Neutral Citation Number: [2020] EWFC 98

Case No: ZC18D00227 and PT-2019-000973

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2020

Before :

THE HON. MR JUSTICE COHEN

- -

Between :

IU	**Applicant**
-and-	
OS	**1st Respondent**
-and-	
AS	**2nd Respondent**
-and-	
S Ltd	**3rd Respondent**
-and-	
L Ltd	**4th Respondent**
AND	
GS	**Claimant**
-and-	
OS	**1st Defendant**
-and-	
IU	**2nd Defendant**

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- -

Mr T Scott QC & Ms C Trace (instructed by **Taylor Wessing LLP**) for the **Applicant**
Mr C Hale QC & Mr N Fairbank (instructed by **Sterling Lawyers**) for the **1st Respondent**
The 2nd Respondent as a Litigant in person
Mr E Sheppard (instructed by DWF Law LLP) for the **Claimant**
The 3rd and 4th Respondents did not appear

Hearing dates: 6th – 23rd October, 28th October, 5 November

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE COHEN

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

The Honourable Mr Justice Cohen :

Introduction

1. This is primarily an application for financial remedy orders made by the wife, IU, (hereafter "W") against the husband, OS, (hereafter "H") which was issued on 1 October 2018. Subsequently, on 11 January 2019, W brought an additional claim to set aside the disposition of shares which H had transferred to his son by his first marriage, AS (hereafter "AS") under s. 37 Matrimonial Causes Act 1973.

2. Additionally, H's first wife and AS's mother, GS, (hereafter "GS") brought a civil claim on 25 November 2019 with respect to one of the several properties in issue in the financial remedy proceedings, namely, the HG property. GS seeks a declaration that H holds this property on trust for her and consequently an order directing HM Land Registry to cancel and vacate the unilateral notice which W lodged.

3. Although this latter claim was begun in the Business and Properties Court, in light of the considerable overlap of issues I ordered on 4 December 2019, as in effect invited to by Master Cook, that the case be transferred to the Family Division and heard with the financial remedies application.

4. W was born on 30 April 1981 and is now 39. H was born on 2 January 1968 and is now 52. W and H married in Ukraine on 5 June 2007 when W was pregnant with their only child, a son ("O"). O was born on 26 December 2007 and is now 12 years of age.

5. Both H and W are Ukrainian by birth, nationality and upbringing. In 2017 W also acquired British citizenship. Until 2010, their lives had been spent in Ukraine.

6. H married GS in 1988, when they were both still students, and they divorced in Ukraine in December 2005. GS worked throughout their marriage in banking, making a successful career for herself so that by the time they separated she was a head of department at a national bank. They had one son, AS, who was born in 1989 and is now 31 years old. When they separated is in dispute, but it was no later than 2005. By then H was in an established relationship with W.

7. H and W's marriage had been in difficulties since at least the end of 2014 but continued until autumn 2018. W filed a petition for divorce in England on 1 October 2018. H, fully aware of her petition, started divorce proceedings in Ukraine 2 days later. Eventually the court in Ukraine accepted that the courts of England and Wales were first seized and ceded jurisdiction. A decree nisi of divorce was pronounced on 13 March 2019.

8. There are a multitude of disputes between H and W, the principle ones being:

   i) When they first met, whether it was in late 2000 or Autumn 2001, and when they began to cohabit, whether it was in 2002 or as late as 2007. W asserts the earlier dates and H the later dates.

   ii) The origins of the wealth that H had acquired by the time that they met. Was H a self-made man, as W asserts, or was his wealth created on the coat-tails of

what his mother had built up. Did, in reality, his mother have any assets of significance.

iii) The extent of H's pre-marital wealth in 2002-2007 and the extent to which its value was diminished by the 2008 Global Financial Crisis and the annexation of Crimea in 2014. W's case is that there has been no such reduction in value but rather that H's wealth has grown throughout the marriage.

iv) The origin and the identity of the provider of the funds for the purchase of three of the four London properties.

v) Whether or not H has divested himself or lost all his fortune so that he is in negative equity, as he asserts, or whether he has substantial undisclosed wealth in Ukraine and USA in addition to the London properties, as W asserts.

vi) Whether the documents that H has produced, being agreements between H and respectively his mother, AS and GS, are shams in the sense of being created for the purposes of this litigation to distance H from the ownership of assets which are his.

vii) The circumstances in which H says that he and W entered into agreements for the division of their assets in 2015 and the effect of the agreements, if found to be genuine.

viii) Whether W has a sharing claim and whether it is capable of quantification.

ix) The extent of W's needs for herself and O.

People

9. W called her mother (hereafter "NU") and her friend (hereafter "AD"), on whom she had relied for an informal litigation loan, who gave evidence following a witness summons from H. Significantly absent from her cast was Mr P, a Ukrainian lawyer, who H says advised her in relation to the 2015 agreement and who W accepts had a role.

10. H called his own mother, Mrs S (hereafter "Mrs S") as well as four of his employees or business acquaintances. Ms P was an estate agent whom he hired to find tenants to occupy various London properties and who was subsequently made a director of S Ltd. Ms B was an old friend and business colleague of H. She became the director of L Ltd and it was she who drafted the "Property Agreement" which H alleges was signed by both H and W on 27 May 2015. Ms D claims to have been a witness to the signing of the Property Agreement. IK was and is a business colleague to whom it is said H owes $2 million.

11. H also called Mr K ("Mr K"), a Ukrainian auditor who retired in 2018, and who acted for H on occasions over the years providing drafting and preparatory services of various documents, the authenticity of several of which are challenged by W in these proceedings.

12. There are two further persons whom H did not call to give evidence at trial, although they both provided witness statements and were both required for cross-examination.

Ms R is a business associate of H, albeit on W's case a junior one, whom H has known since 1990. Ms R played a significant role in drafting the "Marriage Contract" (hereafter the "PNA") which was signed on 5 June 2015 by H and W in Kiev and also, according to H, loaned him $1m on 15 May 2017, repayable within 3 years. H said Mrs R was unable to give oral evidence as she has been unwell for many years. This is denied by W.

13. Secondly, Ms ON ("ON") who was H's PA for a number of years and acted for H in much of the communication with the conveyancing solicitors in London with regard to H's property acquisitions. H was adamant that her role was confined to duties concerning O and his education and logistics but it is clear that she did communicate frequently with H's conveyancing solicitors, Bankside Commercial Ltd, with respect to the purchase of the HG Property and the NG Property and the content of those emails suggests a reasonably high level of knowledge regarding H's personal financial position at the relevant times. He said that she had refused to give evidence and that she was no longer his employee, although it is clear that she still carries out administration for him.

Properties

14. There are three valuable London properties which W contends are owned beneficially by H in addition to the jointly owned home at OR ('the OR Property'). With the exception of the OR Property, H denies any beneficial ownership of them and says that they are owned by AS, GS or family corporate and trust entities.

15. The OR Property bought in November 2010 for £765k in W's sole name but which was transferred into H and W's joint names pursuant to an agreement signed by H and W on 29 May 2015. This is now valued net of costs of sale ("cos") at £795k. It is where W and O live.

16. The LG Property bought in the name of L Ltd in November 2011 as a new conversion for £2.45m. There is a dispute involving all the apartments in the development over latent defects which have given rise to ongoing problems with the building and have reduced its current value to £2 million (net of cos £1.94 m). H says that the company is beneficially owned by AS.

17. The HG Property bought in July 2014 and completed in December 2015 in H's sole name for £6.425m. Its current value net of cos is just under £5.6m. H claims that he holds it on trust for GS.

18. The NG Property bought in the name of S Ltd in May 2017 for £4.75m and now worth net of cos £4.05m. H claims that the company holds the property on trust for the S Family Trust and that its beneficiaries are AS and O.

19. H and W also bought a holiday home in Sotogrande, Spain, in joint names in 2013 for €650k. This is the only property bought subject to mortgage, which stands at €300k. Its current net value is put at £430k.

20. These property assets total some £12.8m.

21. W alleges that H also beneficially owns a property in Sunny Isles, Florida as part of the Armani Project Florida. The apartment was bought by 1800 FH LLC for $4.65m in

December 2019. H denies this company is his, contending that it was in fact bought and owned by his friend Mr IM.

22. There are also a variety of properties in Ukraine in which the parties either lived or stayed at various times during the marriage. Each party accepts ownership of one property in Kiev, worth about £200k but W asserts that H owns other properties. H denies ownership, saying that 3 homes are owned by his mother and 1 commercial premises and 1 residential property are owned by Mrs R.

23. In addition, H has various business interests in Ukraine. Their extent and value are unknown.

24. W realistically has decided that a pursuit of any asset in Ukraine is likely to be fruitless and confines her claims to the English properties and the Spanish holiday home plus a lump sum in addition.

Background

25. H was raised by his mother in a modest three room apartment (2 bedrooms and a living room) in Kiev. He went to school and then a technical college before starting at Kiev State University in 1987. After school H's further education was in the field of telecommunications and radio physics and I am in no doubt that it was this acquisition of expertise which became the foundation of H's business life.

26. It was at university that H met his first wife, GS. They married in 1988 and around two years later moved out of Mrs S's home into their own state-owned apartment in Kiev with their son, AS. In 1991 H commenced his 14 month military service, during which time GS and AS lived with either Mrs S or with GS's mother.

27. On H's evidence, Mrs S generated substantial wealth during the 1980's by making use of her position as catering chef/cook for various restaurants. She would over-order on produce and sell the excess on the black market. By the late 1980's Mrs S had allegedly accrued around 500k Russian roubles (around £1.3m+ in today's money) which she stored in cash in the homes and gardens of her siblings.

28. H's case is that in 1986 he and Mrs S entered into a 'Family Agreement' for the purpose of preserving and enlarging this family capital. The document was handwritten and was allegedly prepared by a close friend of H's, their next door neighbour according to Mrs S, who happened to be at law school at the time. Somewhat surprisingly neither H nor Mrs S could recall his name or recognise whose handwriting the document was in.

29. The agreement purported to create a trust-like arrangement between H and Mrs S in which Mrs S transferred the full amount of her savings to H outright but with the promise that he would use the funds in good faith, reasonably, and making every effort to ensure maximum profit. The agreement stipulated that any and all property and profits obtained by H through this fund were the common property of the family, including H, Mrs S and any future children or grandchildren H might have.

30. At the fall of the Soviet Union in 1991 H asserts the value of his and Mrs S's joint wealth to have grown to approximately $10m.

31. Purportedly, Mrs S retired from significant involvement in the family investments and business activities in 2004, and continued only by way of investment in real estate projects in Kiev because projects in her home town were close to her heart and "tangible".

32. W refutes this story of wealth generation in its entirety and both she and NU gave evidence that Mrs S had never been wealthy and that H had told them that he financially supported his mother over the years and that the money he had by the time he met W he had earned himself.

H's career

33. H says that he began dabbling in business during his time at vocational college as a teenager. After returning from military service in 1992 H built on the business operations he had begun previously and found particular financial success in ferroalloys. There is evidence that it was a high risk:high reward life which engaged him for the major part of the 1990s before H moved into the more sedate world of telecommunications.

34. I have no doubt that through the 1990s H amassed a substantial fortune. Not only was he buying and selling ferroalloys in Ukraine, but he was on his own account a major player in the international trade in ferroalloys. He says that he stayed in that industry until the late 1990s. By the time he left the business he says that there was capital created of $70m, of which he claims his share was $30m and his mother's share was $40m. His mother knows nothing about ferroalloys that I have heard, and she was understandably concerned about her son's safety in that industry where a number of major figures had, according to H, been killed.

35. During the 1990s H had the support of GS. He said that "my wife was instrumental in developing our business"; she had a better understanding than him of financial and banking matters, and she assisted him in his setting up of his own business. H also diversified, particularly into construction and real estate in Ukraine and Crimea.

36. From the mid 1990's he also became heavily involved with the growing telecommunications sector in Ukraine and in 1996 was made commercial director of U Company before going on to play a role in establishing AT Company in 2002.

37. H took demonstrable pride in sharing his political successes with the court, which he had achieved from a remarkably young age, including becoming a city councillor in Kiev. From these early successes he went on to become the People's Deputy for a Party in Ukraine and a Member of Parliament as well as a Minister and Chair of a State Committee. To achieve such success at a young age demonstrates clearly his ability. As a result, on any view, by the time H and W met in the early 2000's H was a wealthy and influential man.

38. On H's case his wealth was at its height in 2004-2007 at around $40m. However, he claims that he has now, principally by virtue of the impact of the 2008 global financial crisis and the 2014 annexation of Crimea, lost all of his personal wealth leaving him in a position of "dire" financial circumstances.

W's background

39. W was born and raised in the provincial town of Mariupol, approximately 750km from Kiev. She lived with her parents until leaving home to study in Kiev and pursue a career as a model. After moving to Kiev she continued to study with the University of Mariupol whilst she finished her undergraduate degree after which she commenced in 2002 a master's degree at the Gateman National Economics University, Kiev.

40. From the time she moved to Kiev, W funded her living in part from money given to her by family and in part through working as a model. She lived in a shared flat rented with other girls from her hometown who were pursuing similar careers.

H and W's early relationship

41. H and W met in a bar in Kiev. W asserts that they met in late 2000 whilst H suggests it was not until Autumn 2001, although the distinction is of no consequence. W says it was not until a couple of months after meeting that their relationship became intimate. H described this early period as one of "friend and mentor".

42. W accepts she became aware that H was married during that first evening but that H described the marriage as "cold" with only a formal existence which he said must be maintained until his son turned 16 years of age.

43. The nature of their relationship between this time and 2007 is very much in dispute. On W's case between early 2001, only a few months after meeting, and 2002 H and W rented a flat together which H partially funded. Although W accepts that H did not live with her full time, she says he would come and meet her there regularly. In October 2002 they moved into a flat in central Kiev, which she believes was registered in Mrs S's name, and lived from that time on as a "family unit". They then moved in 2004 to a bigger "family home" just outside Kiev which H had been building for the express purpose of their shared residence.

44. By contrast, H is clear that no permanent cohabitation commenced until 2007. He says W's account could not be true as he lived with GS and AS until 2005, when they divorced. This is a version of events which GS corroborates.

45. NU gave evidence that she first met H in 2002 and at that time, to her mind, H and W were already living together. She commented that whilst she couldn't say if H was then a wealthy man he was obviously "quite well off" and "respectable". In 2002 H became a sponsor of Miss Ukraine beauty competition for the purpose of helping W in her career and he accompanied her with a friend to the Miss World competition in London later that year.

46. On balance I am inclined to believe that some sort of semi-detached cohabitation was operational between H and W between 2002-2005, with H living between the two women at their respective homes. Thereafter I find that his home was with W.

47. It is W's case that H built up wealth throughout their partnership. W claims to have been instrumental in assisting H to build this wealth through her support and encouragement, although she inevitably accepts that all the money which entered their marriage was derived from H.

48. The parties married on 5 June 2007 shortly after discovering that W was pregnant with O. H had clearly hoped for more children and says that by this time he truly loved and cared for W. W contends that H expressed the somewhat old-fashioned view that he wished that after the birth she would remain a homemaker and be "looked after". She described this as having been a non-negotiable request by H.

49. In 2010 H and W decided to relocate with O to London so that he would have the benefit of an English education. This had been a deeply held aspiration for H for many years, and he expressed regret that he had not managed to agree with GS to provide this for AS. H added that this decision was in part motivated by the political pressure he was under as not long before the new President of Ukraine had imprisoned the leader of H's old political party. As a result, W agreed to move with O to London and after looking at houses for only 1 or 2 days they bought the OR Property.

50. W is clear that this property was intended only to provide the family with a temporary base from which to get to know London better and enable them time to find a long-term home which would be more in keeping with the lifestyle they had enjoyed in Ukraine. As a flavour, two of the homes W alleges they lived in in Ukraine during their marriage included a 5 bedroom mansion in Romankiv with a swimming pool and a penthouse apartment in central Kiev replete with a grand marble staircase installed at a cost of $10k.

Cultural Backdrop

51. As has been alluded to above, this case is set against the backdrop of the latter years of the Soviet Union in Ukraine and life in the immediate period thereafter. As a result there are important cultural realities which should be addressed at the outset to avoid a risk of falsely concluding that certain behaviours found within this case are in fact as unusual as they are likely to appear to the Western eye.

52. During the Soviet period pre-1991 the evidence was that although private enterprise was illegal, there was a black market operational in Ukraine through which it was possible to accrue personal wealth.

53. One of the aspects of this case was the account of very large transactions being undertaken on both a personal and commercial level by way of cash transfers, usually in American dollars. The potential for such transactions, as opposed to whether the account of them was truthful, was not in issue.

54. Indeed, it was common ground that part of the economy in Ukraine both during the Soviet period and in the aftermath was cash based. It may be the case that this reliance on cash was a continuation from the necessity to resort to cash for any private wealth acquisition during the period before 1991 and the relatively recent emergence of private banking, which it was suggested only became the norm after the 1990s. H gave evidence that only companies were commonly using bank accounts from 1990 or 1991 onwards and that at least until the fall of the Soviet Union the only bank accounts which individuals were able to hold were with a state bank and could only be used to pay for utilities and other bills.

55. The use of foreign currency was at least in part a response to historic occurrences of hyperinflation in the Soviet and subsequent Ukrainian currencies, making retention of

those a high risk endeavour. Conversely, US dollars provided a reliable and predictable value, even despite the absence of any interest being gained or inflation proofing.

56. The result was that throughout the 1990s and afterwards the use of safe deposit boxes in banks to store cash was common. GS gave evidence of the benefits of storing cash in this way against the backdrop of a country which had all too frequent experience of banks falling into liquidation. Her evidence was that by placing money in a deposit box rather than an account, if a bank did liquidate the depositor was provided with a small window of time to reclaim their cash from the bank rather than losing everything automatically.

57. Before coming to the issues in dispute it is relevant to say something about the relations between the parties. In December 2014 H became aware that W was conducting an affair with a man in the Ukraine, which on her account, commenced in 2011. H was very upset and it is clear that between then and mid-2015 the relations between the parties were poor. W saw solicitors in London in or about April 2015 and H saw lawyers in Ukraine. W contemplated starting divorce proceedings in England and H actually did start proceedings in Ukraine but they were never served and discontinued by him relatively swiftly. H says that the reason that he abandoned the proceedings was because of the agreements that the parties made in May/June 2015 in contemplation of their continued marriage.

58. At a date that has not been investigated W commenced a second affair with a man who H regarded as a violent criminal. He says that he became aware of that affair in January 2017 and claims that in October 2017 he was personally threatened by the man.

59. W issued her petition for divorce on 1 October 2018 in England and on that day obtained an order prohibiting H from removing O from W's care. The petition and order were served by email on H.

60. In what has turned out to be a disastrously ill-conceived move, H decided to launch his own divorce and child proceedings in Ukraine. His case is that he was advised that service by email on him was not good service in Ukraine, whatever the English order may have said about service. His petition contained a mass of untruths, including saying that:

    i) The parties had not "lived together, maintained any common household or kept any marriage relations" since 2011;

    ii) They had lived separately for about 7 years;

    iii) They lived in Ukraine.

61. At the same time he issued an application for O's residence claiming that:

    i) Since the end of 2014 W and O had moved to another place of residence and from that time W had prevented O from meeting H;

    ii) It was obvious that W could not independently support the family and ensure adequate financial situation for the upbringing of O;

iii) W was currently living with her parents, sister and child and sister's husband in a one room apartment in Ukraine and that in consequence O's residence should be committed to his father.

62. The quoted contents of both H's petition and children proceedings were of course completely untrue and H also failed to refer at all to the existence of the English proceedings.

63. As I understand it, H obtained an order in Ukraine and it was only some significant time later that the order was discharged and the Ukraine divorce petition was dismissed on the basis that the English court was first seized. The inevitable consequence of these procedural shenanigans has been that W has been very reluctant to set foot in Ukraine with O and that will only have been increased by the steps that H took in the late Spring 2020 when he resuscitated his custody proceedings and obtained on 7 May 2020 an order in Ukraine that O could not leave the country, where he was with his mother to visit her parents. It took W until September to have that order discharged.

64. It is very sad to report that communications between O and his father have entirely broken down. It was not my role in this case to try to delve into exactly why that had happened although I urged that there should be indirect contact. But, more materially, H, his mother and AS feel very strongly about the absence of O from their lives and that is reflected in their attitude towards W. They do not see that the situation was largely one of H's creation.

The issues

The foundation of the family wealth

65. It is the case of H and his mother that at all material times his mother was independently wealthy. Notwithstanding the fact that from the mid-1970s she was a single parent, it is her case and that of H that throughout the 1980s she built up a fortune by working as a chef/cook in Kiev. In that capacity she was responsible for the ordering of supplies. She would deliberately over-order and sell off the surplus food, usually in city markets, keeping her employers in ignorance of what can only be described as her theft from them. She says there was a thriving black market in foodstuffs in Ukraine. She received money in cash which she hid around the gardens and homes of her brother and her sister.

66. So successful was she in this enterprise that by 1986 she had accrued wealth to the extent that she was able to give money to H to invest and by the end of the 1980s she had saved what in today's money was about £1.5m [para 7 D221] or £1.3m [para 6 D196].

67. On 2 January 1986 (H's 18th birthday) they entered into an agreement whereby she transferred to her son funds of a total value of RUB500K. The money was given to H for him to invest "exclusively for the benefit of the parties and the future children and grandchildren" of H. It is a very formal agreement drawn up, they say, by the university friend of H who was studying law whose name was no longer remembered. The agreement states that all the property acquired by the use of the funds shall be considered family capital of the family and that all profits are to be considered common property of the family.

68. Of particular interest is paragraph 1 which says that "Party 1 (H's mother) transfers and Party 2 (H) takes control of disposal of funds of a total value of 500,000 (five hundred thousand) roubles." This is significant in the light of H's statement at D196 where he says "towards the end of the 80's she (his mother) managed to save RUB500,000 which was … approximately £1.3m in today's money". In her statement his mother claims to have achieved that sum towards the end of the 1980s. Thus, she could not have had that sum of money in 1986.

69. In her oral evidence Mrs S said, which H had not said and she had not said in her statement, that in 1986 she gave H the use of only $50,000, being ⅒ of her fortune. The rest, she said, was only handed over in the early 1990s. This is not consistent with paragraph 1 of the agreement.

70. I do not accept that Mrs S had built up any enormous fortune during the 1980s for a variety of reasons, some of which I have just mentioned. It is inherently unlikely that the equivalent of £1.3-1.5m could have been saved in cash by H's mother and concealed in her siblings' homes even taking into consideration her account that in the late 80s she diversified into the buying and selling of textiles. The vast majority of Ukraine was poor at that time. It would be naïve of me to assume that there was not some sort of black market, but I find it inconceivable that this size of fortune could have been achieved largely from a stall in a market.

71. The accounts of both H and his mother were conspicuously devoid of any detail as to how the operation was run.

72. I bear in mind also other important factors. First, the evidence of W's mother, who I felt was a reliable witness, was that Mrs S showed not the slightest signs of any wealth or spirit of enterprise. Secondly, the family life hardly reflected the existence of any significant funds. H was brought up in a modest 3 roomed apartment (2 bedrooms, 1 living room) in Kiev and when he left home his mother moved not into a bigger apartment, but a smaller one consisting of one bedroom and one living room. In 2003 she moved from her 3 roomed apartment to another flat. It cost just $10-20k more than her previous apartment which is not suggestive of her having much wealth at the time.

73. Whilst a student at university H met his first wife GS. I note that GS in her statements says nothing about H's trading with his mother or any pre-existing wealth, and if this had been a significant part of their life together, as it would have been if H and his mother's case was true, this is a major omission.

74. In H's statement he said that "this marriage formed me as an individual and as a businessman" and GS claims that she played an active part in his business activities. She too had specialised in telecommunications before moving into economics. This makes more stark the absence of any reference to H's business activities and/or fortune with his mother.

75. I do not accept that H and his mother had any significant shared business activity nor that she had a role in his business activities and nor do I accept that his fortune was in some way shared with her. When asked about the details of finance and in particular the overseas entities which both she and H had said were used by her for her money, she was unable to explain why she needed more than one overseas entity and seemed uncertain of the investment which had been the recipient of her funds.

76. It follows that I do not accept that the document described as the 1986 Family Agreement is a genuine document in either its dating or its content. I need say little more about it as it is not argued that it has any legal relevance to or effect on the issue which I have to decide.

77. There was a further document between H and his mother bearing the date of 18 May 2004 and described in English as "Fiduciary Agreement on the Preservation and Management of Family Capital". Exactly who drafted the document is not clear. Mr K said in his evidence but not in his statement that he drafted the document. Mr K was anxious to point out to me that he drafts on instructions and it is not for him to comment on the truth of the contents of the document. This document was, on W's case, drawn up in 2018 and the date that it bears is untrue.

78. This is another document of formality. H and his mother are collectively referred to as "family founders" and the agreement says that the purpose of it is to "preserve, maintain and increase the family fortune of the S family, to ensure safe and comfortable life of the members of the S family … The family capital of the S family should be aimed at investments in order to preserve and increase family fortune in favour and in the interests of the members of the family".

79. The initial capital is described as being 132,750,000 Hryvnias, being the equivalent of $25m. Mrs S says she provided $15m and H provided the balance. The family manager (H) was responsible for the management of the capital and upon reaching the age of 21 the functions of the manager could be assigned to AS, as the sole child/grandchild. Notwithstanding that, H was to remain the family curator whose functions included control and the compliance with the terms and conditions of the agreement and the achievement of the specified purposes. In practical terms I have no doubt that the control of these funds has never left H. The provisions of utilisation of the family capital for the family manager are extremely wide and even after the transfer of functions to the family manager the functions of the family curator remain with H.

80. The agreement went on to say an asset may be added to the family capital by the provision of an annex to the agreement. It is the case of H that in 2017 the NG Property was added to the fund by way of the transfer of shares of S Ltd which in turn owned the NG Property.

81. In 2018 the signature of AS was added to this document, it apparently being intended to indicate his acceptance of the terms of the agreement upon his becoming the manager at that time. I do not think that in the light of the powers granted to the curator his participation is significant, but the dating of his addition is significant. AS was by then 29 years old and the marriage in its last days.

82. This document bearing the date of 2004 was the subject of investigation by the handwriting experts. They were unable to form any conclusion as to the date of the creation of the document, but they noted that this was one of 6 documents, the others bearing dates of 2006, 2015, 2018 and 2019, which all had the same printing defect. I shall return to this issue.

83. To keep matters broadly chronological, in 2002 AT Company was established. Its business was building and servicing communications systems in the internet industry. H's mother says "we founded AT Company with five other families each founder

invested about $1.5m making the total of about $10m, I provided the entire sum for this investment. I made this investment on the basis of our usual agreement with H". H says that W chooses the date of 2002 as the commencement of their cohabitation in a naked attempt to boost the size of the marital acquest. I have dealt with this issue, which is not as clear cut as either party would have me believe.

84. I regard it as fanciful that H's mother was the founder or lead investor in the business. This was a business operating in H's special field of expertise and in which his mother knew nothing. It was founded at the time when H was on his account a wealthy man and in no need of money from his mother to invest.

85. In 2005 GS and H divorced. They claim that H agreed by way of divorce settlement to pay to GS the sum of $10m. According to GS this was the offer made by H. He said that he was worth about $40m at the time, which he says was the highest net worth he ever achieved, whilst GS put his worth at $50-$55m. She said that H offered $10m and after some thought she decided to accept it.

86. In a family where everything is documented (or so they ask me to believe), it is remarkable that there is no document that evidences the agreement that was reached. When Mr Scott QC asked GS what would have happened if H had dropped dead before payment, she after thought simply said "well, it didn't happen". She said that she had complete confidence that H was a man of his word and that she was bound to receive payment. She went on to explain that the absence of a written agreement was the result of the fact that it was a peaceful settlement. GS struck me as a thoughtful, intelligent and well-organised lady and I found these answers unconvincing and at odds with, for example, the receipts and the Trust Agreement which she says that she and H entered into.

87. Her confidence becomes more surprising when in answer to a question as to when the sum was due for payment she said that it was as long as "a couple of years". It must have come as a very considerable surprise when it was all paid in seven tranches over 5½ months. If H had it in cash, why 7 tranches in such a short time? GS claims to have had no curiosity about this.

88. The receipts for the money are to be found in the bundle. They are hand-written and almost identical in appearance. The handwriting experts regard it as more probable than not that the receipts were all created on one occasion rather than on seven separate occasions. This is denied by GS and H.

89. W says that she has no knowledge of H making any payments at all to GS. She doubts very much that he had that sum of money available at that time to give away and she says it is inconsistent with a letter which H read to her in 2002 in which she says GS said that she wanted to make no financial claims whatsoever against H. GS and H deny that there was any such letter and I consider that this is an example of W gilding the lily. I cannot see why GS should have written such a letter. Although she has had a successful career in banking, she was in 2005 very much a middle manager with a student child who needed support. If she is right, as I am willing to accept, that she had played a significant part in assisting H in creating wealth, it would be surprising if she was willing to give up her claims so easily.

90. In considering this alleged divorce settlement, and indeed many of the issues in this case, it needs to be remembered that notwithstanding the apparent dispute between GS and H in these proceedings, there is in fact a unity of interests between GS, AS and H, supported by H's mother, all of whom seek to retain assets and/or have them removed from the marital pool to preserve them for AS.

91. I also need to consider this account of the production of $10m in the light of how it is said to have been used. In 2006 and 2009 GS entered into loan agreements with H. On 30 November 2006 a loan agreement was entered into whereby GS lent to H $8m "for the development of a family business within the framework of a fiduciary agreement on the preservation and management of family capital on 18 May 2004" (2.1).

"The borrower undertakes to return to the lender the amount of money specified … before December 1 2015 or according to the additional agreement between the lender and the borrower investing in the interests of the borrower in real estate outside Ukraine".

92. Mr K says that this document was drawn up and witnessed by him. Again he does not seek to make any submissions as to the truth of its contents. Of note, the acknowledgement of the receipt of the monies from H identifies their use as being "for the purpose of involving them for the development of my business" (emphasis added).

93. This was a strange agreement in a number of respects:

i) GS handed over $8m for a period of 9 years without there being any upside in terms of security or interest or share in any profit;

ii) Drafted as it was at H's behest, why does it refer to the development of a family business within the framework of the fiduciary agreement when it is no part of H's case that the money was ever used for the family business or within the 2004 Agreement and nor was any annex entered into?

iii) Why the discrepancy between "family business" and "my business"?

iv) Is it sheer chance that the agreement expires in December 2015, which just happens to be the time that H was required to complete on the purchase of the HG Property?

v) Why does the agreement make provision for the purchase of real estate outside Ukraine which at that time had been no part of the experience of either H or GS?

94. H said that he was involved in a major property development in Crimea which in 2006 had run into difficulty. That was why he needed to ask GS to lend him money. This is inconsistent with his account that in 2007 he was still at his financial zenith.

95. Three years to the day later on 30 November 2009 GS loaned back to H at his request the last $2m she had received from him "for purchase of real estate and other property to meet the family needs". The term of the agreement was for 8 years expiring on 29 December 2017. Just as in 2006 and as had been the case since 2005, the money was still sitting in cash in a safe deposit box.

96. Once again, the agreement is odd:

    i) There was no interest or security;

    ii) H says that he was in financial difficulties following the banking crisis of 2007-2008 and that was why he needed to borrow more money from GS. If H needed the money for business purposes why does the agreement say that the cash was an advance for the purchase of real estate and other property?

    iii) Within a year H was buying property in London and within a short time had spent more than £4m on London property and the investors bond. Why did he need to borrow at all?

97. What makes this all the more surprising is GS's reaction to his request for the borrowing of money. She says that she had total confidence in him and that his word was "iron". She said that she never asked for any business plan or any explanation as to why he needed the money. She just accepted what he said.

98. Yet, this is the lady who was intimately involved in the building up of his business during their marriage and the creation of so much wealth. She was and is financially acute. It is in my judgment beyond belief that if this story was true, she would not have taken some interest in why H needed the money and how it was being used.

99. Even without the forensic evidence, putting all this together I conclude that the story being put forward is untrue. My finding that the documents which are said to support it have been created for that purpose only fortifies my conclusion.

100. For the avoidance of doubt I am not in a position to say what, if any settlement may have been made between H and GS but I am satisfied that it is not the one that is being presented to me.

The OR Property

101. In 2010 the parties decided to buy a home in England, with O then coming up to 3 years of age. After very little searching, they found the OR Property where they purchased a 2 bedroomed flat for the sum £765K. It was purchased in W's sole name. At the same time W obtained a tier 1 investor visa which required a deposit of £800K. They moved into the property in January 2011. The OR Property is a 2 bedroom, 4th floor flat with a gross internal area of 79m^2 (849ft^2). The property was bought in cash with no mortgage.

The LG Property

102. One year later, namely in November 2011, the LG Property was purchased for £2.45m. The purchase was in the name of L Ltd and needs careful examination.

103. It is the case of H, AS and H's mother that this property was purchased by H's mother for investment purposes in the name of her limited company, L Ltd, before in 2014 she gifted it to AS. It is W's case that the funds for its purchase all came from H and that the purpose of its purchase was to provide a replacement family home. It is her case that they lived there from September 2012 until December 2015, when they moved back to the OR Property following O starting at Northbridge Prep School.

104. The LG property was purchased by L Ltd. The question is, who was the beneficial owner of L Ltd. There are no company accounts available and the ownership was in the hands of the holder of the bearer share.

105. It is clear that the conveyancing solicitors thought that it was being bought by H and W. The discussions for the purchase started as early as February 2011, only a month after moving into the OR Property. A reservation fee of £10K was put down and that came from W's own personal account. At all times this and subsequent transactions were handled by Bankside Commercial Ltd with Mr Bill Warburton as the conveyancer.

106. After the receipt of the reservation fee, all subsequent payments of the purchase price of £2.45m came from L Ltd. On completion the keys were handed over to W.

107. Following the purchase, works of refurbishment had to take place and it was only in September 2012 that W and O moved in, as I understand it, H dividing his time between Ukraine and London.

108. On 16 November 2013 H's PA, ON, wrote to Mr Warburton saying, "We are writing to ask for your help in registering the apartment … owned by L Ltd". The decision was made "to transfer the property by way of donation to both Mr OS and Mrs IU (the property will have two owners)".

109. On 17 January Mr Warburton wrote back to ON saying:

"Dear ON,

I ought to contact Stephen Landes, who advised from an accountancy point of view, on the transfer/gift of the property, to make sure that a simple transfer for no money will be ok please confirm I may contact him".

110. ON replied to say that all that mattered was that it came into being prior to 5 April 2013. In fact the transfer into individual names did not happen, but Bankside billed H personally for the professional charges for advice given in relation to the proposed transfer from its corporate proprietor to a personal name. The payment of Mr Landes' fees was made from W's personal account.

111. Two days later ON wrote again saying:

"Dear Bill,

It was nice to talk to you!

We would like to emphasise again for better understanding that Mr OS is a non-resident **beneficiary** (sic) of L Ltd, IU is a resident of UK but she is not a beneficiary of the company".

112. It is H's case that the parties only lived in the LG property for a very short time when there happened not to be a tenant there. But this was in my view exploded by Ms P who was a letting agent used in various transactions by H. She explained that between 2012 – 2015 the OR Property was rented out and that in 2015 she was instructed to find tenants for the LG property which took her until early 2016 to achieve. It is of note that when the property was put on the market for rent in late 2015 the photographs of the

interior show not only the parties' art on the walls but also O's bedroom with his belongings.

113. I accept that the LG property might seem an odd property for the parties to purchase as a home with a young child. It did have the great plus of proximity to Hyde Park, but it did not have a lot of outdoor light and was not greatly bigger than the OR Property, but, the evidence satisfies me that that is where they went and further confirmation is to be found in W's bank statements which show the payment of school fees for schools in the area of the LG property.

114. Significant in ascertaining the ownership of L Ltd is the fact that some £70k was paid into W's personal account from L Ltd in the period 2013 – 2014. These payments were to meet the living expenses of W and O in London. If W was not a beneficiary of L Ltd, these payments should not have been made.

115. In AS's evidence, he stated that the payments were made at his father's request and that L Ltd was repaid. H did not say this himself and I reject AS's evidence on this. Mrs S has no explanation of the transaction. On the contrary, the evidence satisfies me that L Ltd was indeed owned by H and that the LG property is and was his too. There is support for this in the conveyancing documents to which I have referred and nothing to gainsay it. There is no documentary evidence that supports Mrs S or AS having any interest in the property.

116. H suggests that ON simply got it wrong when she described H as a beneficiary of L Ltd and that the property was to be given to H and W. I do not accept that. H used ON as the means of communication with the conveyancing solicitors as she was fluent in English and he had little. She took her instructions from him. Further, there was no satisfactory explanation from H as to why, having given a statement on other matters, she suddenly became unavailable to give evidence.

117. In considering the ownership of L Ltd and the LG property it is necessary to look at the wider picture to test the assertion of H's mother and AS that it belonged to her until she gave it to him in 2014. H's mother and at that time AS spoke no English. H's mother has never been to England and never visited the flat. She was not a cosmopolitan lady. Neither H's mother nor AS knew anything much about the area in which the purchase was being made.

118. When the property was eventually let out the rental income was simply paid into the L Ltd account and neither H's mother nor AS have ever had any use of the income. AS at this time owned no property of his own and was living in rented accommodation in Kiev. It would be running before he could walk to suddenly become the owner of a £2.45m property in London. Indeed, he did not even visit the property until 2015.

119. L Ltd was one of three overseas companies that have featured in this case. The first in time to be established was IS Company, with accounts in both Switzerland and Cyprus and registered in the BVI. L Ltd and K Company were established in the Marshall Islands. These were the companies whose purpose and activities H's mother had difficulties in explaining. There have been no documents at all produced in respect of any of these companies and so it is impossible for me to know what they hold other than the properties mentioned in this judgment. In particular, I have no idea of any of their cash balances, although there is evidence that at least in 2017 there were

substantial funds in or available to K Company's account (see later). I have been told that IS Company, the third company was liquidated but again there are no documents.

120. I accept that for a period of about four months in 2013 the parties spent the summer in Spain where they had purchased a home and that for one term O attended school there. I do not think that anything turns on this.

K Company

121. K Company is a similar company to L Ltd as an investment vehicle through which to channel funds into different projects. The difference is that, on H's case, K Company was never intended to own any assets.

122. Just as L Ltd had transferred funds to W's account for her use, so did K Company to the tune of just under £50k in 2014/2015.

123. In a telling piece of H's evidence, he said "Before 2010 I had offshore companies that I used to help with the business of my family". He identified them as IS Company, L Ltd and K Company (emphasis added). Challenged, he said that he meant 'my family used'.

The HG Property

124. In June 2014 H became interested in purchasing an apartment in HG, a new build adjacent to the Design Museum in Kensington. The timing is not insignificant because it was just 3 months after the Russian invasion of Crimea which brought such asserted ruination to H's construction and development projects there. If H was in financial difficulties, it might be thought surprising that ON was writing to Mr Warburton on 12 June as follows:

"Dear Bill, We are pleased to inform you that Mr OS and his wife IU have finalised their choice of the future apartment they would like the last to be held in a way of "joint tenants". …. The price is £6,425,000 inclusive of one parking space and a storeroom … as one of the variants, the purchase can be made through personal IU's account with Coutts Bank in Switzerland the origin of the funds will be based on a contract of loan which is entered with our offshore company (emphasis added) the amount of the loan £7m and will be provided for a period of 5 years. In this regard we would much appreciate to receive the information from you which form of payment would minimise the number of questions in relation to OS (as to a PEP) and to IU as a resident of UK".

125. On 23 July 2014 ON emailed Mr Warburton to say that the contract should be signed on behalf of W, as he had been told on 10 July that she was to be the purchaser. In response he said that he would go ahead and exchange contracts. 10% was to be paid on exchange, 10% soon after, and with the balance paid on completion. The first tranche was paid by K Company direct to the solicitors and the second tranche came from the same source but was paid through W's Coutts account. However, before things went much further H became aware of W's first affair.

126. In consequence, in December 2014 instructions were given that notwithstanding the exchange being in W's name the contract was to be completed in H's name.

127. On 5 January 2015 ON wrote to Mr Warburton in respect of making payment of the second tranche and went on to say, "also Mr OS is interested what shall he do so that his wife couldn't put a claim in for this apartment in case of divorce".

128. It seemed to me clear that the purchase of the flat was initially intended to be either for them as a family or as part of H's investment portfolio. It matters not which. W never visited the apartment and although she had some initial contact with the interior designer/decorator hired for the property, her involvement was minimal.

129. As 2015 went on and the building took shape H was going to have to find the balance of the purchase price. By this time the marriage was plainly in significant difficulty. Before turning to how the last tranche of monies was paid it is chronologically necessary to examine the events of the early summer 2015.

2015 Agreements

130. As mentioned earlier, both parties had taken legal advice in Spring 2015. In May 2015 a family holiday had been arranged to take place in Turkey but W said that she was not prepared to go and so H decided to ask three of his friends/colleagues in her place namely ON, Ms B and Ms D. It is H's case that shortly before the holiday was due to take place W changed her mind and flew out to join the group. She said that she had been subjected to significant pressure by H in the period leading up to this trip and felt that she had to attend.

131. H says that whilst they were there, intensive discussions took place about the future of the marriage and the basis upon which it might continue. They were the continuation of discussions that had already started some weeks beforehand during the course of which what I shall call a post-nuptial agreement ("PNA") had been discussed. W says that H had indeed mentioned this and shown her a draft but refused to allow her to have a copy so that she could take her own legal advice. H denies any form of impropriety or pressure.

132. Ms B says that she was present at a meeting between H and W that took place in her hotel bedroom where they agreed the terms of how they were to deal with their property. It was, she says, a meeting of several hours the broad thrust of which she noted down and then whilst they went out of the room, she telephoned various telecommunication companies that she knew of to speak to their legal department to see if somebody could advise her as to how she could draw up a matrimonial agreement. She did this and they then returned to the room and signed the document.

133. The document is described as "Property Agreement" and is dated 27 May 2015. It is a document which is hard to construe. It sets out that:

The parties "came to an agreement on the intention to conclude a marriage contract during the marriage, in view of the following preconditions" and then it sets out various terms.

134. There is precious little if anything to be said for it in terms of what W might receive as the OR Property which was in her name was to be deemed to be common property of the spouses, and apart from the flat in Kiev and two used cars W received nothing from the marriage. She and O were to share "monthly £1600-2500 (cash and non-cash)".

135. Significantly, the document states that W is "aware… that H plans to purchase the HG Property in his name, as the title nominee, in the interests of his first wife to cover his obligations to her". Although consistent with what GS said in her statement, this is not consistent with H's July 2020 statement where at paragraph 56 he explains that it was only towards the end of 2015 that he decided to seek agreement to use GS's funds to complete the purchase.

136. Whilst the terms of the agreement might be unusual, its format is even odder. In handwriting it stretches over two pages. Both parties' signatures appear twice at the bottom of the second page with the identity of the three "witnesses" shoehorned in between their signatures and the text.

137. It is W's case that she never signed this document and that H got her to sign a blank piece of paper, and the text and witnessing have been added subsequently.

138. I have struggled to see what the purpose of the document was because in all material ways it was overtaken by the subsequent PNA. Why should H have wanted this document signed? The oddity is increased by the fact that on 29 May W did sign a document transferring the ownership of the OR Property into the joint names of the parties. Nowhere in H's statement does he mention there being two documents.

139. The handwriting experts are understandably suspicious. It is, they say, very rare to see the signatures of the makers of the agreement appear below that of the witnesses. Why, they ask, do the signatures of the parties appear twice and in such a large form so that the witnesses are left with so little space?

140. The explanation by Ms B and Ms D came out in almost identical terms and gave the impression of having been rehearsed. They said that the parties were told to sign each page and misunderstood this to mean that they should sign the second page twice. Why they were not corrected or then directed to sign the first page in addition was unexplained. W says that she simply signed a blank piece of paper at some stage and that everything else has been added subsequently.

141. It has not been easy to reach a conclusion both in respect of the authenticity and its purpose. I think on balance that W did sign the document. She had no advice upon it and she may not have appreciated what its content was. I do not believe that she understood that she was signing a document of any great significance. What happened in Kiev the following week was far more important and I conclude that this document was intended by H to be a safety or security net upon which he might seek to rely in the event that W proved unwilling to sign the PNA. As she did sign the PNA the significance of the Property Agreement disappears.

142. On 29 May and while still in Turkey W signed the short document which H says was prepared by ON, with advice from Bankside as to form and content, and on the instructions of H, transferring the ownership of the OR Property into joint names.

143. About a week later the parties met up in Kiev. On 5 June 2015 they entered into what is described as "Marriage Contract" and which I have shortened to PNA.

144. This was a formal legal document drafted by a notary. H says that there were a number of drafts that went between him or his lawyer and a Mr P, a Kiev lawyer on behalf of W.

145. W says that she had no dealing of any significance with Mr P and that he was found by H to represent her. H denies this arrangement. He says that Mr P amended a number of the drafts but there is no evidence provided to me from either side as to what the drafts contained or how they were changed. It is agreed that Mr P was present at the signing of the document but it is common ground that he waited in an ante room while the parties went into the notary's small office.

146. The agreement as translated contained important terms which I set out as follows:

We (the spouses) ... acting voluntarily in accordance with own free expression of will that corresponds to our internal will, being in sound mind and clear memory, understanding the meaning of our actions, having previously familiarized ourselves with the requirements of the current legislation as to the invalidity of legal acts, and intending to settle the property relations between the spouses have concluded this Marriage Contract as follows: ...

1.1 By this Contract the Husband and Wife settle property relations between them, including the determination of legal regime of the property obtained during the period of registered marriage, determination of property rights and duties of each of the Spouses, etc. (There is then set out details of certain Ukrainian real property, motor vehicles).

1.2 All property, including movable and immovable, including, but not limited to: apartments, housing estates, land plots, vehicles, monetary funds, currency values, securities, corporate rights, etc., wherever it is, purchased and/or obtained by the Husband or the Wife before the registration of the marriage, is personal property and belongs on the basis of personal private ownership to that of the Spouses in whose name it was purchased or obtained.

1.3 All property, including movable and immovable, including, but not limited to: apartments, housing estates, land plots, vehicles, monetary funds, currency values, securities, corporate rights, etc., wherever it is, purchased and/or obtained by the Husband or the Wife during the marriage as a gift, in order of inheritance, as well as under other free legal acts (agreements) that are of personal nature, is personal private property of that of the Spouses to whom the property was transferred during the period of the marriage, including received as a gift and/or inherited.

1.4 All property, including movable and immovable, including, but not limited to: apartments, housing estates, land plots, vehicles, monetary funds, currency values, securities, corporate rights, etc., wherever it is, purchased and/or obtained by the Husband or the Wife during the marriage, but at the expense of the funds that belong to the Husband or to the Wife personally, including as a result of previous sale of the property that belonged to the Husband or Wife on the basis of the right of private ownership, or as a result of debt forgiveness or gift in favour of the Husband or Wife, who is the party to corresponding legal acts. Etc., is personal private property of that of the Spouses, at the expense of whose funds such property was purchased.

…

1.7 All other, not mentioned in the paragraphs 1.5-1.6 of this contract, movable and immovable property, including but not limited to: apartments, housing estates, land plots, vehicles, monetary funds, currency values, securities, etc., wherever it is (in Ukraine or abroad in the territory of other countries), purchased and/or obtained in the name of the Husband after the registration of marriage before the conclusion of this contract, by agreement of the Spouses is personal property and belongs on the basis of the right of personal private property to the Husband.

1.8 All corporate rights formalized in the territory of Ukraine in the name of the Wife after the registration of marriage before the conclusion of this contract, by agreement of the Spouses, belong on the basis of the right of personal private property to the Husband.

…

1.10 In case of the dissolution of the marriage all objects of movable and immovable property, including, but not limited to: apartments, housing estates, land plots, vehicles, monetary funds, currency values, securities, corporate rights, etc., wherever it is, belonging to the Husband or to the Wife are considered personal private property of that of the Spouses, to whom it will belong as of the moment of the dissolution of marriage.

1.11 In case of the dissolution of marriage the property that belongs to the Parties on the basis of the right of personal private property in accordance with this contract and the property that belonged to the Parties before the registration of the marriage, shall not form the part of the property that is subject to the division.

…

2. PECULIARITIES OF LEGAL REGIME OF CERTAIN TYPES OF PROPERTY

…

2.2 Monetary funds in the accounts with bank institutions, any bank deposits, including interest accrued on the same, existing as of the date of the conclusion of this Contract, shall be considered personal private property of the Husband from the moment of opening of such accounts, regardless of the date of the conclusion of this contract and of the fact in whose name of the Spouses the account is opened with the bank institution.

…

3. ADDITIONAL CONDITIONS

…

3.3 The second of the Spouses shall not be liable for the agreements made by the other of the Spouses without his/her written consent.

3.4 Each of the Spouses shall be liable with respect to the obligations assumed towards the creditors within the limits of the property belonging to him/her.

3.5 The parties have agreed that as of the moment of the signing of this Contract the Husband undertakes to ensure the conclusion in favour of the Wife of the contract of transfer of the right to claim to investment contract No. X/PH-Y of X as to the investment of three-room apartment located at the address: apt. 48, AB str., city of Kyiv, total area 127,38 square meters.

At the same time the Husband shall undertake also to:

- *Ensure the fulfilment in the mentioned apartment of the repair sufficient for comfortable living of the child;*

- *Ensure the purchase in the name of the Wife of the parking slot maximally close to the house where the apartment indicated in this paragraph is located.*

3.6 Each of the Spouses shall assume equal responsibility for the maintenance, education and study of common children, including in the case of the dissolution of the marriage, till the full age (majority) of the children.

3.7 The Husband shall undertake during the period of the marriage and in case of its dissolution till the moment the common child of the Spouses reaches the full age to allot to the Wife monthly amount of funds for the maintenance of the child agreed by the Spouses. The amount of the mentioned monthly maintenance and the form of its provision will be agreed by the Spouses additionally by means of conclusion of separate agreement.

3.8 The Husband during the period of marriage and in case of its dissolution additionally allots to the Wife annually the funds for the payment of expenses, in accordance with the bills for the study, health improvement and recreation of common children of the Spouses, received and agreed with the Husband.

…

4. FINAL PROVISIONS

...

4.8 This contract includes full volume of agreements between the Parties with respect to the subject of this contract, annuls and makes null and void all other obligations that could be adopted or made by the parties in oral or written form before the conclusion of this contract.

4.9 The Notary has explained to the Parties the provisions of the current legislation as to the order of conclusion of marriage contracts, reasons and consequences of their recognition as null and void, the article 203 of the Civil Code of Ukraine, articles 92-103 of the Family Code of Ukraine.

…

147. There are certain obvious points to be made:

i) At 1.4 all property belongs to the spouse "at the expense of whose funds such property was purchased." Thus, W loses all her property interests in England and elsewhere, save for one Kiev apartment which H transfers to her.

ii) Not only is this inconsistent with the Property Agreement, which it superseded, but leaves her massively worse off than she was just days before. She ends up with 1 Kiev flat and 2 used cars in place of the OR Property and half the Spanish property.

iii) There is no disclosure of any of H's business interests or his bank or savings accounts.

iv) There is no spousal provision by way of maintenance. How was W expected to support herself?

Its terms read as a document heavily weighted in favour of H and it is manifestly disadvantageous to W.

Radmacher [2010] UKSC 42

148. Radmacher v Granatino clearly sets out the court's approach to nuptial agreements. It is important to point out that there is a distinction to be drawn between a contract entered into in anticipation of divorce and one predicated on the continuation of the marriage. This falls into the latter category.

69. The safeguards in the consultation document are designed to apply regardless of the circumstances of the particular case, in order to ensure, inter alia, that in all cases ante-nuptial contracts will not be binding unless they are freely concluded and properly informed. It is necessary to have black and white rules of this kind if agreements are otherwise to be binding. There is no need for them, however, in the current state of the law. The safeguards in the consultation document are likely to be highly relevant, but we consider that the Court of Appeal was correct in principle to ask whether there was any material lack of disclosure, information or advice. Sound legal advice is obviously desirable, for this will ensure that a party understands the implications of the agreement, and full disclosure of any assets owned by the other party may be necessary to ensure this. But if it is clear that a party is fully aware of the implications of an ante-nuptial agreement and indifferent to detailed particulars of the other party's assets, there is no need to accord the agreement reduced weight because he or she is unaware of those particulars. What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end.

71. In relation to the circumstances attending the making of the nuptial agreement, this comment of Ormrod LJ in Edgar v Edgar at p 1417, although made about a separation agreement, is pertinent:

"It is not necessary in this connection to think in formal legal terms, such as misrepresentation or estoppel; all the circumstances as they affect each of two human beings must be considered in the complex relationship of marriage."

The first question will be whether any of the standard vitiating factors: duress, fraud or misrepresentation, is present. Even if the agreement does not have contractual force, those factors will negate any effect the agreement might otherwise have. But unconscionable conduct such as undue pressure (falling short of duress) will also be likely to eliminate the weight to be attached to the agreement, and other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it.

149. There are a number of fundamental problems with the agreement in addition to those set out at paragraph 147 which together lead me to give it no weight:

i) There was no disclosure process between the parties. Whilst W would have had knowledge of H's English assets there was no disclosure of any income, business interests or of accounts or any picture given of H's wealth.

ii) The agreement could never be regarded as fair. It made no proper provision for meeting the needs of W and O, then aged 7.

iii) Whilst I am satisfied that W had a lawyer who had some input, I am not satisfied that she received any legal advice. She says that she met Mr P only once for a short period. She would not have had much opportunity as she was only in Kiev for a few days before the document was signed and it is not one that would be easy for a lay person to follow.

iv) There is a real sense of W being hurried into the agreement. Surrounded as she was both in Turkey and then in Kiev by H and his coterie of friends and advisors who were both older and wiser than W, I accept that she would have felt outgunned.

v) That it was unfair and failed to make proper provision may be inferred from H's open offer to transfer the OR Property to W.

<u>The HG Property Completion</u>

150. H's account is that the history has to be seen in the context of his construction plans in Ukraine. He says that following the Russian invasion in 2014 he suffered a massive loss of some $30m. All that he was able to get out of the Ukraine was some $8-10m, being a sum approximating to what GS had loaned him for the investment.

151. H has provided not a shred of documentation to support his case as to the money which H says GS lent him ever going into the Ukraine, the value of the investment in the Ukraine both before and after the Russian invasion, and the recovery of any money. H says that the court must simply accept his explanation.

152. Thus it was, he says, that he was faced with either repaying GS, and then being devoid of funds to complete the HG Property which would mean the loss of his deposit, or using GS's money to complete the purchase. It is of course worth reminding oneself

that on the account of the S family, if K Company, from whom the first 20% of the price had been paid, belonged to H's mother or the Family Trust, it would not be H who lost the deposit money as it would not have been his. But this appears to them to be only a detail.

153. H says that he spoke to GS and between the two of them they came to an agreement that she would permit H to use the money that he had recovered from Crimea, and which he would otherwise have paid to GS, to complete the purchase. To recognise what GS had allowed, they entered into what is described as "Trust Agreement" which was dated 25 December 2015 (which in the Orthodox calendar was not the Christmas Day festival). By their agreement:

   i) The parties created a trust according to which GS transferred the right to claim a debt under the 2006 loan agreement and H transferred the real estate at the HG Property;

   ii) H agreed to act in the interests of GS and undertook to pay the revenue and capital to GS in accordance with this trust agreement. This included paying to GS the income and capital of the trust fund on a quarterly basis;

   iii) The trust was to be terminated in the event of GS within 3 years from the date of the trust calling for the transfer to her of the property;

   iv) Written amendments to the agreement were permitted.

154. Notwithstanding the agreement, upon completion the property was let out by Ms P and the rental was paid solely to H. He had use of it and he declared it to HMRC. After expenses and tax, he had in mid-2019 amassed a little over £200k. From either April or August 2019 (I was given both dates) the rental was no longer paid to H but went into Ms P's client account where it has sat untouched to this date. Notwithstanding their agreement, GS has received nothing.

155. This is one of several very curious aspects of the implementation of this agreement:

   i) No valuation took place of the flat in December 2015. On the face of it the trust agreement satisfied the debt under the loan agreement for $8m by the transfer of apartment. How could GS know whether or not she was receiving an asset of an appropriate value for her loan?

   ii) Why was H receiving the rent when under the terms of the agreement it was due to GS?

   iii) In a confused attempt to explain this, H and GS sought to explain that there was further accounting still to be done between them when the apartment was finally transferred to her with, at different times, each of them claiming that money was due either to GS or to H. Mr Sheppard's attempts on behalf of GS to say that this amounted to a verbal variation to the agreement was not one that had any evidential basis.

   iv) Why had GS never drawn the income which is sitting in Ms P's client account?

v) Why has GS, who formerly was so interested in H's business affairs and who is herself a banker, become so uninterested as to the value of the property which was being substituted for her loan and as to the reality or otherwise of H's need for continued use of her funds?

156. GS says that she was unaware that H's marriage to W was in difficulties until 2018. I do not believe her. It is inconceivable that AS did not tell her, if H had not. H, his mother, and AS are not people who would keep their feelings about W's behaviour silent. The number of people involved by H in the 2015 agreements show that it was not a secret.

The NG Property

157. I turn now to the last property purchase in this country. The trail starts on 3 December 2016 when Mr Warburton writes to ON about "OS's purchase of the property". By about this time H's offer in the sum of £4.75m to purchase the property in Hampstead had been accepted.

158. In January 2017 both Ms P and ON wrote separately to Mr Warburton to ask him to ensure that W could not make a claim against the property.

159. On 3 February Ms P wrote to Mark Davies, a tax lawyer, as follows:

"The property he is buying is a freehold house comprising three flats – effectively Mr OS will be purchasing two upper flats from one seller and the garden flat and the freehold from another seller, who is a relative of the owner of the upper flats. Both sellers are acting together and the total price of £4,750,000 has been agreed. Mr OS's plan is to redevelop all three flats and possibly sell in the future two upper flats and retain or sell the garden flat. Mr OS may be getting a mortgage to fund part of the purchase.

"The sellers expect the exchange to be done next week therefore there are a few questions in relation to the purchase structure that Mr OS needs to have answers for – cons and pros / tax implications of purchasing the property in a trust where his sons would be a beneficiaries, types of trusts and their tax position, SDLT (linked transactions less multiple dwelling relief, less 3% first property allowance? Or are there better options?), basic CGT for trusts in comparison to a private buyer.

"Providing Mr OS is happy with the advice given he could consider further consultations and cooperation with your firm in this and other transactions.

I look forward to hearing from you soon."

160. Mr Davies replied seeking the usual documentation and asked "Can you also tell me where Mr OS is tax resident, and where his sons are tax resident and age of his sons? Can you tell me if Mr OS is buying using a mortgage or loan, or whether this is a cash purchase?" The response on 6 February was as follows, "Mr OS has two sons, the younger one is 9 years old and he lives in London with his mother, the older son is over 21 and he lives in Ukraine. The idea is that both sons are the beneficiaries of the trust. Mr OS does not want to consider an off-shore property purchase structure and he

intends to raise 60% of the amount via mortgage, if possible and 40% will come from his own funds (emphasis added)".

161. On 14 February Mr Warburton replied:

"Dear OS

I write to report on your proposed purchase of the above freehold property.

This transaction is much more straightforward and I therefore propose to report in a simpler fashion.

The contract

The contract provides for the purchase by S Ltd of the freehold and three leasehold interests in the property. The contract attached shows you as the buyer. I am getting a further version showing S Ltd as the buyer.

You control S Ltd absolutely.

You will control the whole of the property as well. Though it may be that the leases become important in the future, when you come to sell one or more of them, they are not important now, as you will own or control the whole property. I therefore do not intend to go through the leases in detail – if there is something that, in future, needs changing, you can change it.

The price is £4,750,000. 10% is payable on exchange. You have sent me that.

We have discussed SDLT in emails between us and your advisers and the plan at the moment is to contract in the name of S Ltd , but on completion imm3ediaytely (sic) to transfer the ground floor flat (or part of it) to trustees to hold that property for your sons on a bare trust providing for the property to vest in them at a future date, yet to be agreed.

As usual, the contract provides that you must satisfy yourself as to the physical condition of the property. If there are defects in it, they are your problem, not the sellers.

Importantly, risk passes to you on exchange and you must therefore insure the property from now, not from completion." [emphasis added]

162. It is agreed by all the witnesses that H was anxious to minimise his exposure to tax, whether it be SDLT, IHT or CGT. Ultimately none of the trust suggestions worked out and the property was purchased in the name of S Ltd.

163. S Ltd was incorporated on 13 February 2017 with H as the 100% shareholder and H and W the directors. It is in my judgment very unlikely that either Mrs S or AS would have made W/permitted her to be a director at this time if they were the funders of the transaction.

164. By what was called an "Investment Agreement" made between K Company and S Ltd, also dated 13 February 2017, K Company is described as "An investment entity who

has decided to invest its funds in the investment object, defined as the purchase of the property agreed to provide £7m". The fund was to cover both the purchase and refurbishment of the property.

165. Once again this is a curious agreement as all (H, AS and H's mother) agree that K Company was simply a conduit and did not have any funds of its own. What it does do is to point strongly to the owner of K Company having spare funds with which to do the building works.

166. On 15 March 2017 the fully paid shares of S Ltd were purportedly settled by Annex to the family trust agreement.

167. The sale was completed on 3 May 2017.

168. On 27 February 2018 the decision is recorded as taken by H and his mother to make AS the manager of the family capital and in accordance H became the curator. At some stage AS appended his signature to the 2004 agreement.

169. On 1 August 2018 a "Decision" was taken by the S family members reassigning the assets of the family owned company S Ltd to AS with a provision that the transfer of the shares in S Ltd from H to his son should be completed before 1 October 2018. Almost simultaneously the shares were transferred to AS, raising the question as to why this longer period was allowed for. It is the recollection of the company accountant Ms C that she received both the decision and the transfer form more or less simultaneously.

170. It is the case of W that all those documents (the investment agreement and annex to the family trust agreement in 2017 and the family decision and share transfers of 2018) are forged in the sense that they were created at the same time as a direct response to H receiving the news of her intended petition for divorce.

171. It is at this stage convenient to look at the company accounts of S Ltd because they show that notwithstanding the company's one asset having been purchased for £4.75m, and now worth somewhat less, the company has a negative equity because there are creditors due of just over £5m representing the purchase price and associated costs. Although the identity of the creditor is not apparent on the face of the accounts it is accepted that it can only be K Company.

172. H, AS and H's mother were unable to explain what the accounts were showing. They all agreed that K Company had no assets and was purely a conduit. H's mother said that the money came from her (inconsistently with the letter at 161) and was provided for the purchase of the property through the mechanism of the family trust and that AS was now the rightful owner. But, if, as she says, the money was a gift why is it described as a debt?

173. The only sensible explanations are either that it is some accounting device which no-one understands or that the money has been advanced by H through K Company for this purchase and that K Company is his vehicle. That would make sense: the correspondence with the solicitors and tax advisers at the outset make it clear that H was producing funds for the purchase and as already set out, K Company has been the company which he has used for other transactions. The money that H had channelled through K Company to S Ltd would properly be recorded as a loan.

174. I am not satisfied that W's claim that all this was done as a response to her petition is well-founded. In particular, I am inclined to accept the evidence of Ms C that the share transfer and Decision were received by her at the start of August 2018. Such a conclusion would fit in with when the documents were submitted to Companies House. It also fits in with the family emails at around this time. I am not impressed also with the fact that the company's registered name was given as being an address which did not become its registered address until 12 October 2018, months after documents prepared by the family had given that as the company's address. W's argument that this slip spills the beans that all the documents must have been prepared after that date is only superficially attractive. I am prepared to accept that it was an inadvertent mistake giving Ms C's business address, as the company accountant, rather than the then actual registered address.

175. More significant is the email from ON to Mr Warburton on 18 January 2017, as the purchase was first being mooted, where she enquires of him, "and further to Anna's email would it be possible to prepare a legal document to be signed by Mr OS's wife where she confirms she is happy for him to purchase the properties and will not lay a claim towards these properties". Almost simultaneously on 12 January 2017 Ms P had written in like terms to Mr Warburton.

176. I am confident that the transfer of the shares in S Ltd from H to AS was for the purpose of trying to make sure that W's claim against this property would not be successful. By then it was apparent that the marriage was in serious trouble. I have no doubt that H was seeking to disassociate himself from ownership of the property to reduce W's claim.

177. I do not exclude the possibility that there was also a secondary motive, namely to put the property into a trust for AS and O. That was something that H had initially mooted. But, for whatever reason that was not the course that was taken.

178. It was put to H's mother that she had treated her two grandchildren very differently. On her account, AS was the owner of the LG property, bought for just under £2.5m, while O was only one of two beneficiaries of a property held by a company with negative assets. She plainly had not applied her mind to this thought and after hesitation responded unconvincingly that she would give O a country property in Ukraine at some stage.

The HG Property revisited

179. On 1 November 2018 ON wrote to Mr Warburton asking on behalf of H to start the transfer process to GS of the HG Property. I note that she does not say that GS is already the beneficial owner of the property. Of course, by that time divorce proceedings had started.

180. On 14 December 2018 GS wrote requesting, pursuant to clause 12 of the trust agreement dated 25 December 2015, that the legal title to the HG Property be transferred to her. That failed because W had by then registered a charge on the property.

181. GS has issued two sets of proceedings in Ukraine against H and W. One sought to recover from H the debt under the loan agreement of $8m. A consent order was entered

into by H and GS on 20 September 2019, made an order of the court 4 days later, whereby it was recited that GS refused to recover in full the debt under the loan agreement in the sum of $8m but instead received the right to the property at the HG Property. Surprisingly, it makes no reference to the 2015 agreement.

182. In addition, GS has issued proceedings against both H and W for $2m relating to the alleged loan. She says that she was advised by her lawyers that under Ukrainian law both spouses are liable for debts and this was a proper claim for her to make notwithstanding the agreement between H and W under the PNA that there would be no liability for each other's debts. I asked GS whether she really intended to pursue the claim to judgment and potentially bankrupt W. Her careful reply given orally and subsequently confirmed in writing says this:

> "I can say at this stage that my intention is only to obtain payment of that $2m debt from OS, since he borrowed the money not from IU. I do not intend to proceed against IU at this stage."

183. The repeated use of the words "at this stage" gives little confidence and shows how the family act as a unit. This was further confirmed by the admission at the very end of her evidence, that GS's costs of the litigation, some £200k, had been funded by AS.

Florida

184. This was very curious part of the evidence. Over Christmas/New Year 2017 H, W, and O were on a cruise in the Caribbean. The ship docked in Miami but because of bad weather the family were unable to fly north to New York. They met up with a Mr IM who was a friend of H.

185. Mr IM is apparently well known in Florida property circles and had he attempted to buy the flat in which he was interested in a plush condominium block he would have been unable to secure a sufficient discount. H's story is that because of Mr IM's identity it was agreed between him and W that they would pose as the prospective purchasers as they would be able to get a better price than Mr IM. This was not a great hardship to H and W as they had time to kill in Miami and had in any event an inchoate plan that at some stage they might take up US residence so that O might complete his education in America. They were therefore interested in looking at the Miami property market.

186. H and W saw the flat and after some hard negotiation which they carried out with the realtor a price of $4.5m was agreed.

187. It is unnecessary to go through the correspondence in detail. There are times when Mr IM's messages can be read to suggest that H and W are the genuine purchasers and others when it looks as though the purchaser was IM.

188. A purchase agreement was drawn up by the realtor in W's name but never acted upon.

189. I do not know if the purchase was ever completed by either H or Mr IM. I have documentation which points in different ways and it is inconclusive. The evidence is insufficient for me to make any finding that H has purchased the property. I say that notwithstanding the fact that the evidence shows that as late as December 2019 documents in relation to the property were still being sent to the OR Property, in

particular a document saying that completion was soon to take place followed several months later by a package from Florida attorneys.

Expert evidence

190. I turn now to the expert evidence. Because of the extent of the disagreement between the parties I permitted both H and W to instruct handwriting experts to examine the disputed documents provided that the experts then produced a joint report. Fortunately, there has been complete agreement between the experts on the areas that matter.

191. It is essential that I bear in mind that the two experts have seen only one small part of the case. Their evidence and opinions are important, but they are only one part of the jigsaw. I have to feed their opinions into the rest of the evidence, and I must not allow myself to be over-influenced by their opinions.

192. I must also bear in mind that the opinions expressed by the experts are just that. They are opinions, not facts. I must take their opinions with a degree of caution.

193. In expressing opinions on handwriting and signatures and on the content and form of documents experts use terms to express the confidence of their opinions. If they feel unable to form a conclusion they have used the term "inconclusive". They have explained that to mean that they are unable to express an opinion which would assist the court. The term covers an opinion which might have been expressed on a fine balance. It does not mean 50:50 but covers a number of degrees on either side. Above that are the terms limited positive evidence, moderate evidence, strong evidence, very strong evidence and conclusive evidence, although other comparable terms are sometimes used.

194. In chronological order the documents that the experts were asked to examine are as follows:

1. The 1986 "Trust Deed"
2. The 2004 "Fiduciary Agreement"
3. The 2005 receipts
4. The 2006 loan agreement and acknowledgement
5. The 2009 loan agreement
6. The 2010 loan agreement between H and IK
7. The 2015 Property Agreement.
8. The 2015 Trust Deed between H and GS.
9. The February 2017 investment agreement between S Ltd and K Company
10. The 2017 annex transferring S Ltd to the family trust
11. The 2017 loan between H and Mrs R

12. The 2018 decision appointing AS as manager of the trust

13. The 2018 decision transferring S Ltd shares to AS

14. The November 2019 particulars of claim of GS

I shall use these numbers in the following paragraphs.

195. Doc 3: the 7 receipts have a close pictorial similarity. Their inks and paper cannot be differentiated. The experts conclude that it is more in keeping with the receipts being created at one time than at multiple times.

196. Doc 8: The trust deed has the printing defect, to which I will return. But analysis shows that pages 4-7 were printed separately from the rest of the document and page 8 was created with different paper to the rest of the document. Thus, the document was created either (i) by combining multiple pages from different printers/print runs into one document, or (ii) pages of the original have been substituted. The reasoning of the experts has not been challenged.

197. Docs 10, 12 and 13: The signatures of Mrs S are similar in that the ink flow is particularly good and AS has had issues with his ink flow. For both, there are close pictorial similarities in their signatures. It is more in keeping with these 3 documents having been created on the same occasion rather than 3 separate occasions.

198. There are corresponding printing defects in documents 2 (2004), 4 (2006), 8 (2015 – page 8 only), 12 (2018), 13 (2018) and 14 (November 2019).

199. The similarity of the defects seen in all the documents in question had led the experts to conclude that one of the following must be the case:

i) Coincidentally, these documents have been printed on different printers malfunctioning in similar ways over a period of approximately 15 years;

(ii) These documents were all produced on the same printer which was in use and malfunctioning in a similar way over a period of approximately 15 years, or

(iii) These defects appear on these documents as they were produced on a single machine over a much shorter period of time.

They point out that it is not for them to say which is the more likely.

200. On other issues, including the dates of the writing and printing, the experts were either unable to express an opinion or only one that was inconclusive. It is not necessary for me to go into the reasons.

201. In closing submissions Mr Scott QC laid weight on the fact that Mr K had said that he was responsible for drafting the documents numbered 2, 4 and 8 and the fact that 14 was dated a year after he retired showed that all 4 documents must have been created on a different printer, almost certainly in the period 2018-2019. That was not necessarily logical as no one had asked what happened to Mr K's printer on his retirement – he might have taken it home for example – nor whether GS used Mr K's printer. Fairness required those question to be asked.

202. On being recalled, Mr K clearly remembered that in November 2018 he disposed of his printer to someone he did not know and that the 2019 document could not have come from his machine. Unfortunately, GS had become ill with coronavirus and was unable to be recalled. I gave her the choice of giving evidence at a later date or the case being concluded without hearing from her further. She took the second course. I draw no inference from that decision.

203. Option (ii) as set out at paragraph 199 disappears as document 14 could not have come from Mr K's machine. Mr Sheppard says that I have no good reason not to accept option (i).

204. I have to look at all the evidence in the round and it is now necessary to refer to the conveyancing files.

205. After the hearing ended at my request counsel put together an agreed list of documents relied upon by W which were not included in the original disclosure of conveyancing folders for the HG Property and the NG Property. Both files had been delivered to W's solicitors having been through the hands of H. Because W's solicitors were suspicious that documents appeared to be missing from the files, they applied to court and I ordered Bankside Commercial to provide their files directly to W's solicitors.

206. Fourteen pages relating to the HG Property were found in the solicitor's files which had not been in the files which H had given to W's solicitors. Thirty pages relating to the NG Property fell under the same description albeit six of them had been provided by Ms P and included in AS's disclosure.

207. The documents that were missing from H's disclosed files were largely but not entirely documents which show H as being the intended beneficial owner of the property or the proposed purchaser and those which illustrated his requirement that W should not be able to claim against the properties.

208. The HG Property documents removed include those that I have set out at paragraphs 124-127.

209. The removed NG Property documents are similarly incriminating. They include most of those set out at paragraphs 157-161.

210. Within the list of missing documents in each case are two pages of Bankside Commercial's client ledger which show the source of funds. I cannot be sure on the evidence before me that those documents would have been given in the file that went through H's hands. I also accept that a few of the documents that were missing appear to be of little materiality to the issues in the case.

211. I made it clear to Mr Hale QC that unless his client wished to put forward an explanation about the missing documents, I would be likely to draw an inference that he had deliberately removed them. Mr Hale did not challenge that I might take such a view but asked me to give myself a Lucas direction, namely that there may be many reasons why acts of apparent dishonesty take place and that I should always bear in mind that there may be entirely innocent explanations and that I must avoid taking the view that simply because the evidence of a witness cannot be accepted on some points that he is therefore lying on every point.

212. These points were well made by Mr Hale. I bear in mind what he says but I find it hard to think of another explanation than H was trying to conceal his intentions in respect of the ownership of the property or the underlying entity that owned it and his desire to protect them from any claim by W. In short, I am satisfied that H has deliberately filleted the solicitors' files in his desire to keep their contents from the court.

213. These are important matters and of course cast light on whether or not he might be someone who would seek to present false documents to the court.

The standard of proof

214. The standard of proof that I have applied is the balance of probabilities. There is no other test. I apply the standards set out in Re: B (Care proceedings: standard of proof) [2008] 2 FLR 141:

13. My Lords, I would invite your Lordships fully to approve these observations. I think that the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not. I do not intend to disapprove any of the cases in what I have called the first category, but I agree with the observation of Lord Steyn in McCann's case (at 812) that clarity would be greatly enhanced if the courts said simply that although the proceedings were civil, the nature of the particular issue involved made it appropriate to apply the criminal standard.

14. Finally, I should say something about the notion of inherent probabilities. Lord Nicholls said, in the passage I have already quoted, that —

"the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability."

15. I wish to lay some stress upon the words I have italicised. Lord Nicholls was not laying down any rule of law. There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one's reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator."

215. I therefore take into account that events such as fraud and forgery do not normally happen and that it is less rather than more likely that otherwise respectable people would behave in that way. It is the common-sense assumption with which to start. But it may

be, and in this case has been, displaced by the evidence that I have heard. I reach my conclusions not by way of speculation but by weighing up all the evidence.

216. I did not find either H or W to be convincing witnesses. In different places I have preferred the evidence of one to the other. The same applies to Mrs S and to AS. GS and Mr K were ostensibly the most persuasive of the major witnesses. But, it is important for a judge not to be over-influenced by demeanour, especially when (a) the witness is visible only on a screen, as was the case for all witnesses except W and AD and (b) the witness, as was the case with all H's witnesses on this issue, spoke no or very little English and had to rely on interpreters.

217. I found the evidence of Mr K particularly difficult to assess because he of all H's witnesses seemed to me to be the one with the least motive to lie and was not part of H's close network of family and friends. On the other hand, by the time he gave evidence he had been retired two years and had, as far as I was aware, no access to any records to refresh his memory about the events, some of which had happened many years before and without there being any reason for them to have lodged in his mind.

218. In a case where I have found that there are few witnesses whose evidence I can rely upon I inevitably place significant weight on contemporary documents. In this case that means not only the documents which can be shown to be contemporary, in particular the email correspondence, but also the absence of documents which I might otherwise expect to find.

219. I bear in mind what Lord Pearce in Onassis v Vergottis [1968] 2LLR 403 said

"It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance"

and I also have in mind the views of Robert Goff LJ (as he then was) in The Ocean Frost [1985] 1LLR 57 where he said

"Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, references to the witness' motives and to the overall probabilities can be of very great assistance to a Judge in ascertaining the truth."

220. The most striking example of an apparently undocumented transaction is that of the so-called divorce settlement between H and GS but it also extends to a whole range of financial activity which I have detailed in the judgment.

221. I accept the opinion of the hand-writing experts. I do not believe that H gave GS a divorce settlement of $10m. The receipts which purport to evidence it are a sham. It follows that I do not accept that he has a debt to her.

222. Putting all these matters together, it is far more likely than not that the 6 documents with the same printing defect were created on one machine over a short period of time than they were printed on the dates they bear over 15 years on different printers that all malfunctioned in the same way. I do not accept the evidence of H or GS or their witnesses, including Mr K whose evidence I find is simply wrong. I therefore conclude that the documents with the printing defects, save for the 2019 pleading, have all been created by H and his family to try to minimise his exposure to W's claims.

223. I do not accept W's case that documents 10, 12, and 13 were created after the filing by W of her divorce petition but I am satisfied that they were created on one occasion in 2017-2018 when it was clear to everyone that the marriage was on the rocks.

224. I find that the properties at the LG property, the HG Property and the NG Property are the sole property of H. He alone has funded their purchase and has at all times retained beneficial ownership. I find that H is the owner of L Ltd and K Company. The transfer of the shares in S Ltd away from H was a deliberate attempt to defeat W's claim as well known to AS and to Mrs S. I set aside the transfer. I dismiss GS's claim.

H's resources in Ukraine

225. It is necessary to take a step back before considering this aspect of H's current resources. The difference between the parties could not be more stark. H says that he has a net deficit of assets over liabilities of some £3m. It is H's case that he divested himself of all his significant assets and that the sums that he owes to GS ($2m), his friend and colleague Mrs R ($1m) and IK ($2m) produce the negative balance. To put it shortly, I do not accept any part of this, but nor can I put any reliance on W's assertion that he is worth more than £100m.

226. It is H's case that he was so well off that he was able to put $10m into the family trust in 2004 and give another $10m to GS in 2005. In the period 2004-2006 he says that he invested $20m in his construction project in Crimea. Yet, in his section 25 witness statement H says this, "at the time I started living with IU in 2007 …. My total wealth remained around $40m, which, was the highest net worth I have ever achieved". In 2005 GS, who said she was much involved in H's business, put his wealth at $50-55m.

227. I accept that H may have suffered a financial reverse during the banking collapse of 2007-8, but he has provided no details of this whatsoever and bearing in mind his distrust of the Ukraine banking system and that he kept most of his personal resources in cash or commodities it does not follow that he would have suffered personally to a major extent.

228. In around 2010-11 he invested over £4m into England (about £3.3m into the OR Property and the LG property and a further £800k provided as an investors bond), which of course casts doubt on his account of needing to borrow $2m from GS in 2009 and $2m from IK in 2010.

229. I heard from GS and IK. Both seemed remarkably relaxed about H's ability to repay the sums that they said he owed. They had complete confidence that he would repay. This can in my judgment only be because either no sum is owing by H or that they are aware of the extent of his assets in Ukraine.

230. According to H all the considerable family wealth now lies with his mother, AS or the Family Trust. When asked what the assets of the family trust now were, the vague reply given was that apart from the NG Property, there had been significant investment in start-up companies in Ukraine. When asked to put a figure on it AS said their value might be $40-50m although he thought that was a little optimistic. That would mean that H, the family entrepreneur, had nothing, whilst they are possessed of wealth. I do not accept this proposition in the light of the facts that I have found.

231. It has been quite impossible for me to begin to assess what assets H may have in Ukraine, whether property or business assets. All that H claims to own in Ukraine is one apartment in Kiev with an agreed value of rather under £200k.

232. The schedule of assets prepared on behalf of W, excluding some farmland of minimal value, identifies three properties which H says are owned by his mother. Two of them are apartments in Kiev and one of them is a substantial detached property outside Kiev of which I have seen photographs, and which has a swimming pool. I do not accept that they belong to H's mother and bearing in mind her own very modest accommodation for most of her life I find it incredible that as an elderly lady she would suddenly invest in these properties from which H, her only child, has been the principal beneficiary. It is far more likely that he is the beneficial owner.

233. Two properties, one commercial and one residential are said to be held by Mrs R. As I have not heard from her it is impossible to assess this claim.

234. W asserts that the total value of the Ukrainian properties beneficially owned by H is some £23m. I regard this as a huge over-estimate and I remind myself that in her witness statement of 10 January 2019 W said this:

> "I believe that the respondent owns directly, or indirectly via his mother, at least 12 properties, both commercial and residential, in the Ukraine with a collective value of at least c.$8.5m."

There is no explanation as to why her estimate of value has gone up 3-4 fold.

AT Company

235. This company is described as being Ukraine's largest owner of fibre-optic infrastructure and "the basis for the internet in Ukraine". Two press articles dated August 2018 describe H as owning 50% of the company. The articles describe how before "the crisis" AT Company was valued at €60-80m. It is not clear what "crisis" is being discussed. It is W's case that H owns 100% or, possibly, 50%.

236. Trying to delve into the extent of H's interest in AT Company and its value is like driving into a cul-de-sac. AT Company was founded in December 2002 and on H's case it was founded by six families of which the S family were one, but it became clear that most if not all of the registered shareholders operated only as bare nominees

holding for undisclosed 3rd parties by way of private agreements. It is therefore extremely difficult to draw any firm conclusions about H (or on his case the family's) percentage ownership. H places this at 16.5% and W asserts it to be at least 50%. The registered shareholding as at 22 January 2019 lists Mrs S as holding 33.5% but notes that she holds 17% of those as nominee for E Ltd. H accepts that, for a time in 2018, 50% was owned by his offshore company SOM Ltd but he again asserts that this was as bare nominee on the basis of private agreements and that it does not reflect his true beneficial ownership at any time during the company's history.

237. A valuation provided by H of the company prepared by consultants in 2019 put its market value at the equivalent of £3.25m. W instructed Grant Thornton to review that report but there were substantial limitations on what they could do due to the lack of access to the company's full books and records. All they were able to conclude was that they were unable to see why any valuation as at April 2019 would not be at least equal to the value of the business adjusted net assets which were some £10m. As they had no access to relevant documents, they could not begin to assess what the proper valuation might be. I am in no better position.

238. The only other business with which H is said to be connected of which I had any evidence was CE LLC. This is a business of which the majority owners are IK and his wife but with H having a significant minority interest. I have no accounts or valuation of that business but it is clear that IK has significant hopes for its future, and the tenor of his evidence was that even if the repayment of his monies came from no other source, H's interest in CE LLC provided considerable comfort. I do not accept H's assertion that the value of his interest is only £21k in the light of IK's evidence.

239. H's expertise lies in telecommunications. He is an entrepreneur. He has been a very successful businessman. There is no evidence that his lifestyle, of which I know little, has been adversely affected by lack of funds. I find it inconceivable that he has no business interests of any substance in Ukraine, albeit that I cannot place even a bracket on his wealth.

240. I do not accept that H has any liabilities of which I need to take cognizance. I do not accept his asserted liability to GS. If he does have any liability to IK or Mrs R it is comfortably covered by his assets in Ukraine.

241. H describes having an income of some £10k pa. How that is compatible with his offer of child maintenance and school fees is unexplained.

<u>W's assets</u>

242. It was agreed that W is the owner of a flat in Kiev with a value of somewhere between £100-200k and some parking spaces worth somewhere in the region of £50k. The flat is currently frozen as a result of the Ukrainian proceedings taken against her.

243. There is a significant dispute between the parties as to whether W is or is not the holder of some shares in 6 companies in Ukraine. She relies on a document which she says she found on a joint computer in the family home as showing her as having holdings. She says that she knew nothing about them and that H must have purchased them for himself in her name. H says it is not a document which he has ever seen. It is unnecessary to make any finding on it.

244. It may be that W does have some small shareholdings although a number of companies in which H has asserted she has an interest have turned out to have a shareholder who is a namesake and not W. No estimate of value is given by H and when W offered to transfer any shares that she had to H, he quickly dismissed the offer as being of no value. I therefore accord the shares no value.

W liabilities

245. W has liabilities which she calculates at about £3.1m. The extent of these liabilities has caused me concern. Her schedule of costs puts the financial remedy total at £1.67m. Bearing in mind that this case has overrun by some 3 days, the figure is only likely to be revised upwards. If interest charged by the litigation lenders is added the total comes to some £2.25m. Additionally, she has incurred £204k by way of costs in children proceedings with another £90k by way of interest and fees. Thus, her total expenditure on costs is between £2.5-2.6m inclusive of interest. This is a very large sum in the context of this case and is to be compared with £305k paid by H, £105k paid by AS and approximately £200k paid by GS. Amalgamating their costs to a total of £610k and excluding interest costs and children's costs, W's costs of the financial proceedings are still some 2.5 times that which has been spent by H, AS and GS.

246. The standard of representation across the board has been excellent. AS has not been represented in court, but he has had assistance from the solicitors representing his father. Even taking into account the very significant burden which W's solicitors have taken on in the preparation of the bundles and the extra costs that they have had when H has not fully engaged with the proceedings I find this disparity hard to follow. In short, I consider the level of costs on her side, while not in any way wasted, is disproportionate, albeit not 'grossly' so, to use the word sometimes cited.

247. W's other debts include £356k towards living expenses with further interest and fees of £91k and £100k borrowed from her friend AD for legal costs. H required her to give evidence and having heard her I am in no doubt that the liability is genuine. But I ask rhetorically, how can W have got through quite so much money over the last two years, fully accepting that the support that she has had from H for her and O has varied from the modest to the non-existent.

Standard of living

248. Rather surprisingly, I have heard little evidence on this issue. In her section 25 statement W simply says this:

"This was lavish. That no expense was spared to setting up our successive London homes is one measure of this" [grammar corrected].

Her Form E casts more light on the homes in Ukraine and the staff and cars.

249. H in his Form E describes it as "middle-class…. I work and do my own groceries shopping". He sets out very limited income needs but describes himself as needing the very precise figure of £7,616,830 for "research and development of an (unexplained) business project".

250. Whilst I have read about the money spent on properties, the impression that I received is that they were done to a good but not extravagant standard. O is being privately educated. The picture that I have is of a very comfortable life but not one of ostentation. None of the usual marks of uncontrolled expenditure are to be seen and nor is there any description of any expensive hobbies. In short, a comfortable lifestyle but not more than that. This is supported by W's claimed budget.

The parties' open positions

251. W

i) She seeks the transfer of the OR Property into her sole name

ii) The necessary share transactions shall be undertaken so that the LG property, the HG Property and the NG Property become hers absolutely;

iii) The Spanish holiday home should be transferred into W's sole name

iv) H should pay a lump sum equivalent to the total level of her debt, namely some £3.1m

v) H should pay O's school fees and maintenance to the sum of £20,000 pa.

252. H

i) The OR Property should be transferred to W

ii) The Spanish property should be sold and the proceeds divided equally

iii) H should pay child maintenance in the sum of £19,200 pa.

253. It can thus be seen that the parties could not be further apart. Both offers were made on the basis of a clean break.

254. GS sought a declaration that H holds the property at the HG Property on trust for her and that the unilateral notice placed by W that HM Land Registry should be cancelled and vacated.

255. In closing submissions there was a small adjustment to both sides' positions. W sought capital orders amounting to £15.5m made up as follows:

The OR Property £795,400

The LG property (in current condition) £1.940m

The HG Property £5.577m

The NG Property £4.050m

Spanish flat (50%) £430k

Lump sum £3m

Total £15,800,000 plus the retention of her Kiev home so as to produce a total of about £16m.

256. From that she would need to meet her liabilities of about £3m and says Mr Scott QC she may face a claim from K Company for the £5m loan allegedly owned by S Ltd. That would reduce her net position to a little under £7.5m. I confess that I do not follow how a claim by K Company could be successful unless it were to have an independent entity rather than being a channel, contrary to all the submissions that were made to me.

257. W went on to say, quite correctly, that not one of H's creditors has offered to forgo their claim in Ukraine made against her for which it is said that she may be liable as H's wife. In addition H has sued W's mother for return of a loan of $100k which W will feel morally bound to pay if the claim was to be successful.

258. H's position changed only to the extent that he accepted liability to pay O's school fees. In the light of his offer to do that W accepted H's offer of maintenance to O at the sum of £19,200pa plus school fees.

Needs

259. It is important in all cases to do a cross check to ensure that the reasonable needs of the parties are met. So far as H is concerned, I have no doubt that his needs are met by the assets that he has in Ukraine. He lives in very comfortable houses and flats, whether owned by him or not (but I find that they are owned by him). I am in no doubt that he is in receipt of a good income even though I know no details of it.

260. W and O need suitable housing. They live in a small flat. The LG property was bought as the family home when O was younger and less in need of space than he is now. I have not been shown any housing particulars as to where they might like to move.

261. W says that the HG Property was to be the family home and that I should take her housing need as being some £5m. I reject that approach. They have never lived in London at more than the LG property level.

262. The LG property has been valued at £2.5m if in good condition. It is the subject of the dispute mentioned at paragraph 16. That has had the effect of reducing its value, but that is not something that I should take into account. I take her housing needs as being £2.5m plus the costs associated with moving to such a property, namely some £300k inclusive of SDLT of rather over £200k and allowing a sum for the usual moving in costs and works. This will permit the purchase of a significantly larger property in the area in which W and O live which is close to his school.

Income

263. The assessment of an income need is difficult. W is 39 years of age. She has no employment history and she lives in a country in which she was not brought up and whose language she speaks imperfectly. Furthermore and significantly, she has been at the receiving end of so much litigation in Ukraine that a return there would be problematic.

264. Mr Scott tried valiantly to persuade me that I should make a lifetime income award to W. He rightly pointed to the fact that her English is fractured and she has no working history. But, it would in my view, be entirely wrong to contemplate making such an award for a woman aged only 39. She is able to make her own new life provided she has the opportunity to learn and retrain.

265. O is coming up to 13 years of age. He will go on living at home for at least another 6 years and no doubt will need a home after that. W should be beginning to make plans for her own future. I take the view that in 6 years' time she ought to be able to achieve financial independence.

266. Her budget totals some £153k of which £27k relates to the upkeep of the property in Spain. Deducting that leaves a total of £126k.

267. O's expenditure exclusive of school fees is put at some £15,500 p.a. which does not seem to me to be excessive. This figure does not include his share of joint expenses which are being paid for by his mother.

268. I have studied W's budget. It was understandably not the subject of significant challenge and I was asked to apply my own experience to it. There would undoubtedly be room for reduction, the most obvious being in the generous sums allowed for holidays and travel put at £46k for W and O combined.

269. After careful consideration I have decided not to reduce the budget below £125k pa because in general terms, holidays excepted, it struck me as a reasonable budget, but also because out of that sum I expect W to fund her costs of education and retraining. Thus, in round figures I find her in need of a capital sum of £750k by way of income fund.

270. Both parties ask that I should order a clean break. But, in considering this I have to bear in mind that H and his team, if I can put it colloquially, are set on a course which could lead to W's bankruptcy if they obtain orders against her in Ukraine.

271. I have concluded that that the proper way to deal with this is to charge the property in England which I intend to leave with H for $5m or such other sum as is W's maximum liability to which she is exposed in Ukraine. In the event that H secures the dismissal of the claims against W by GS, IK and Mrs R the charge will be pro rata reduced. I consider that they have no such claim but my finding, certainly so far as IK and Mrs R are concerned, cannot bind them. I have no doubt that it is within H's power to secure the dismissal of their claims against W if he so wishes. In addition H must give W an indemnity against any other claims made in Ukraine in respect of his alleged debts.

272. Taking into account W's housing need as £2.8m, her debts of £3.1m and an income fund of £750k, I find a needs-based claim to be £6.65m.

273. In arriving at this figure, I bear in mind that it would of course be possible for W to trade back down to a property similar to the OR Property if circumstances required. That seems to me to be the answer to the assertion that only her short term future is catered for.

274. W's needs-based claim is only a reference point, as she is entitled to her share of the marital acquest if that exceeds her needs, subject only to proper provision being available to meet H's needs.

Marital acquest

275. A significant part of H's case as it has been recalibrated since the arrival of Mr Hale QC on the scene is that there has been no marital acquest. It is argued that H was at his richest in the period 2004-2007 when his wealth was at around $40m, and now his fortune is very much less and on his case in negative territory.

276. The difficulty with this approach is that I have no figures upon which I can place any reliance. I do not accept that $40m has been the high point of his wealth. Indeed, on his own case he had by 2007 parted with some $40m yet still says that he was worth that sum. Further, GS says that his fortune in 2005 was $50-55m. There is no documentary evidence which supports any figure that he might put forward. Likewise, I find that I have no figure that I can put any reliance on as to what he was worth in late 2018 when the marital partnership came to an end.

277. The approach that the court should take was set out in Moher v Moher [2020] 1FLR 225. At paragraph 86 Moylan LJ said as follows:

[86] My broad conclusions as to the approach the court should take when dealing with non-disclosure are as follows. They are broad because, as I have sought to emphasise, non-disclosure can take a variety of forms and arise in a variety of circumstances from the very general to the very specific. My remarks are focused on the former, namely a broad failure to comply with the disclosure obligations in respect of a party's financial resources, rather than the latter.

[87] (i) It is clearly appropriate that generally, as required by s 25 of the 1973 Act, the court should seek to determine the extent of the financial resources of the non-disclosing party.

[88] (ii) When undertaking this task the court will, obviously, be entitled to draw such adverse inferences as are justified having regard to the nature and extent of the party's failure to engage properly with the proceedings. However, this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption said, should the court 'engage in pure speculation'. As Otton LJ said in Baker v Baker, inferences must be 'properly

drawn and reasonable'. This was reiterated by Lady Hale in Prest v Petrodel Resources Ltd [2013] UKSC 34, [2013] 2 AC 415, [2013] 2 FLR 732, at para [85]:

'… the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are.'

[89] (iii) This does not mean, contrary to Mr Molyneux's submission, that the court is required to make a specific determination either as to a figure or a bracket. There will be cases where this exercise will not be possible because, the manner in which a party has failed to comply with their disclosure obligations, means that the court is 'unable to quantify the extent of his undisclosed resources', to repeat what Wilson LJ said in Behzadi v Behzadi.

[90] (iv) How does this fit within the application of the principles of need and sharing? The answer, in my view, is that, when faced with uncertainty consequent on one party's non-disclosure and when considering what Lady Hale and Lord Sumption called 'the inherent probabilities' the court is entitled, in appropriate cases, to infer that the resources are sufficient or are such that the proposed award does represent a fair outcome. This is, effectively, what Munby J did in both Al-Khatib v Masry and Ben Hashem v Al Shayif and, in my view, it is a legitimate approach. In that respect I would not endorse what Mostyn J said in NG v SG (Appeal: Non-Disclosure) [2011] EWHC 3270 (Fam), [2012] 1 FLR 1211, at para [16](vii).

[91] This approach is both necessary and justified to limit the scope for, what Butler-Sloss LJ accepted could otherwise be, a 'cheat's charter'. As Thorpe J said in F v F (Divorce: Insolvency: Annulment of Bankruptcy Order) [1994] 1 FLR 359, although not the court's intention, better an order

which may be unfair to the non-disclosing party than an order which is unfair to the other party. This does not mean, as Mostyn J said in NG v SG, at para [7], that the court should jump to conclusions as to the extent of the undisclosed wealth simply because of some non-disclosure. It reflects, as he said at para [16](viii), that the court must be astute to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations.

278. By his approach H has deprived the court of the opportunity of assessing what if any sharing claim W may have.

279. I conclude that there has been an increase in H's wealth during the marriage. I am sure that he was wealthy in 2005 and that since then he has suffered reverses as well as spells of success. The bulk of the increase will be down to what he already owned in 2005 and will be a development or growth of pre-accrued assets. I have not been told directly of any completely new business activity as opposed to the expansion of pre-existing business, but the references to CE LLC and to investment in start-up companies give good grounds for believing that there has been such activity.

280. The fact that H was able to invest in four properties in England between 2010-2017 at a cost exclusive of fees and SDLT of some £14.4m indicates a significant increase in wealth and I am sure that it has been matched by at least a similar increase in Ukraine.

281. I am satisfied that the award that I am making is one that will still leave H with substantially more assets under his control than W will have under her control. I am not able to put figures, or even a bracket, on the extent of the disparity because H has not given me the necessary information.

Outcome

282. This has been a medium length marriage between an already wealthy man and a younger wife. They have one child. Although the marriage has been in serious trouble for about half of its duration it limped on, probably because of the commitment of the parties to O.

283. H has on current values invested some £13m in property in England and Spain. I am confident that he will have larger resources in Ukraine where he spends most of his time and his business interests are based, albeit that it is probable that some of his wealth is illiquid in the sense of invested in business enterprises. I am sure that he will have created wealth in the period 2005-2018 to at least the same extent as he did prior to 2005. $40 million, H's estimate of his wealth in 2005, is the equivalent to £30 million.

284. H would be entitled to significant credit for pre-marital accrual, in the sense of new money being built from old money, and some for illiquidity. Doing the best that I can, I have determined that the sum to be shared between the parties after giving those credits is £16m.

285. At the end of the day I have to fix a figure that is fair in all the circumstances of the case. My award for a clean break is £8 million, which is inclusive of the property assets held in W's name and which were given to her during the marriage. This represents a sharing award above W's needs, and it will permit her to fund any further litigation in Ukraine without having to have recourse to the needs-based award. I shall hear counsel as to what properties shall be used to meet that award.

286. In addition, W will have a charge to the tune of $5m as security against any liability in the Ukraine litigation in which she is a defendant. On her discharge from that litigation the charge will be released.

287. Bearing in mind that H has made no payments for about a year for O as a result of, as he sees it, the denial of contact by W, it seems to me plainly appropriate that W's capital claims for O should remain alive.

288. During the course of the hearing an enormous number of points have been taken. This is in no sense a criticism, but this long judgment would become impossibly lengthy if I was to deal with every single argument and point raised. I have attempted to take into account all the important matters. Simply because I have not referred to it does not mean that an argument has been overlooked.