Case No: GU13D00045

IN THE CENTRAL FAMILY COURT

First Avenue House
42-49 High Holborn
London WC1V 6NP

Tuesday, 9 September 2014

BEFORE:

DISTRICT JUDGE HESS

BETWEEN:

MRS V WELCH

Applicant

- and -

MR D WELCH

Respondent

MR F FEEHAN QC (instructed by Adler Fitzpatrick LLP) appeared on behalf of the Applicant

MR P CHAMBERLAYNE QC (instructed by Gordon Dadds LLP) appeared on behalf of the Respondent

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Approved Judgment

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1. THE DISTRICT JUDGE: This case concerns the financial order proceedings arising out of the divorce between Mrs Vivien Welch, the applicant, to whom I shall refer in this judgment as the wife, and Mr Denis Welch, the respondent, to whom I shall refer in this judgment as the husband.

2. The case proceeded to a final hearing on 4, 5, 8 and 9 September 2014. Evidence and submissions were completed at the end of the court day on 8 September 2014. I have had time to reflect overnight on the evidence and submissions and to consider my judgment in the course overnight and this morning, and I am delivering this judgment on the afternoon of 9 September 2014.

3. The parties appeared before me as follows. Mr Frank Feehan, leading counsel for the wife, and Mr Patrick Chamberlayne, leading counsel for the husband. I am grateful to both counsel for the extremely helpful and clear way in which they have both respectively conducted their cases. Both parties have been represented before me at a very high level of expertise.

4. The court was initially presented with a bundle running to 16 lever arch files. Some additional material has been added in the course of the hearing. I have considered all of the documents presented to me. My focus of course has been on the Form E, narrative statements and other statements, for example in the maintenance pending suit hearing and the adjournment applications and the applications for disclosure, the documents in the character of pleadings and the respective answers to questionnaires and also the documents annexed to all of the above.

5. I have heard both parties giving oral evidence at some length and being cross-examined and I have had the benefit of full submissions from each counsel in their respective opening notes and their closing oral and partly written submissions.

6. The history of the marriage is as follows. It is necessary for me to go into this in a little more length than I would normally. The wife is age 58, having been born on 15 May 1956. The husband is age 65, having been born on 27 April 1949. The parties met initially on an online dating website in August 2006. They met in person in September or October 2006. The relationship quickly developed and the husband moved into the wife's home in January 2007. On both accounts it was an intense and passionate relationship, variously described in the course of the evidence as a "fire and ice" relationship and one in which "sometimes daggers were drawn and sometimes there were love hearts". In my view that is an accurate characterisation of the period since 2006.

7. As at January 2007, the parties' positions were broadly as follows. The husband was then age 57 and in good health. He was and is a qualified naval architect. He had had a good career in the shipbuilding and ship repair industry. He was technically skilled in the areas of engineering and design, particularly in relation to ships. He had worked over the course of a long and varied career for GEC-Marconi, British Aerospace and Swan Hunter. I have seen a full account of his working history at page O218 of the bundle and that seems to me to be broadly accurate.

8. At that stage he was working for a company called Intelligent Engineering in the UK. He was living at 4 Guards Club Road, Maidenhead, Berkshire, a property which he

owned, I think outright, worth about £400,000. He was earning about £95,000 per annum gross with a share option package. He had some pensions, largely those which he still has. He had some savings. It has not been entirely clear to me what those were, but something in the region of £40,000 to £50,000 worth of savings at that stage. He was divorced with three children. By then his children had grown up and were adults. [redacted]

9. The wife was then age 50 and she was divorced with two children, both of whom were living with her. They later went to boarding school but still lived with her during the school holidays. [redacted]

10. [redacted]

11. [redacted]

12. 

13. 

14. By the time the parties in this case (the husband and the wife) had met, the wife had already been exploring the possibility of attempting to set aside the 2002 judgment. She had already obtained advice from those different people and some preliminary enquiries had been made. It was not until 26 January 2007, the same month that the husband in this case moved in with her, that she finally issued her application to set aside the Baron judgment.

15. Nonetheless, despite all of that, as at January 2007 she still had a house in her sole name at Inglenook, 22 Roseacre Gardens, Chilworth, Guildford, Surrey, which had equity in it of approximately £300,000. She was also doing some sort of work at that stage. The nature of her work at that stage was not to me very clear. She accepted that she was a director of an organisation called Global Intelligent Services Limited and she tried to explain to me in her cross-examination what that was all about. I note her evidence runs as follows:

"In 2006 I was a director of Global Intelligent Services Limited. The purpose of this group was risk management. We would go into big companies like Tesco and people would be planted in firms to catch out criminals stealing goods. I did talk to the husband about the nature of the work. [redacted] *I told him that I had a fear of heights, but he has made up the context of that comment being that I was standing on a windowsill looking over somebody's shoulder at documents. I did tell him that the work involved an aspect of the Alex Ferguson case about a horse. I did tell him about the case. I referenced it. I am sure I told him about meeting points with MI5, but I did not do any intelligence work myself. I was on the marketing front. My job was to get people like Tesco to quote and do mundane work. I was always at the desk. The company didn't use computers to gather intelligence; perhaps Google it, but not IT operations. I did operate or start to begin to operate something called Spy Tours and Spy Café. These were just names registered intention-wise to carry out tours to places like the war rooms to see what work MI5 and MI6 had done. It was an idea to maximise revenue. It never got off the ground."*

16. I shall have to assess that evidence in relation to the conduct allegations which I will come back to. At this stage I do note that in so far as the wife had a career, it was in the area of intelligence and surveillance and that I have no very clear figure for what she was earning at that stage. It appears that she ceased doing even that work when the parties began cohabiting and has not worked subsequently.

17. The parties, having begun cohabiting in January 2007, began to move quickly onwards on a number of fronts. They became engaged in May 2007 and married in Singapore on 29 December 2007. I shall consider the next few years under four headings: (1) the move to Singapore; (2) the husband's career in Singapore; (3) the wife's litigation; and (4) the state of the marriage.

The Move to Singapore

18. In early 2007 an opportunity arose for the husband to set up an operation for intelligence engineering in Singapore. He wanted to pursue it. It involved an increase in his earnings to £150,000 per annum gross, plus a housing package. It was attractive to him. He thought the wife was on board with this proposal and he sold his house in Maidenhead raising £393,000 or thereabouts and in June 2007 he moved to Singapore and started his new job.

19. I am satisfied that the plan was that the wife was to go there as well and I have heard a great deal of evidence analysed in great detail by counsel and cross-examined at some length on what happened in terms of the wife's move to Singapore. I have looked again in considering my judgment at the emails and the passports and the note of evidence on this subject. I have reached the following conclusions: (1) the husband was in love with the wife in 2007 and continued to be so for a significant period of time. He wished her to go and join him in Singapore and in so far as she was absent that made him unhappy because he wanted to be with his new wife; (2) the wife was at

least initially in love with the husband and wanted to go to Singapore with him; (3) in fact, she never went for much longer than a few weeks at a time; (4) the total time that she spent in Singapore or overseas with the husband between 2007 and 2013 was no more than a year; possibly less than that.; (5) the reasons she did not go to Singapore, or when she went she came back, were that she wanted to deal with her litigation in England, she wanted to be with her children and she did not very much like Singapore when she did go there. I regard those as rational and understandable reasons for not going.

20. I do not find that these facts in their totality amount to conduct within Section 25(2)(g) of the Matrimonial Causes Act 1973, nor has the husband established to my satisfaction that this was a sham marriage *ab initio*, as was certainly part of his case at the outset of the case, but not I think quite so much at the end, and in so far as it is part of his case I do not agree with that. It was a marriage like many which come before this court which went wrong and is regretted with the benefit of hindsight, but I do not accept that it was a completely sham marriage *ab initio*.

21. The wife's case is in writing and orally before me that she barely left the husband's side from the time they moved out there, and that is to be found at A3 in the bundle, and that she made a major contribution to the development of the husband's career in Singapore. I reject both those propositions. It is not true that she barely left his side. She was more not by his side than by his side in the sort of proportion that I have already mentioned. Although it is true that she purported to help him with some aspects of his career development in Singapore: for example getting involved with the setting up of the OWM, the corporate structure through which the husband did his work, or some of it anyway, in Singapore and researching a market logo for OWM and various things for that company. I also accept that the husband to some extent encouraged the wife to do this. I find, however, that his success in Singapore was very predominantly the result of his own skills and abilities and not those of the wife. It could be said that overall she has in fact been more of a hindrance than a help to his career in Singapore, certainly in more recent times, but even in the early years her contribution to his financial success in Singapore was in my view minimal and she has in my view vastly exaggerated it in the course of these proceedings.

Husband's career in Singapore

22. The second heading is the husband's career in Singapore, to which I have found that the wife contributed little. The details are as follows. I have already said that he worked initially for Intelligent Engineering. After just less than a year in April 2008, he got a better job as Chief Executive Officer of Drydocks World, South East Asia, and it is broadly agreed that in this job he was earning $US 665,000 per annum gross and that little or no tax was payable on that income, so his net income was something in the region of £425,000 per annum gross. This was obviously a successful period in the husband's career.

23. He held that job until September 2010 then that came to an end. He then moved in early 2011 to work for another company called Mermaid, for which he was earning a net figure of £275,000 per annum as Chief Executive Officer. Then in October 2011, he became Chief Executive Officer of another company called IHC Merwede, and in that job he was earning something in the region of £324,000 per annum gross; after tax, about £273,000 per annum net. The original plan was that he would keep that job until

October 2014, but in fact he was made redundant in January 2014. He has disclosed his redundancy settlement. The husband remains living in Singapore in rented accommodation, but he tells me (and I accept what he says about this) that he has made numerous attempts to obtain similar work since in Singapore or nearby, but he has been unsuccessful and I am satisfied that apart from the redundancy payments and modest payments on one or two smaller projects, he has not had an earned income in the course of the year since January 2014. He is unhappy about that and I will come back to his earning capacity in due course.

The Wife's Litigation

24. I have already mentioned that the wife was unhappy with the result of her divorce litigation in 2002 and that on 26 January 2007, at around the time that the husband came to live with her, she launched an application to set aside the Baron order. This proved utterly disastrous for the wife and the financial consequences are significant in the context of this case. It is necessary for me to mention a number of staging posts in that litigation. Because of what happened later when she was in litigation with her own solicitors, I have a full judgment from Sharp J at E1543 which sets out fully, clearly and incontrovertibly what was actually happening in the course of 2007 in the context of the setting aside litigation.

25. It is clear that the wife employed a high powered team, Mr Wass, a solicitor at Withers, Ms Scott, a junior barrister and Mr Wardell, leading counsel, and that they worked on her case. It is possible, though I have seen no written evidence of it, that there was a level of enthusiasm for this application in the early stages, but as time wore on it is quite clear to me that the lawyers were advising the wife in clear and incontrovertible terms that she should give up this litigation and that this was not a litigation that she should pursue. One can see in June 2007 at page E256 in the bundle that she was advised in consultation with Mr Wardell that he had a real concern that she would find herself at the end of a losing judgment and that there would be costs consequences. Most sensible people faced with that sort of comment from leading counsel would be very cautious about proceeding any further and it does seem that she could have backed out of the litigation at that stage without too much of a loss. That was not her reaction. Further down that page she told her leading counsel:

> *"I will go ahead anyway. If I get a blank, then I will go ahead anyway."*

26. The pressure on her from her legal team to give up that litigation continued to mount, so in July 2007 she was told in a written advice:

> "*We must advise against issuing proceedings. The risk to you is substantial in these circumstances."*

On page E1561 in the bundle, she was advised to reassess her position and she was told in a summary letter:

> *"Vivien, we know how you feel very strongly about [redacted]'s dishonesty and are anxious to proceed; however, we are very concerned that you might be throwing good money after bad, and although we consider the claim can be pleaded, there are obvious dangers in proceeding."*

Mr Wardell is recorded at E1562 to have said to the wife *"Do you want to proceed if your chances of success are only 30 to 40 per cent?"* Her response was it was better to try and lose than not to try at all. The evidence of the solicitor is that that advice was given in as forceful a manner as he had ever known leading counsel to give advice. Still, the wife was not to be dissuaded from her project and the advice carried on in September 2007. She was given clear advice:

> *"Our strong recommendation is that you should discontinue proceedings immediately. There is a risk that the freezing injunction could not be maintained."*

There was a high risk the claim would be struck out. Even if the claim was not struck out, she was bound to lose. His advice seemed to be in the strongest possible terms and continues:

> *"Our unequivocal advice to you is that you have come to the end of the road. You must do the best deal you can now before the strike out application is heard".*

However, according to this judgment the wife refused to accept or follow this advice and she described the solicitor's letter from the other side, Manches, as "*rambling nonsense, bluster and puff.*"

27. In October 2007 the solicitors obtained a second opinion from another barrister, another leading counsel, Mr Lawrence Cohen QC and he said the case was hopeless; but still the wife was not to be put off and so unhappy with the advice that she was getting was she that she dismissed Withers and took up an alternative solicitor. The case went to court on 31 January 2008 and the wife's application was duly struck out by His Honour Judge Seymour QC with indemnity costs order against the wife of £205,000 plus interest until payment.

28. The wife, just as she had been with the 2002 order, was thoroughly dissatisfied with that result and blamed her solicitors, Withers. She did not pay their bill for £93,000 and they sued her for this bill. She counterclaimed for negligence and a third piece of litigation ensued. This also proceeded to trial, the trial in July 2010 culminating in a judgment delivered on 3 November 2010 by Sharp J which I have already cited from in part. The case before her was in a nutshell that she blamed Withers for the disaster which had ensued, but Withers said, *"No, we told you to give up. We told you you would lose. It was your decision to press on. We cannot be blamed for that.*" Sharp J found in favour Withers firmly and clearly. She dismissed the wife's counterclaim and held Withers' claim and ordered costs against the wife. As a result of that, the wife now owes Withers a sum in the region of £414,000 with interest accruing at the court judgment rate every day.

29. There was a further piece of litigation because in February/March 2009 the wife transferred Inglenook to the joint names of the parties on trust for them as to 1 per cent for the wife and 99 per cent for the husband. Withers understandably saw that as a way of avoiding them being able to snatch that property by way of satisfaction of their judgment and they sought to set aside that transfer and they sued both the husband and the wife and that litigation carried on and got to a final hearing on 4 October 2012 when His Honour Judge Shaun Spencer QC delivered a judgment, which I have also

had the benefit of reading in full and I note from that two things of interest to me. First of all, he said this at page N212 in the bundle:

> *"I am clear on the evidence that there was an understanding between Mr and Mrs Welch that he provided the funds for litigation costs if she needed them. I have no doubt that the understanding was as from 2007 going into 2008 that he would get the house or virtually all of the house, having sold his own and used the proceeds of sale of his own as a source of support for Mrs Welch. At the outset the money advanced to be sure will have been substantially left than the equity in the house. By 21 March 2009, the amount advanced exceeded in value of the equity of the house. In the circumstances I take the view that that would not be a transaction at an undervalue in the sense of being a transaction with the other for consideration, the value of which in money or money's worth is significantly less than the value in money or money's worth of the consideration provided by himself."*

At N2215 he recorded that the husband had told him:

> *"If she had won, we would all have benefited, but that was not my motive. I left Vivien to deal with all litigation. I did not help her a lot. In fact, I could have given her more emotional support.*

The judge continued:

> *"I have already referred to Mr Welch as being truthful, generous and quixotic. I accept his evidence when he says that all he was seeking was the house to replace the house he had sold, in effect. I accept his evidence. In those circumstances, I take the view that this litigation is not litigation that he was running or she was running for his benefit; that he may be considered to be a pure funder, and therefore I made no party costs order against him.*

30. On that litigation the husband and the wife were successful. Withers failed to get the transfer of the house set aside, hence the continued existence of the debt and the continued existence of the property in the joint names of the parties on the trust that I have just mentioned.

31. All of this litigation which took place between 2007 and 2012, almost exactly the span of the marriage, was disruptive and expensive. It is very clear on the evidence that I have been presented that this litigation was paid for entirely by the husband. He has set out some evidence of that at page D1178. He sums up the payments that he made towards the wife and we are talking about large amounts of money; the sum total of six figures that are included here is £872,405 between 2007 and perhaps 2010.

32. On closer analysis of that figure, it becomes clear (and this is now common ground) that that figure of £872,405 includes regular payments made by the husband to the wife whilst she remained in England to keep up her lifestyle in England and also payment of the mortgage in England over that period of time. It is not possible to pin down with minute accuracy, but something between £300,000 and £400,000 comes in that category, leaving something in the region of £500,000 spent by the wife on her

litigation, which was funded by the husband's money. That includes payment of Manches' indemnity costs order in the setting aside application.

33. A number of questions arise out of this. To what extent was the husband involved with the wife in being told about and knowing and considering the advice given by Withers in 2007 and also counsel in that period in relation to the litigation? The wife told me that the husband had been fully involved. In fact, she went rather further and, to my mind curiously, she said that he had applied duress to her to carry on with this litigation. She, by implication, was blaming him for it, although pressed for the details of how he had applied duress, she was really unable to particularise this to my satisfaction or at all.

34. The husband's case was that he was very much in the dark over all this. He did not know about the advice that the wife was getting. He was not invited to the consultations. He did not see the written advices and he very much relied upon what the wife told him, which was positive. This was a winner and all was going to be well if only she was left to pursue the matter a little bit further. This is indeed entirely consistent with the passage from the judgment of His Honour Judge Spencer that I have just read out and seems to me to be very likely to be correct. The litigation was pursued in England. The husband was only tangentially aware of it. Although one might ask why he did not ask more questions when large amounts of money were being spent, I am satisfied and accept what he says, which is that he did not know about the advice that was being given and had he done so, he would have reacted very differently and that he had the wool pulled over him by the wife in all of this. I accept what he says about this. In my view, the cause of this disaster can be placed firmly at the feet of the wife. I shall return to the consequences of this in the context of my analysis of conduct in due course.

The State of the Marriage

35. It is quite remarkable, it seems to me, that the marriage survived as long as it did. It does seem to me that the husband sincerely wished to make a go of the marriage for a long time when many others might have given up on it long before. Even after the first divorce petition (later withdrawn) was served in 2011, he still wished the marriage to continue despite the fact that by then he knew that the wife was not really coming to Singapore and that the litigation was very expensive. He still wanted to stick with the marriage. I put this down really to his being blinded by the passionate love for the wife and also a blindness to what was really happening. He perhaps allowed unrealistic hopes continue for what he can now see was far too long. It does, however, seem to me the marriage did continue in one form or another until 2013 when it did finally break down either late 2012 or early 2013. By that stage it had broken down beyond repair and I am satisfied that thereafter there was no significant attempt to repair it.

36. The wife issued her divorce petition on 16 January 2013 and although there have been some problems with her pursuing that, she has now pursued it and decree nisi was ordered on 5 September 2014. There is no separate costs order for that and I propose to deal with that within the context of these financial proceedings.

37. I note in passing that there are no children of the parties. [redacted]

38. I apologise for the lengthy analysis of the background of the marriage, but that is the complicated story leading up to these financial proceedings. The financial order proceedings chronology is as follows. The Form A was issued by the wife together with an application for maintenance pending suit on 25 July 2013. That was initially in Guildford County Court and the matter came before District Judge Trigg in that court on 5 September and she ordered a maintenance pending suit order of £5,000 per month plus a legal costs order of £2,000 per month. Because that was in essence what the husband had offered prior to the hearing, she also made an order that the wife should pay 50 per cent of the husband's costs, which he suggests is about £21,028. I appreciate that has not been subject to an assessment, but that is the figure he puts forward.

39. The matter was then transferred to the PRFD (as it then was) and listed for a first appointment on 24 January 2014. Forms E were exchanged in early October 2013 and there was then a sequence of blows in attempts by the wife to have the first appointment adjourned. I have looked at the paperwork surrounding that. The wife applied *ex parte* to District Judge Aitken and then the husband, learning of that and being outraged at what had happened, applied *ex parte* to Deputy District Judge Morris who restored the first appointment. As it happened, that came before me on 24 January 2014. The costs of the exercise which I have just mentioned were reserved to be dealt with now.

40. Having looked again in the context of what I now know about the case, about what the wife did in getting that adjournment and then the wife having to go *ex parte* and unpicking it, I am in no doubt at all that I should consider the wife responsible for the husband's costs of that occasion. What she did applying *ex parte* without appraising District Judge Aitken of the true facts was inappropriate and although (for reasons explained below) I am not going to make an actual costs order, I propose to factor in a notional costs order against the wife arising out of those events. The figure put forward by Mr Chamberlayne for that sequence of events is £5,395. I appreciate again that has not been subject to assessment.

41. I made some nominal first appointment type directions. I was persuaded by Mr Chamberlayne on that day that in view of the wife's attitude, it would be unlikely that an FDR would be appropriate in this case. Nonetheless, whilst ordering a final hearing in September 2014, which has now happened, I reserved another date on 11 April 2014 which I said could be used as an FDR if that seemed appropriate when the parties got there. That came before me on 11 April 2014. It was perfectly clear on that day that there was little purpose in having an FDR because of the vast difference there was between the parties as to their assessment of the value of the case and Mr Chamberlayne had been absolutely right in January 2014 in saying that there was no

purpose in having the FDR. Nonetheless, I used that as a directions hearing and made some directions.

42. There was no reason why the matter should not have moved smoothly to a final hearing before me in September 2014, but the wife chose to make not one, but two, adjournment applications: one before His Honour Judge Brasse on 1 July 2014 and the second one before me on 18 August 2014. Now that I have heard the case in full, I am satisfied that both my view and that of His Honour Judge Brasse to decline the adjournment applications was 100 per cent correct and the basis of those adjournments seem to me, looking now through the telescope backwards of the position leading up to the final hearing, to have had no merit in them at all.

43. On 18 August 2014 the wife suggested that because of her arrest and the seizing of her computers that there were various documents that she would need to refer to at trial and I said to her, and it is recorded in my written judgment of 18 August, that I would be open to hearing further explanations as to why I should adjourn and she would need to give me an explanation. There has been no attempt to do that and the issue has really hardly been referred to at all in the course of the hearing and I checked with Mr Feehan in closing submissions and he told me that the wife expressly did not seek a further adjournment left open by me on 18 August 2014.

44. His Honour Judge Brasse made a costs order against the wife because he felt the application was non-meritorious and assessed it at £14,250 and now that I know what I know, I would also be inclined to make a costs order against the wife for the fairly pointless hearing before me. The suggestion is the costs wasted by the husband that day were £13,840. The case did eventually get ready for trial and both parties filed four narrative statements which were in due course filed on 28 August 2014. The matter has proceeded as a final hearing before me. In dealing with the claim, I must of course consider the factors set out in Section 25 and 25A Matrimonial Causes Act 1973 together with any relevant case law.

45. Section 25 of the Act is familiar, but the important passage for my purposes is Section 25(2) and I do set it out because it is and should be the starting point of any analysis:

> "As regards the exercise of the powers of the court … the court shall have regard to the following matters in particular:
>
> (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
> (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
> (c) the standard of living enjoyed by the family before the breakdown of the marriage;
> (d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;
(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

And Section 25A of the 1973 Act reads:

(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1)(*a*), (*b*) or (*c*), 24 … in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party."

46. I start with the usual starting place: the property and the other financial resources which each of the party to the marriage has or is likely to have in the foreseeable future. In this respect, I had the benefit of schedules of assets produced by both counsel and because it was first before me I looked at Mr Chamberlayne's schedule and Mr Feehan was able to look at that and make some comments on it. In the end, the significant majority of the assets on that schedule were not controversial, but I do need to make a few comments. First of all, the value of Inglenook I took, I think in the end by agreement, as the value as the average of four market appraisals and that average is £861,250. Second, the value of the Aboriginal art collection. The order that I made on 11 April 2014 required the parties to try and agree it. If they did agree it, that would be the figure used, but otherwise there would have to be a valuation. Some time after that the wife's solicitors wrote a letter and it appears at N15 in the bundle in which they said as follows:

"*In terms of the value (this is the Aboriginal art collection) our client proposes what she said at court through her counsel; that the collection is valued at £200,000 for the purpose of the final hearing if the collection is not sold before trial. Evidently, if it sells sooner than that, the net proceeds will be what they will be for the purpose of the asset schedule.*"

The husband's side was content to go with that and so there was no valuation. The Aboriginal art collection has not been sold and so logically as a result of that exchange it seems to me beyond doubt that the correct figure for me to assess it at is £200,000. Mr Feehan in opening said that the wife's view was that that was an unjustifiably high figure and that the wife knew that the Aboriginal art market had turned down. I am not actually sure that there was any evidence on that subject, but it seems to me that it is inappropriate for me to permit. Aside having proposed an agreed figure, the proposal having been adopted, it is not open to the side who made that proposal to come to the trial and say, "Well, actually we have changed our mind," certainly not without proper warning and laying the groundwork. In those circumstances, I shall use the figure of £200,000. I think it must be right that there should be taken off from that a figure for the commission on the sale and Mr Chamberlayne ultimately has suggested £30,000 for that. Mr Feehan did not particularly argue with that and I think that sounds, taking a broad view, about right so I am going to adopt that figure, hence the figure of £170,000 in the schedule which I have just handed down to counsel.

47. [redacted]

48. [redacted]

49. The debt to Withers in the wife's column is there for the reasons that I have already explained at some length. There is a figure in the husband's part of the schedule – the Central Provident Fund - and this is one area which I would make a criticism of the husband. He did not disclose this asset and the wife has on this one satisfied me that there is an asset and Mr Feehan has demonstrated that the husband has been paid this fund and it is connected with employment in Singapore, but it is by common ground agreed that it can be taken out as cash and the only issue is how much it is. The rival figures were the husband's figure £35,000; the wife said £150,000. I note that the husband has failed to provide any disclosure of that. I think he could have done and should have done, and I criticise him for that. On the mathematics, it seems to me the figure is likely to be significantly higher than the figure that he has given. Because I criticise him, I draw adverse inferences against him. I am going to find that the value of that asset is at the higher end of the range put forward by the wife of £150,000 and that is the figure I have put in the schedule.

50. Then, of course, the wife's case has been or was, maybe is, that the husband has hidden assets. It starts with the 5 per cent sharing in [redacted] an air conditioning company. I have heard the husband's explanation about this and I accept that he does not own 5 per cent of HVA and that the reason why he was involved was to help out a friend; not because he is an owner of that company. I think he gave me an honest explanation for the documents which, on their face anyway, show something different.

51. The wife's case from when I first met her in January 2014 and right up to His Honour Judge Brasse's hearing (where she said the husband was worth £3.5 million) and from the beginning to the end of this case, is that the husband had undisclosed assets worth several million pounds. The figures were fairly vague. Asked to particularise what she meant by that in the witness box, she was, I think, a little vague but in so far as she was pinned down, it was clear that she had no real clue as to what she was saying or sustainable rationale as to why she was saying it. She gave one example of the account number ending 4691, which the husband had put in his schedule at £11,613. She said no, that was not correct, and that she had what she described as "intel" (a name that she used quite a bit in the course of her evidence - intel means, she explained, oral information provided by somebody that she was not prepared to name, who rang her up and gave her this information – the expression is, I believe, an abbreviation of the word "intelligence"). She either was not prepared to or did not know the chain through which this information had passed to get to her, but it was not documentary. There was an unnamed Chinese man involved and it possibly also involved the husband's current partner Winnie Aquino, who was involved in selling him out. It may also have involved his secretary, who was involved in selling him out and taking money for providing information. The wife was, however, unwilling or unable to identify how this precisely worked or who was doing the work or what she paid for it or how the work was done.

52. As a general proposition, she referred to intel as being information gained through this source. The one piece of intel which we were able to follow through was the account ending 4691 because the husband was able to produce within 24 hours bank statements from this very account which "intel" had suggested had £48,000 in it; not the £11,000 which he had asserted. When the bank statements were produced it was revealed that this account had not had £48,000 in it at any stage, or at any stage relevant to this enquiry. In fact, the husband was being generous to the wife because when he had done his disclosure he had had £11,617 in it but now, on 4 September, had only £1,056 in it and at no stage in the intervening period had it had £48,000 in it.

53. What can one derive from that? Certainly that the wife was wrong on that one, and I think it is reasonable for me to derive as a general proposition that the wife's "intel" is unreliable and either she makes it up or the information comes from a source which is not reliable. Either way, it is not persuasive evidence before me in this case.

54. There was another account, the ABC account ending 4001 which the wife excitedly told me had £221,000 in it. Mr Chamberlayne was able to demonstrate that account had been closed and was able to demonstrate from documents already disclosed in the bundle exactly where that money had gone and account for it amongst the husband's assets. So the wife was wrong about that as well. That is for a different reason.

55. The wife told me that the husband had opened a new account on 14 July 2014. She provided no documentary evidence. Again, her source was intel and, for the reasons I have already given, I reject that.

56. There was some dispute about the value of a share in the One Degree Club in so far as there is a difference between the husband and the wife and there is a modest difference. I prefer the evidence of the husband.

57. The biggest area of alleged non-disclosed assets is a rather general proposition that the husband has at least £2 million in trust accounts. That was as high as the particularity went of this allegation. It was advanced with great confidence by the wife as if to her it was obvious and true, but on close analysis it seems to me there is a not a shred of evidence apart from her assertion to justify that proposition: no document produced to justify it; no explanation as to where it came from or how the husband could have earned or accrued that sort of asset at the time that we are talking about. Indeed, when it came to the cross-examination of the husband I do not remember that he was asked any questions about that at all and query how much that really is, in fact, pursued.

58. What do these allegations amount to? With the exception of the CPF Fund which I have already mentioned, all of these allegations seem to me to be wholly unfounded; certainly not established to the requisite standard of proof. It seems to me the fact that the wife has maintained those allegations and has maintained them throughout has both prevented an FDR taking place and has added to the length and the costs and the necessity of this trial. It seems to me the wife's allegations are unsubstantiated, unjustified and that she has pursued them just as she has before in a disproportionate, unreasonable and obsessive manner. The echoes of the judgments of Baron J ring around us.

59. Then there are some pensions. The wife has no pension assets. The husband does have three pensions. There was some point of dispute as to why there was not a written cash equivalent and I ruled that I would make an assessment of what those pensions were worth based on what they were producing by way of income which we did have some information on, and the figures in the schedule are the ones suggested by Mr Chamberlayne which seem to me to be broadly reliable as good a guesstimate as we are going to get and Mr Feehan has not sought to challenge those figures, so the cash equivalent of the husband's three private pensions are £319,174, producing for him, or in one case about to produce, a gross income of £16,833 per year for life, for him.

60. There was no evidence put before me as to what the parties or either of them can expect to get in the future or now in relation to UK State Pensions. The fact that the husband is 65 suggests that he might be entitled to something, but I have heard nothing about that, nor has the wife told me that she will get something or will not get something. There is simply no evidence on it, so it remains a lacuna for me as far as this case is concerned.

61. I make the observation that the pensions were accrued prior to the marriage, but that the husband's current realisable assets were accrued during the marriage, he having spent all the assets that he had at the beginning of the marriage on the litigation and subsequently was able to accrue the savings from his substantial earnings during his years in Singapore.

62. Turning to the income earning capacity of the parties and whether it is reasonable for me to expect the parties of the marriage to take steps to acquire an income and whether it would be appropriate to require periodical payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party. As I have said, the husband earned good money before and during the marriage, but was made redundant by IHC Merwede in January 2014. The husband has told me that he has been trying very hard in the months since then to obtain other work and there is a document in the bundle showing various attempts and meetings and possible leads as to what he might do.

63. He told me that he felt at the age of 65 with health not as good as it might be, and he is not suggesting he is completely now unable to work, but he has problems with his heart and problems with his knee and there is an impediment to his work, but in any event he is age 65 so already at State Pension age in the UK and he says:

> *"I have been trying to get work. I have been unsuccessful and I am fearing I am at the end of my career. It may be that I will get something and I am hoping I will get something which will keep me going in Singapore at least until next year, but I have not had any luck in the last year and I think my age is against me and I think that the most likely eventuality is that I shall return to the UK in Spring/Summer 2015 and retire at that stage."*

64. Broadly speaking, I accept that self-assessment. He may get something. I am not finding that for definite he will never work again, but it does not seem to me that he is likely to get anything very substantial, very long-lasting and that he is very much toward the end of his working life.

65. I read the closing submissions of Mr Feehan on the subject, paragraph 14(i) and read this:

> *"It is W's case that H has very significant resources as a result of these matters and the profits that will accrue. She estimates that within a reasonable time of the order in this case it is reasonable to ascribe a further value to H's benefit of about US$ 4 million."*

I pressed Mr Feehan on what that meant or where that figure came from, and I am not sure that I got a very satisfactory answer. It seems to me that figure is completely plucked out of the air and does not stand up to scrutiny and I can see no basis upon which any of the projects which the husband is looking at or trying to look at could possibly result and certainly that I could find that it would be likely to result in a benefit of anything anywhere near the figure suggested. It seems to me that figure is completely unjustified.

66. The wife does not work at the moment and has not really done any work since 2007, partly because she has been really a professional litigant in all of that time through all of this litigation, culminating in this litigation. She did work before that. It is not entirely clear to me what she earned, but she worked in the security surveillance intelligence industry in some capacity as I have already said. I do not think I have been

given figures as to what she earned. She has her own health problems. She had breast cancer 20 or so years ago. It is never possible to say that has gone away forever, but it appears that has gone away for the time being, hopefully forever. She has had some nervous problems, but I think that is probably related to this litigation as much as anything else, and I do not accept that there is any health ground which prevents her from working at the moment. She is resourceful and intelligent and might have been rather better if she had put some of her energies into pursuing some work rather than pursuing litigation, but there we are.

67. Even at age 58, it seems to me that it should be possible for her to find some work. I remind myself that the husband at age 58 was just about to embark on a whole new career in Singapore and there is no reason that I can see why she should not get some work. I accept that it is going to be a limited amount and for a limited number of years, but I see no reason why she should not earn at least £10,000, £15,000 perhaps, for the remainder of her working life until her State Pension age probably.

68. In relation to needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future, I have the following observations. Very little time was spent on this aspect of the case and in the course of the evidence, which is unusual in these cases. Not very much time was spent even on housing needs, which usually dominates this sort of case. That is because of the primary cases of both parties. The wife wishes to remain in Inglenook with the mortgage paid off and the husband says she should have nothing at all; that is his primary case.

69. How should I asses her need? It does seem to me that I could not possibly assess her as needing Inglenook. I appreciate that she would wish to stay there. It has been her house for a long time. But on the facts of this case, whereas had she not done what she had done in the last five years, six years, seven years, that might have been a possibility; the figures are not such that that is a feasible proposition as things stand now. The housing particulars from both sides have shown two-bedroom properties each at £250,000. In each case, it is my view that those would meet the parties' basic needs. I can understand that both of them have become used to living in something rather better than that, but this seems to me to represent their basic needs.

70. For example, the husband produced a property in Woking Road, Guildford, for the wife at page N219 of the bundle at £250,000 which would meet the wife's basic needs, albeit not as attractively as she would like. Similarly, at Q27 the wife has produced a property particularly in Cheltenham which would meet the husband's basic needs adequately.

71. Income needs: again, almost no attention to this in the course of the case, but the wife's primary case is that she should have £8,000 per month on a joint lives basis. The trouble with asserting such a figure in a case such as this where there is really no income and not enough capital on any case to sustain a figure of that level is that by asserting it is to make a meaningless comment and so the court is left in the dark really as to any proper evidence on needs. However, it may be reasonable to say that the parties' basic needs, like those of anybody else, could be met for something like £2,000 a month after housing costs. Some people live on less than that, but that seems to me to represent a reasonable assessment of basic needs and although both parties have

lived much better than that in recent years and for many years before that, I do not think anyone could say that would not meet their basic needs.

72. What about the other Section 25 factors? I have described the parties' standard of living both before and during the marriage. I do not think it is possible to recreate, even if that was desirable for both of them, the standard of living that they have enjoyed during the marriage even if everything was split 50/50, but I noted as part of the case and I have taken that into account in reaching the assessment of need that I have. The ages of the parties I have already noted. The duration of the marriage: from cohabitation to effective separation 2007 to 2013. I note that the parties lived together a modest proportion of that time. I do not place an enormous amount of weight on that. It is still a marriage - it has a duration. Even on that basis it is certainly not a long marriage. It is somewhere between short and medium and I remind myself of some of the cases on short marriages, for example Lord Nicholls in the House of Lords in Miller v Miller; McFarlane v McFarlane [2006] 1 FLR 1186 said this:

> *"The difference is that a short marriage has been less enduring. In the nature of things, this will affect the quantum of the financial fruits of the partnership ... In the case of a short marriage, fairness may well require that the claimant should not be entitled to a share of the other's non-matrimonial property. The source of the asset may be a good reason for departing from equality."*

Similar sentiments expressed by Wilson LJ (as he then was) in K v L [2011] 2 FLR 980. In making those observations I am cognisant of the fact of course that the savings which would be the source of provision for the wife perhaps have been accrued during the marriage, but at the same time unusual facts of this case are that what was there at the beginning has gone to be replaced by what is there now and therefore to some extent either I could characterise what is there as non-matrimonial property or I could say the circumstances of the case justifies departure from the quality; but the wider point remains the same.

73. So far as contributions are concerned, I shall discuss those in the context of conduct in a minute. Loss of pension benefits: I have already talked about the pensions that the husband has. He had them prior to the marriage, so I think they are plainly non-matrimonial property.

74. I note that the wife does not have any private pension. She may have some State Pension. In so far as she does not have State Pension, there may be pension credit or its equivalent to assist her.

75. Disability does not arise here, but there is one factor which has dominated this case, and that is conduct. I remind myself of some of the law on conduct, starting of course with the statute section 25(2)(g):

> *In exercising its powers ... the court is required to have regard to the conduct of each of the parties if that conduct is such that it would be an opinion of the court to be inequitable to disregard it."*

In practice, allegations of misconduct come in two categories: personal misconduct and financial misconduct. For personal misconduct to become a relevant factor, it must be

"both obvious and gross, so much so that to order one party to support another whose conduct falls in this category is repugnant to any one sense of justice. In such a case, the court remains free to decline to afford financial support or to reduce the support which it would otherwise have ordered. Short of cases falling into this category, the court should not reduce its order for financial provision."

That is a quotation from Watchel v Watchel [1973] Fam 72.

Burton J, in the case of S v S [2007] 1 FLR 96 suggested that it must be the sort of conduct which would cause the ordinary mortal to throw up his hands and say, "Surely that woman is not going to get a full award." Counsel suggested a test of applying what he called the gasp factor. Cases which come into this category are quite rare and something really quite serious is likely to be necessary to justify inclusion in this category.

76. Mr Chamberlayne has drawn my attention to the case of FZ v SZ [2011] FLR 64, in particular paragraphs 83 and 84 where Mostyn J said:

> *"If a wife decides to breach locks or to open post then she takes a calculated risk that (a) she will be prevented from using the documents in the proceedings ... (b) having her actions characterised as misconduct under Section 25(2)(g) with a financial adjustment to reflect this and/or (c) that an order for costs be made against her ... It is a dangerous strategy ... The same principles should apply to a wife who breaches a password on her husband's PC to obtain documents. A grey area is the position found by me to obtain here. This is where the wife goes to the computer used by her husband, finds it turns on and prints out or otherwise copies documents. She does not breach a password. I incline to the view that this should be regarded as just falling on the legitimate side of the line."*

Where a password is breached it is equivalent to opening post or breaching locks and should be regarded as conduct in the right circumstances.

77. Cases involving financial misconduct are much more common. If one spouse recklessly or wantonly dissipates assets then in reaching its decision it may be appropriate for the court to treat that party as if he still had those assets and reattribute them to him for the purpose of assessing resources. Dissipation can take many forms and reported cases have involved examples of heavy gambling, purchase of expensive and unnecessary consumer goods or services, but also the pursuit of manifestly unwise litigation.

78. I have looked at the case of Beach v Beach [1995] 2 FLR 160 in which something not wholly dissimilar to what has happened here had happened in that the husband had pursued unmeritorious litigation to the financial disadvantage of the family funds. Thorpe J (as he then was) characterised this as follows:

"He obstinately, unrealistically and selfishly trailed on to eventual disaster, dissipating in the process not only his money, but his family's money, his friends' money, the money of commercial creditors unsecured and eventually his wife's money in so far as the disaster that eventually developed did not even pay for her specified agreed sum. It would have been in his interest had she forced him into accepting a property marketed sale in the 1980s. She cannot be blamed for having failed to achieve that result....I can understand how difficult it must have been living for her under the same roof with somebody so deluded. Responsibility is not shared, not hers, but his. On one view, why should he have anything when she has not even had what should have been her due under the contract? My first impression was to dismiss this claim; however, on further reflection I have concluded that the disparate present position of the husband and the wife is so great that would not be a fair application of the Section 25 criteria."

79. These cases sometimes involve what I call Norris add backs as a result of the case of Norris and Norris [2003] 1 FLR 1142, a decision of Bennett J where he said:

"In the circumstances of this case, as I have set them out, in my judgment the scale and the extent of the overspend was reckless. I do not think it inappropriate to add back the entire overspend, but I do not consider it unfair to add back into the husband's assets the figure of £250,000. In my judgment there is no answer the husband can sensibly give to the question why should the wife be disadvantaged in the split of assets by the husband's reckless expenditure? A spouse can, of course, spend his or her money as he or she chooses, but it is only fair to add back into that spouse's assets the amount by which he or she recklessly depletes the assets and thus potentially disadvantage the other spouse within ancillary relief proceedings."

80. That case received further analysis in a decision of Wilson LJ as he then was in Vaughan v Vaughan [2008] 1 FLR 1108 where he approved the principles which I have just referred to, cited an earlier case of Martin v Martin [1976] Fam 335 in the words of Cairns LJ:

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

But he said this:

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

81. Some cases such as Vaughan and Norris permit a clear cut mathematical reattribution but there are other cases – and that applies also in the personal misconduct cases – where mathematic reattribution is not available, but the court still considers it will be repugnant to a sense of justice not to take the conduct into account. In Martin the Court of Appeal said that it would be just for the court to be more concerned to mitigate the reduction in the wife's standard of living than the husband's. Coleridge J in H v H [2006] 1 FLR 990 suggested:

> *"The proper way to have regard for the conduct is as a potentially magnifying factor when considering the wife's position and the other sections and criteria. If the glass through which the other factors are considered, it places her needs, as I judge them, as a much higher priority to those of the husband because of the situation the wife now finds herself in is in a very real way his fault. She must be given a greater priority in the share-out."*

82. Sometimes of course this might take the form of a broadly assessed mathematical discount of a size which fits the facts. On other occasions, it may be a question of departing from equality to meet the innocent party's needs at a level which would have been available if the dissipation had not taken place.

83. I want to mention the question of costs of this case (I have already dealt with the other cases) in the same context. First of all, the costs orders which have already been made October 2013: £21,028; January 2014: £5,355; July 2014: £14,250; August 2014: £13,008. Total £54,513, as I say, have already been made. Two of them have been made and two of them have been reserved and notionally I would make them. In so far as costs already made actually or notionally £54,513, there is potential for reducing that on a detailed assessment, but still a substantial amount of money which the wife notionally owes the husband which, because of her financial situation, there is no prospect of his recovering if I simply order it as a costs order rather than a reduction in what she otherwise might get.

84. There is also her costs bill in this case overall. The husband spent £190,769 which I believe includes the £54,000 I have just mentioned. If the wife had not pursued her obsessive and disproportionate attack on his credibility, this case could have been dealt with much more cheaply in my judgment either because there would have been an FDR or the case could have been settled at a much earlier stage.

85. The husband did make an offer to settle, which included the offer of a housing fund of £250,000 on terms, and the wife appears not to have given that the time of day. Not only did she not give it the time of day, she was in breach of rule 9.38 of the Family Procedure Rules. She failed to make any open offer before I think either the day of the trial or the day before and when she did make an open offer, it seems to me to have been an offer inspired by her wholly unrealistic assessment of the case and when she asked for the whole of Inglenook with the mortgage paid off, another £250,000 and £8,000 a month for life, she must have been looking at the case through her very optimistic and unrealistic eyes rather than anything realistic.

86. It does seem to me therefore that I should factor into my consideration the fact that the wife has caused the husband to incur the costs of this litigation as well as the earlier litigation. It would be open to me to do it by way of a costs order. For the reasons I

have already given, that is unlikely ever to be recoverable and as a result of that, it would be unfair, it seems to me, to the wife to reflect that behaviour in that way. A better and fairer way would be for me to depart from what might otherwise have been ordered and make in the end no order for costs and for me to discharge the costs orders which have already been made.

87. So, against that background, how should I assess conduct in this case? First of all, dissipation of assets – and this really is the costs of all the litigation, both the wife's own litigation and the cost of the litigation which I have just mentioned of these proceedings. Does this case fall into the category identified in Norris and Beach discussed above? In my view, it does. I find that in this litigation and in the previous litigation the wife has, just as the husband had been in Beach, been obstinate, unrealistic and obsessive. Her conduct is such that I should certainly take it into account in a significant way in my analysis of the case. The disaster which leaves the wife in the position she is is her fault; not a mutual fault. It is her fault and she cannot expect to receive an award without this factor being fully taken into account.

88. There is also in the context of her behaviour the question of the computer hacking. I do not agree with every single one of Mr Chamberlayne's assertions in this respect and where I do not mention it, it will be because I have not been satisfied on the balance of probabilities that what he said has been made out or, if it has been made out, that it amounts to conduct. There is one particular area where I do think it is made out and that is in relation to the computer hacking of the d.welch@ihcmerwede.com email. I am entirely cognisant that there is currently a police investigation into exactly this matter and I do not intend what I say here to have any bearing on that investigation. That investigation is dealing with a criminal burden of proof. I have to deal with the matter on a balance of probabilities. The police may be looking at slightly different matters and may be in possession of information which I am not in possession of, and I do not intend in giving this judgment to encourage the police to take a particular line or discourage them from taking a particular line. My findings solely relate to this case.

89. I do conclude on a balance of probabilities that the wife has found a way of hacking into the husband's email and has disgracefully and frequently over a period of time hacked into his email account. There is on my view very clear evidence to that effect, much of which is set out in Mr Chamberlayne's closing submissions. For example, the wife came into the possession of an email from Karl Watkins and her triumphant declaration to be found at page L290 in the bundle where she said, "*What balderdash. No shares in HVA - that is not what is sitting before me on my desk.*" I wholly reject her explanation that she had no document sitting on her desk except that which she had dictated from intel. It seems to me that she had the very email on her desk in front of her and there is no legitimate explanation as to how she could have come by that that I have heard, and I conclude that she must have hacked into the email account in order to get that email.

90. A very similar analysis applies in relation to the Karl Watkins' email which is to be found at page D1122 of the bundle where she, the wife, wrote an email which included the exact text of his email. Again, she explained to me that it had been dictated to her in intel, as she put it. I do not accept that. I think she was lying about that. I think she had the email and the only explanation for that was that she had hacked into his computer.

91. Similarly, I entirely accept the husband's evidence as to what happened on 10 June 2013. The husband flew in to London and arranged by email to meet his solicitor at a particular place in Paddington. Within a very short period of time, the wife demonstrated that she knew exactly where that was and when they suggested that they should later meet, he did agree to meet her and I accept his evidence that the conversation that they had over lunch is accurately described in his email to Emma Morris on 10 June 2013 where he said: "She goaded me throughout." He made some notes on his napkin, and she illustrated that she knew exactly what he was doing in a number of material ways which she could only have known had she been hacking his email, and he concluded: "*Emma* (that is Emma, his solicitor) *she must somehow be reading all of my emails, including my work emails which ought to be at my advantage because I have done nothing that needs defending.*" Emma Morris was suitably horrified by that.

92. The explanation that the husband concocted that email to embarrass the wife and that in fact all of that information was given to the wife over lunch and that he had gone out of his way to arrange the lunch and that she had told him these various things, I reject. I prefer the husband's explanation entirely on that evidence.

93. Similarly, there is what happened when the husband arrived in Amsterdam on 31 August 2013. The wife demonstrated that she knew of his arrival and where he was going in Amsterdam within a short time of his arrival. It seems to me that she could only have known that by hacking into his emails and by responding and taunting that she knew where he was and what he was doing. That was a deliberate attempt by her to intimidate him.

94. Similarly, and equally serious, is the email from [redacted] the husband's son, who is a maths teacher who wrote an offensive email about the wife warning his sisters and his father to block her emails because she was irrational, unpredictable and he was saying it was important for them to protect themselves. It seems to me that clearly was written to the husband's email account and the wife has hacked into it and found it. The wife's explanation that [redacted] forwarded that email to her and that is how she knew about it is wholly incredible. It seems to me perfectly obvious that she would be the last person that he would be sending such an email to. There is certainly no evidence that has been produced that that actually happened, and I reject her explanation about that completely.

the husband's son

95. In my view, the evidence is overwhelming that the wife has done these things and that these are very serious matters. It may be that she has seen some private privileged correspondence between the husband and his solicitor. I have not heard any particular details about what she may have read, but it seems to me that is on the balance of probabilities quite likely to have happened. That has caused the husband, I am satisfied, to suffer a significant amount of distress and I have seen some of that in the witness box. I can understand that entirely. As well as that, it has contributed to the length and cost of this case.

96. In my judgment I should take into account conduct, both in the costs of the previous litigation and the costs of this litigation and the computer hacking in deciding what should happen. That, it seems to me, should cause me to reduce significantly what the

wife might otherwise have received had this case taken a more normal trajectory. Mr Chamberlayne's primary case goes as far as saying that the conduct is so bad that it should extinguish the wife's case altogether. I have not been persuaded quite of that. It seems to me that I should not disregard her needs entirely and that I should not, as Mr Feehan said, leave her destitute. There is enough money for him to make some provision for her whilst recognising both her needs and the conduct in the case, rather similarly to the situation Thorpe J found himself in in the case of Beach v Beach. Bad though the conduct is, it is not so bad on the facts of the case to extinguish the claim altogether. It certainly reduces it quite significantly.

97. It seems to me that I should not disregard the fact that the wife has a housing need at a basic level I have already mentioned. It can be assessed at £250,000. She also has an income need and although I have found that she can earn something in the years ahead, she certainly has a shortfall which reasonably needs to be met for a period of time.

98. I have asked myself how long that period of time should be in the context of the conduct, in the context of the duration of the marriage and in the context of Section 25A of the Matrimonial Causes Act and the conclusion that I have reached is that there is an income need which I should meet and the period that I have decided to adopt is one of six years, being the length of the marriage. Had there been no conduct or lesser conduct, it may well be that we were talking about a joint lives order, but the conduct is such that I feel able notwithstanding the wording of Section 25A to bring that support to an end after a period of six years.

99. That brings me to a difficultly which we confronted right at the end of this case as to the structure of any order that I make. A conventional order in this sort of scenario would be to order that the husband pays a lump sum to the wife to represent housing need plus capitalised maintenance. If I did that, that would simply have the effect, it seems to me, of inviting Withers to come and collect that money from the wife and she would be left destitute again. Mr Feehan has suggested that that problem could be solved by the property to be settled with the wife having a life interest and her children having a residual interest, but I think Mr Chamberlayne is right that if I did that, it would be open to Withers simply to make the wife bankrupt and then the life interest asset could be sold. Likewise, if it was a capitalised maintenance order, the lump sum could simply be taken in bankruptcy proceedings against the wife, assuming that Withers found out it was there and issued proceedings.

100. How should I deal with it in the context of my wanting to meet the wife's needs; not Withers' needs. Mr Chamberlayne indicated to me what he thought was an appropriate structure which was that I should indicate an appropriate figure for housing and that the husband would consider and would be likely to be favourable to going along with my making an order which included an undertaking from him to provide that amount of money for a house in which the wife would have a right to live in on certain terms to be negotiated, but that she would have no interest in it in property terms. We have not specifically addressed the question of periodical payments, but if there were to be a periodical payments order, it may be that that would get wrapped up in some sort of bankruptcy proceedings, but it may be that the amount which Withers would get out of that would not be sufficient to make it worth their doing that. I can think of no way of getting around that problem, assuming that I am minded, as I am, to make some sort of income provision for the wife.

101. Having discussed that, it seems to me that the structure suggested by Mr Chamberlayne is the one which I should properly adopt and I am willing to hear any further thoughts that Mr Feehan has about it, but that seems to me to be the best way forward on the facts of this case.

102. The final question is what figures I should put on that provision. I start by looking at the asset schedule as I found it to be now. I note the potential sharing claim which the wife has. I note that a lot of the realisable assets were accrued during the marriage. I note that the wife has some needs, but against that I pitch the conduct allegations which I have set out in significant detail already, both in relation to the costs of previous litigation, the costs of this litigation and the computer hacking. Taking that all into account, the conclusion that I have reached is that the figure that should be made available for the wife is the figure of £250,000 for housing purposes.

103. As far as maintenance is concerned, the figure that I have reached is £1,000 per month for a period of six years. As far as the maintenance order is concerned, for reasons I have already given, were it not for the wife's circumstances, I would be minded to capitalise that sum, but for the reasons I have given, that is not helpful to her and not something that I should do. I am cognisant of the fact that there is a risk that if I make an order in the form of a periodical payments order, there is a danger of a variation application. I want to express the view that because of the way in which this order has been made, because of what lies behind that, I am expressing the view that it would be very unlikely that the court would consider favourably a variation application by either party. I think I have to recognise that legally speaking I cannot stop such an application being made, but I can make the order non-extendable and I do that.

104. I can also require that any further hearing on that can come back before me so that I can remember what was said and perhaps have a better knowledge than somebody coming fresh to the case. With all that in mind, I have drafted an order which I am now going to hand down to counsel which seeks to set out what I have just talked about.