by 1 April 2004 dealing with alleged tax liabilities W has permission by 28 days after service to file a report in reply (if so advised) If W files a report, accountants to liaise within 14 days and compile memorandum of matters agreed/not agreed. Amendment under the slip rule to costs order dated 16 October 2003 H to pay W's costs of the adjourned financial dispute resolution
February–May 2004	H visits Cuba on at least four separate occasions
13 February 2004	B&S valn W's jewellery (£78,500)
26 February 2004	**H s 25 Affidavit**
5 March 2004	Letter On behalf of L and J to give their views as the true ownership of the South of France property Property placed in their joint names for tax reasons; do not consider it to be their property; regard it as belonging to their parents.
26 March 2004	H instructs new firm
31 March 2004	New firm on the record for H
1 April 2004	H arrested in Spain whilst en route to UK from Cuba and is accused of customs offences in relation to importing goods into Spain some years ago (possibly in 1999)

7 April 2004	**Order: District Judge Million** H to comply with the order of 5 January 2004, specifically items 1 to 4 inclusive, 9, 11, 16 and 17 of the *Scott* schedule within 7 days and to provide the documents in the Schedule of Documentation annexed **[A-24]** by 29 April 2004 Order of Johnson J varied so H has permission to serve accountant's report by 5 May 2004 and unless he has done so by 5 May 2004 he be de-barred from relying on such evidence save with the leave of the court H to pay W's costs
27 April 2004	H undergoes a full psychiatric assessment (of his own volition) by Dr P-T
29 April 2004	Further disclosure from H
4 May 2004	Report of H's accountant, Report of Dr P-T
10 May 2004	Further disclosure from H
13 May 2004	L Affidavit J Affidavit Re the ownership of South of France property
19 May 2004	**Order: Ryder J [A-25]** H's application to adjourn final hearing on 28 June 2004 for 4 days (incl judicial reading time) declined Costs reserved
25 May 2004	**Order: Bracewell J [A-26]** WITHOUT NOTICE TO H H's Merrill Lynch portfolio ('W' Holdings Ltd) frozen up to the value of US$4,000,000 H not prohibited from spending £1,500 per week towards ordinary living expenses H not prohibited from spending a reasonable sums on legal advice/representation W affidavit in support of application for a freezing injunction
9 June 2004	W open proposals
23 June 2004	H's open proposals
24 June 2004	H is admitted to the C Clinic, Berkshire Preliminary diagnosis is severe depression and anxiety The doctor has advised us that H will be unable to attend court on Monday and he anticipates H will need to remain in the psychiatric unit for **3–4 weeks at a minimum.** The doctor has confirmed that H's current state will be classified as a mental illness under the Mental Health Act 1983.

25 June 2004	Letter from Dr P-T H is suffering from a severe depressive illness, coupled with acute anxiety and psychotic features, including auditory hallucination. H was admitted as an emergency case to the C Clinic He is currently under treatment and is going through an alcohol detox. He has been seriously ruminating about suicide.
25 June 2004	H is examined by Dr M (on behalf of W)
28 June 2004	**Final hearing (t/e 4 days, inc. judicial reading time).** Template attached to the order of 19 May 2004
29 June 2004	**Coram: Baron J:** UPON the court being informed that the parties' respective psychiatrists agree that H is unfit to give evidence/instructions UPON the basis that the transfer of the Former matrimonial home is without prejudice to the final outcome of W's claims for ancillary relief UPON W acknowledging that she is domiciled in England & Wales and if she predeceases H prior to the resolution of their ancillary relief claims the will have the jurisdiction to entertain a I(PFD)A 1975 claim AND UPON the basis that, as from the date of transfer, W will be responsible for paying the outgoings on the Former matrimonial home. Hearing adjourned to 9 May 2005 (before Baron J if available). Beneficial ownership of Former matrimonial home transferred to W forthwith. H's rights of occupation terminated accordingly.

	Legal ownership to be transferred when practicalities of implementation are agreed. All contents of Former matrimonial home to remain in situ (save H personal belongings) pending final hearing. Freezing injunction varied to substitute the sum of £750,000 for the sum of US$4,000,000, unless H purchases a property within the jurisdiction with an unencumbered value of at least £750,000 (which shall then be frozen up to that value). Order to continue until the conclusion of the adjourned hearing. The adjourned hearing to be a 'final' listing, not be further adjourned, even in the event that H is, whether through illness or otherwise, unable to give instructions or is otherwise unfit to give evidence. H's solicitors forthwith to inform the Official Solicitor of the possibility that it may be necessary for H to be represented by a litigation friend. The parties shall instruct their respective psychiatrists to examine H and prepare a joint report to be made available by 28 February 2005. Such report shall deal with H's capacity to give instructions and/or evidence at the adjourned hearing. If the report indicates H unfit to instructions and/or evidence, H's solicitors to apply to the Official Solicitor. In the event that H does not call as a witness his Spanish accountant, permission to W to call him for cross-examination. W to file a litigation template by 11 April 2005 (to be agreed between junior counsel if possible). Costs reserved.
5 July 2004	H wishes to come out of hospital attend at the Former matrimonial home to collect his belongings
7 July 2004	H is discharged from the C Clinic
8 July 2004	H's application to be allowed back into the former matrimonial home in order to collect his personal belongings H affidavit in support
10 July 2004	Full report of Dr M

13 July 2004	**Coram: Bodey J** UPON W undertaking to conduct a thorough search for the former matrimonial home for any further items belonging to H and to package them up for his collection. H's application dated 7 July 2004 is refused. H's solicitors have permission to attend the former matrimonial home to search in locations specified by H as being the whereabouts of privileged documents in order to retrieve such privileged documents (if any). H to make a contribution of £500 towards W's costs.
June 04– February 05	Many attempts to effect transfer of Eaton Square H's solicitors write over 100 letters on various points in 220 days.
5 February 2005	H's sols serve draft transfers from W Holdings to H and from H to W
16 February 2005	W's sols agree the draft transfers
18 March 2005	H's application to adduce further valuation evidence
24 March 2005	Preliminary valuation report of [name given]
1 April 2005	H's application for a production appointment (never proceeded with)
4 April 2005	**Coram: District Judge Berry** W to nominate three valuers [for the Spanish property] by 6 April and a draft letter of instruction. H to select one by 8 April. In the absence of a timely nomination, H has permission to rely on his own expert's report, provided it is served by 29 April 2005. W to provide the information requested in para 4 of H's application by 14 April. W to disclose all letters or notice of instruction in relation to any private investigator's report on which she intends to rely by 13 April 2005, together with any parts of such reports which have not yet been disclosed (and any notes from which the reports are prepared). W shall have leave to rely on the expert evidence of S as to the value of the former matrimonial home. Leave to H to rely on [name given], subject to a report from each valuer being served by 14 April 2005 and the author of the report meeting on or before

	20 April 2005 and preparing at that meeting a schedule of agreements and disagreements. W shall permit [name given] to inspect the former matrimonial home on 72 hours' notice. Costs reserved (insufficient time to consider the correspondence)
13 April 2005	Valuation report of [name given] Value of former matrimonial home is in the region of £3.5m.
19 April 2005	H's further application for directions
25 April 2005	**Coram: District Judge Green** Parties jointly to instruct (by 4 pm, 26 April) BSJ to value the jewellery. No order as paras 2.4 and 5 of H's application (para 3 having been dealt with already by the parties) Costs reserved through lack of time
29 April 2005	Parties' valuers agree value of former matrimonial home to be £3.3m H indicates for the first time that he will not attend the adjourned trial and wishes to give his evidence by video link
9 May	Adjourned hearing.

Order accordingly.

Solicitors: *Sears Tooth* for the petitioner
Mischon de Reya for the respondent

PHILIPPA JOHNSON
Law Reporter