[2017 Gib LR 251]

B v. B

SUPREME COURT (Butler, J.): September 1st, 2017

Family Law—financial provision—principles—principles to be applied on application for financial remedy order

The petitioner applied for financial remedy orders.

The parties married in Morocco in December 2006, when the petitioner ("the wife") was 24 years old and the respondent ("the husband") was 47. They moved to Gibraltar in 2007 and their child was born in December 2007. The parties separated in July 2016 and a decree nisi was granted. The child lived with the wife in the former matrimonial home and the husband paid interim maintenance of £700 per month for the child and £450 per month for the wife. Both parties were employed. The husband earned substantially more than the wife but was expected to retire within a couple of years.

The parties' assets included their former matrimonial home; a holiday home in Spain ("Chiclana," which was in the parties' joint names); a property, "La Linea," which the husband had inherited; "the Marina Bay property," which the husband had purchased as an investment for himself some 20 years prior to the parties' marriage; and "the Sta. Margarita property" for which the husband had paid the deposit prior to the marriage but the purchase had been completed after the marriage. The mortgage on the Sta. Margarita property was mostly paid by rent received from the La Linea property. The property had been rented out and the husband was currently living in it. The husband also had a pension fund, valued at £458,279. The wife's current monthly income, including the interim maintenance payment, was £2,313; the husband's, excluding the interim maintenance payment (but including rental income from La Linea and Marina Bay), was £3,871.

The wife applied for financial remedy orders. She submitted, *inter alia*, that, with the exception of the La Linea property, all of the assets should

be divided equally between the parties. The husband submitted that the Marina Bay, La Linea and Sta. Margarita properties should be excluded from the sharing principle as non-matrimonial property. In respect of his pension, the husband submitted that the wife should share the value of the fund only to the extent that it accrued during the marriage (*i.e*. she should receive only £68,169).

Held, ordering as follows:

(1) The following well-established principles applied on applications for financial remedy orders: (i) The judge must make an order that was fair and reasonable for both parties. He had a wide discretion but it must be exercised fairly and judicially. (ii) Each case depended on its own facts and circumstances. (iii) The judge had to take into account all the circumstances, with first consideration being given to the welfare of the parties' child and taking into account the checklist in s.37 of the Matrimonial Causes Act. (iv) The judge must avoid discrimination and not attempt a comparative evaluation of the parties' personal contributions in their different roles during the marriage. (v) The judge should have regard to the parties' assets and liabilities, incomes and outgoings at the time of the hearing. (vi) The judge must take a holistic approach to the facts of the case. (vii) He should first ascertain the extent of the assets and then determine which of them should be divided between the parties and in what manner. The judge should start by applying the yardstick of equality to the assets that could properly be classified as matrimonial. Any departure from the yardstick of equality must be justified and fair in all the circumstances. The judge should also stand back and consider his overall conclusion to ensure that it appeared fair and reasonable to both parties, bearing in mind that the child was his first consideration. (viii) The judge must have regard to the three elements of needs, sharing and compensation insofar as it was fair and appropriate to do so. (ix) Whilst the judge should attempt so far as reasonably possible to divide assets of like nature and quality fairly between the parties, in the present case there was considerable merit in reaching a simple conclusion which avoided the prospect of later discord or misunderstanding between the parties. It was not realistic in the present case to divide each asset between the parties and insofar as one might be left with the less attractive assets, that was a relevant consideration. (x) The judge should attempt to make an order in relation to spousal maintenance which achieved a clean break between the parties as soon as reasonably possible, so long as it could be done fairly and justly and enabled the weaker party to adjust without undue hardship. Consideration of future maintenance should depend in most cases on need. It would be rare, in the absence of any element of compensation, that the sharing principle would apply to future maintenance. (xi) In considering the issue of sharing, it was necessary in the present case to take into account contributions, whether assets had been treated during the marriage as matrimonial assets, and whether they had been inherited or gifts. Proportionality, as part of the overriding objective, was important in

family cases, particularly where the available assets were not great. Parties should be assisted to keep their cases as simple and straightforward as possible (paras. 7–8).

(2) In addition, the following principles applied in the present case: (i) There was no doubt that the source of the assets was a relevant consideration. If assets had been acquired before the marriage or since its breakdown, or from a third party, it might well justify a departure from the yardstick of equality. (ii) In the United Kingdom there had been a divergence of opinion as to the most appropriate approach in considering financial remedy cases: some suggested that first the total assets and liabilities should be ascertained, then they should be divided between matrimonial and non-matrimonial assets, the yardstick of equality should be applied to the matrimonial assets and then consideration given to whether the sharing principle should apply to non-matrimonial assets. Others suggested that the sharing principle should apply initially to the whole of the assets with consideration then being given to whether there was a good reason to depart from equality in relation to any assets. The prevailing view appeared to be that non-matrimonial property should rarely be distributed between the parties save where their needs required otherwise. (iii) In the majority of cases, too academic an approach should be avoided. Proper consideration of all the circumstances, including the statutory checklist, bearing in mind the yardstick of equality and avoiding discrimination would achieve a fair outcome. The relevance of assets acquired after separation would depend on the circumstances of each particular case. (iv) Precise analysis of the correct approach was often counterproductive and likely to lead to a more legalistic approach then was desirable. In the present case, the judge would apply s.37(1) and the general principles above. (v) A clean break should be achieved wherever reasonably possible. (vi) The value and categorization of the available assets should be considered as at the date of trial (para. 9).

(3) The court considered the factors on the statutory checklist in s.37 of the Matrimonial Causes Act:

Section 37(2)(a). The parties had agreed the assets and liabilities. In respect of earning capacity, the wife should be able to work full-time and for considerably longer than the husband. She would not, however, be likely to acquire substantial pension rights, which should be reflected in the capital award. The husband would be likely to work for another two years. It was right to recognize that the wife's contributions as the primary carer for the child would continue and the wife would have childcare expenses. The husband would contribute by paying child maintenance and might assist with childcare.

Section 37(2)(b). The case had not been presented as expressly needs based, but the wife did mention her needs when submitting that it would be unfair for her not to share equally in the whole of the husband's pension fund and the capital assets. Both parties claimed sums as housing need. The judge did not see why the husband's reasonable housing needs

should be less than those of the wife. He too needed a home fit to accommodate the child.

Section 37(2)(c). The family enjoyed a good standard of living during the marriage.

Section 37(2)(d). The parties' age difference of 23 years was important. It would be wrong to guess the medium- to long-term future of either party, but the wife had very substantial additional time during which to provide for later retirement.

Section 37(2)(f). Neither party suggested that the personal contributions of one party during the marriage had been less valuable than those of the other. For these purposes, it was right to regard the marriage as continuing until the date of separation. Thereafter, the wife had continued to be the primary carer and supporter of the child, and the husband had made generous financial provision for them from his income. That would continue to be the case in respect of child support until the child ceased full-time education. The balance of likely future contributions should not make a material difference to the outcome in the present case.

Section 37(2)(h). The wife suggested that the court should take into account her potential loss of benefit from the husband's pension. It would be wrong in principle to find the wife entitled to share equally in the husband's pension rights simply because she would have shared in them had the parties remained married (para. 10).

(4) When considering whether or not the relevant assets were matrimonial assets, the wife's concession in relation to the La Linea property was clearly correct. It had been inherited by the husband and should not be treated as a marital asset. The Marina Bay property was also not a matrimonial asset, having been purchased by the husband as an investment for himself some 20 years prior to the parties' marriage. The parties agreed that the Chiclana property, which had been purchased to be the parties' Spanish holiday home, should be shared equally. In respect of the Sta. Margarita property, it was not useful, in the circumstances, to categorize it as entirely matrimonial or non-matrimonial. The husband had paid a deposit for the property prior to the marriage but the purchase had been completed during the marriage. The mortgage was mostly paid by rents received from the husband's La Linea property. The property had been rented out and the husband was currently living in it. It was accepted that the former matrimonial home was a matrimonial asset. With respect to the husband's pension, conventional practice was to calculate the entitlement of a party to the other party's pension pot according to the part of the pot that could be said to have been acquired during the marriage (which was treated as part of the marital acquest). To arrive at an appropriate figure, the current value of the pot was divided by the number of months during which the party or his employer had been contributing to the fund or during which the party had been acquiring the fund, and to multiply that figure by the number of months from the date of the marriage (including any period of pre-marital cohabitation where there was a seamless transition to marriage) to the date of separation. In the

present case, the wife would have expected to share substantially in the husband's pension rights in the future if the marriage had subsisted, she was unlikely to be able to build up a pension fund for herself in the foreseeable future and she would continue to contribute substantially as the child's main carer for at least 11 years. These circumstances together made the case unusual. If the court were deciding the wife's entitlement according to a division of each individual asset, fairness would require a small increase in the wife's share of the husband's pension fund to £90,000 (para. 11).

(5) The wife should receive the sum of £512,500 (being half of the value of the matrimonial assets; £90,000 in respect of the husband's pension; and £13,500 with regard to the Sta. Margarita property), which was a fair, indeed generous, proportion of the assets (against which sum £8,500 would be deducted in respect of assets which she already had), particularly as the husband would retain three properties that were difficult or uncertain. It was approximately 30% of the total assets although fair in the circumstances. The wife and child should be able to live reasonably in a good, mortgage-free home. The husband would retire soon and would have to live on the property he retained. A strict division of all of the assets, resulting in an entitlement for the wife of about £766,516, would have been unfair to the husband. Upon payment of the £504,000 to the wife, her maintenance payments would cease. After very careful consideration, the court was satisfied that the order would amply provide for the needs of the parties and the child and was a fair outcome for them all (paras. 16–22).

Cases cited:

(1) *B* v. *B (Financial Orders: Proportionality)*, [2013] EWHC 1232 (Fam); [2013] Fam. Law 1374, followed.
(2) *CR* v. *CR*, [2007] EWHC 3334 (Fam); [2008] 1 FLR 323; [2008] 1 F.C.R. 642; [2008] Fam. Law 198, referred to.
(3) *Charman* v. *Charman (No. 4)*, [2007] EWCA Civ 503; (2007), 9 ITELR 913; [2007] 1 FLR 1246; [2007] 2 F.C.R. 217; [2007] Fam. Law 682; [2007] NLJR 814, considered.
(4) *Cooper-Hohn* v. *Hohn*, [2014] EWHC 4122 (Fam); [2015] 1 FLR 745; [2015] Fam. Law 124, referred to.
(5) *H* v. *H*, [2007] EWHC 459 (Fam); [2007] 2 FLR 548; [2008] 2 F.C.R. 714; [2007] Fam. Law 578, referred to.
(6) *JL* v. *SL (No. 2) (Appeal: Non-Matrimonial Property)*, [2015] EWHC 360 (Fam); [2015] 2 FLR 1202; [2015] Fam. Law 519, considered.
(7) *Miller* v. *Miller*, [2006] UKHL 24; [2006] 2 A.C. 618; [2006] 2 W.L.R. 1283; [2006] 3 All E.R. 1; [2006] 1 FLR 1186; [2006] 2 F.C.R. 213; [2006] Fam. Law 629, applied.
(8) *Rossi* v. *Rossi*, [2006] EWHC 1482 (Fam); [2007] 1 FLR 790; [2006] 3 F.C.R. 271, referred to.
(9) *S* v. *S (Ancillary Relief after Lengthy Separation)*, [2006] EWHC

2339 (Fam); [2007] 1 FLR 2120; [2007] 2 F.C.R. 762; [2007] Fam. Law 482, referred to.

(10) *SS* v. *NS (Spousal Maintenance)*, [2014] EWHC 4183 (Fam); [2015] 2 FLR 1124; [2015] Fam. Law 267, referred to.

(11) *VB* v. *JP*, [2008] EWHC 112 (Fam); [2008] 1 FLR 742; [2008] 2 F.C.R. 682, referred to.

Legislation construed:

Matrimonial Causes Act 1962, s.37:

"(1) It shall be the duty of the court in deciding whether to exercise its powers . . . to have regard to all the circumstances of the case, first consideration being given to the welfare while any child of the family . . .

(2) As regards the exercise of the powers of the court . . . to make a financial provision order in favour of a party . . . the court shall in particular have regard to the following matters—

(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, whatever the nature of the conduct and whether it occurred during the marriage or after the separation of the parties or dissolution or annulment of the marriage, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

(h) 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."

C. Simpson for the petitioner;
S. Diable for the respondent.

1 **BUTLER, J.:** This is an application by the petitioner wife (to whom I shall refer as "W") for financial remedy orders following the breakdown of the parties' marriage. I shall refer to the respondent as "H."

Background

2 The parties married in Morocco in December 2006, having met about one year previously. W was 24 and is now 34; H was 47 and is now 57. They moved to live in Gibraltar during 2007, W following H. They separated in July 2016. It was therefore a 9½-year marriage, which I regard in these times as a marriage of reasonably substantial length, though not particularly long. There is one child of the family ("C"), who was born on December 11th, 2007, is now 9½ and lives with W in the parties' former matrimonial home at Europlaza. A decree nisi was pronounced in favour of W in October 2016. It has not yet been made absolute and my order will take effect only upon decree absolute. H pays interim maintenance pending suit at a total of £1,150 p.c.m. (£700 for C and £450 for W) pursuant to an order made by me on September 8th, 2016.

The assets and liabilities

3 The assets are as follows:

(i)	Apt 902 Europlaza	£580,471 after sale costs and small mortgage
(ii)	18 The Square Marina Bay	£132,600 after sale costs
(iii)	Chiclana de la Frontera, Cadiz	£148,629 after taxes and sale/ legalization costs
(iv)	Sta. Margarita property	£39,954 after tax, sale costs, mortgage, *etc.*
(v)	La Linea property	£85,044 after tax and sale costs
		£986,698
(vi)	W's Bank accounts	c.£3,855
(vii)	H's Bank Accounts	c.£9,843
(viii)	H's debentures	£25,000
(ix)	H's cars	c.£32,000
(x)	W's car	c.£4,000
(xi)	W's wedding ring	c.£700
(xii)	Endowment Policy	£8,658
		£88,056
	Total	**£1,074,754**
	H's pension fund	**£458,279**
	Grand total	**£1,533,033**

Notes: W and C live in the Europlaza property; H lives in the Sta. Margarita property and uses the Chiclana property at weekends. The Marina Bay and La Linea properties are rented out. All the properties save

for Chiclana are held in H's sole name. Chiclana was purchased in joint names and H concedes that it was intended to be a family asset to which the parties are entitled equally. The Chiclana property is subject to potentially significant legal problems, which have been taken into account in its agreed valuation. W owes £45,000 in legal costs; H owes £20,000. The above grand total figure is thereby reduced to £1,468,033. I have decided to deal with this aspect of the case separately, towards the end of this judgment. There is a small bond which both parties accept was purchased by H for C and which will be retained for her benefit.

The parties' incomes and earning capacities, now and in the foreseeable future, and their predicted outgoings

4 (i) W earns about £13,956 p.a./£1,163 per month. She works part-time as an Arabic telemarketing representative. I assume, in the absence of information to the contrary, that such employment is now permanent (she should by now have been informed as to whether it will be permanent). Having heard her oral evidence, I find that she should be able to increase her earnings before the end of this year to around £18,000 net p.a./£1,500 p.c.m. She receives maintenance pending suit from H of £1,150 per calendar month (£700 for C and £450 for W). Her total current income is therefore about £2,313 p.c.m./£27,756 p.a.

(ii) H's net income for the year ending July 2016 was nearly £52,500. From July 2016 to January 2017 he earned at an average annual rate of about £45,700. I shall assume that his net earnings will continue at about £49,000 p.a./£4,083 p.c.m. He also receives rental income totalling about £14,500 p.a. from his rental properties (about £850 p.c.m./£10,200 p.a. from his Marina Bay property and £363 p.c.m./£4,356 p.a. from his property in La Linea). Currently, therefore, his total net income is about £60,256 p.a./£5,021 p.c.m. From this he pays W £1,150 p.c.m., leaving him with about £3,871 p.c.m./£46,452 p.a.

The issues

5 The main contentious issues between the parties are as follows:

(i) H submits that Marina Bay, La Linea and Sta. Margarita should be excluded from the sharing principle as "non-matrimonial property." W reasonably, but only at the very last minute, accepts that La Linea should be excluded from the computation but suggests that the other properties should by divided equally.

(ii) H submits that W should share the value of his pension fund only to the extent that it accrued during the marriage (being only about 30% of its value). The result should, he says, be that W receives £68,169 of the total value of £458,279, leaving him with £390,110 of it. W's case is that such approach is wrong in principle, unfair and discriminatory.

6 On closer examination, it seems to me that W's case is not so much that H's calculation is technically incorrect. Nor is she (or should she be) saying that, standing alone, H's approach to the pension provision is incorrect, or would be if needs were not a relevant feature of the case. Insofar as she may base her case on the suggestion that she should have an increased share of the assets simply because H has a much higher earning capacity than hers, I do not agree. If she has a continuing maintenance entitlement, then capitalization of that entitlement in order to achieve a clean break order would certainly be a factor to take into account. If there is no continuing maintenance entitlement, she should not acquire it by the back door by seeking an enhanced share of the capital to compensate for H's probably short-lived superior earning and pension-building capacity. It has never, however, been the case that courts considering financial remedy applications should seek to achieve future equality.

The law

7 I have been referred to a number of legal authorities but it seems to me that the relevant law is straightforward and may be summarized as follows:

(i) I must make an order which is fair and reasonable for both parties. My discretion is wide but must be exercised fairly and judicially.

(ii) Each case depends upon its own facts and circumstances.

(iii) I must take into account all the circumstances, first consideration being given to the welfare of C and particularly taking into account the checklist in the Matrimonial Causes Act 1962, s.37.

(iv) I must avoid discrimination. It would be invidious in the circumstances of this case to attempt a comparative evaluation of the parties' personal contributions in their different roles during the marriage.

(v) I should have regard to the parties' assets and liabilities, incomes and outgoings at the time of the hearing.

(vi) I must take a holistic approach to the facts of the case. Facts as I find them individually may seem insignificant but taken together as a whole may be significant.

(vii) I should first ascertain the extent of the assets. Then I must ascertain which of those assets should fairly be divided between the parties and in what manner. In this case it appears to be agreed that I should start by applying the yardstick of equality to the assets which may properly be classified as matrimonial. My approach is to bear in mind the yardstick throughout, as one of the principles of fairness which ought to be applied, and also to use it as a check once I have reached a provisional view. Any departure from the yardstick of equality must be justified and

fair in all the circumstances. I shall also stand back and consider my overall conclusion to ensure that it appears fair and reasonable to both parties, remembering throughout that C is my first consideration.

(viii) I must have regard to the three elements of needs, sharing and compensation insofar as it is fair and appropriate to do so. It is not suggested that this is a case for application of the principle of compensation. I do not accept the suggestion in the skeleton argument of Mr. Simpson, counsel for W, that compensation means "compensation for any economic disparity from the marriage." Rather it generally refers to compensation for any economic disadvantage which has arisen as a result of the marriage (classically, for example, where one party abandons a career in order to care for children). In the end, my main concern, therefore, is the issue of how the assets should be shared, bearing in mind the parties' needs. Whilst needs have not assumed a central role in the evidence and arguments before me, this is not a "big money" case and, in my view, needs are of importance.

(ix) Whilst I should attempt so far as reasonably possible to divide assets of like nature and quality fairly between the parties, where that is possible, in this case there is considerable merit in reaching a conclusion which is simple and which avoids the prospect of later discord or misunderstanding between the parties. Already there is tension in relation to child issues. It is of vital importance that the parties concentrate their future efforts on mending their own relationship and acting together for the sake of C. She is likely to suffer significant emotional harm if her parents cannot learn to compromise and work together for her. Whatever they may think, she will notice and feel the atmosphere between them and it will stay with her for life. It is not realistic in this case to divide each asset between the parties. Insofar as one may be left with the less attractive or less saleable or more problematic assets, that is a relevant consideration.

(x) I should attempt to make an order in relation to spousal maintenance which achieves a clean break between the parties as soon as reasonably possible, so long as it can be done fairly and justly and will enable the weaker party to adjust without undue hardship (MCA, s.38(1)). I take the view, in common with Mostyn, J. and others, that consideration of future maintenance should depend in most cases on need. It will be rare, in the absence of any element of compensation, that the sharing principle will apply to future maintenance.

(xi) In considering the issue of sharing, in my judgment it is necessary in this case to take into account contributions, including the element of when the assets were built, whether they have been mixed with other funds or treated by the parties during the marriage as joint assets, and whether they have been acquired as a result of inheritance or gifts from

third parties (whether before or during the marriage). Much time and effort has been spent in this case on issues concerning extra-marital contributions, both in terms of pre-marriage and post-marriage acquisitions and inheritance and gifts from third parties. There are no hard and fast rules governing the correct approach in every case. Mixing or intermingling of funds will not always result in equal sharing of them if it is clear that the assets are largely non-matrimonial. The fact that assets are non-matrimonial will not always mean that they should be entirely excluded, or excluded at all, from sharing.

8 All of these principles are, in my view, so well established as to need no reference to authorities to support them in a case such as this. I, and other family judges, have repeatedly stated that the temptation to adopt an overly academic, complicated and legalistic approach should be avoided so far as possible. Proportionality, as part of the overriding objective, is particularly important in family cases, especially where the available assets are not great. It should be a first principle that the parties should be helped to keep their cases as simple and straightforward as reasonably possible, preserving their hard-won assets for their own advantage and avoiding the unnecessary financial and emotional costs of delay and failure to compromise, and to achieve a dignified end to their marriage. I do not intend to embark upon a detailed analysis of the judicial authorities which proliferate in this field and with which I am entirely familiar. I have reminded myself of the numerous authorities in the parties' separate authorities bundles. I have considered in detail Mr. Simpson's helpful analysis in his skeleton argument on behalf W and Mr. Diable's submissions on behalf of H.

9 In addition, the following principles apply in this case:

(i) There is no doubt that the source of the assets is a relevant consideration. That assets have been acquired before the marriage or since its breakdown or from a third party may well justify a departure from the yardstick of equality.

(ii) There has been, in the United Kingdom, a divergence of opinion as to precisely the most appropriate approach in considering financial remedy cases. Some (including Mostyn, J.) suggest that first the total assets and liabilities should be ascertained; next they should be divided between matrimonial and non-matrimonial assets; the yardstick of equality should then be applied to the matrimonial assets; then consideration should be given to whether, and if so to what extent, the sharing principle should apply to the non-matrimonial assets or whether there is good reason for not applying the yardstick to the matrimonial assets. The prevailing view seems to be that non-matrimonial property should rarely be distributed between the parties save where their needs require otherwise. Mostyn, J. in *JL* v. *SL (No. 2) (Appeal: Non-Matrimonial Property)* (6) considered

such distribution to have no "moral or principled foundation" and that cases in which it would be justified would be "rare as a white elephant." The alternative, he suggests, is a lawless science. He found ([2015] 2 FLR 1202, at para. 41) that—

> "for those assets which were in place at the point of separation. They remain matrimonial property but the increase in value achieved in the period of separation *may* be unequally divided. I emphasise *may*. Obviously passive growth will not be shared other than equally, and there will be cases where on the facts even active growth will be equally shared . . ."

In *Charman* v. *Charman (No. 4)* (3) a less formulaic approach was suggested: sharing should apply to all of the assets but there may be greater reason to depart from equality when considering non-matrimonial property. Others consider that the sharing principle should apply initially to the whole of the assets; then one should consider whether there is good reason to depart from equality in relation to any of those assets; the fact that a particular asset was not part of the marital acquest or came from an external source will often be good reason for departure from equality. In some cases, the courts have been concerned to take into account passive growth in non-matrimonial property or the "springboard effect." I am fully acquainted with the differences in approach, for instance, of Mostyn, J. in *Rossi* v. *Rossi* (8) and *SS* v. *NS (Spousal Maintenance)* (10) and Charles, J. in *H* v. *H* (5) and Singer, J. in *S* v. *S (Ancillary Relief after Lengthy Separation)* (9). I note also the comments of Roberts, J. concerning post-separation accruals in *Cooper-Hohn* v. *Hohn* (3) (that case, however, was particularly dependent on its own facts).

(iii) I am bound to say that in the majority of cases, too academic an approach should, in my judgment, be avoided. Proper consideration of all the circumstances, including the statutory checklist, bearing in mind the yardstick of equality (or checking the result against it) and avoiding discrimination, will achieve a fair outcome. I agree with Bodey, J.'s view in *CR* v. *CR* (2) that the relevance of assets accrued post-separation is "discretionary and fact specific."

(iv) I have deliberately not included all the reported authorities on this subject in the above list. I do, for instance, agree with the passage in the judgment of Coleridge, J. in *B* v. *B (Financial Orders: Proportionality)* (1) to which I refer below.

(v) I confess that, in my view, precise analysis of the correct approach, helpful though it is in some cases as an aide memoir to relevant considerations in particular circumstances, is often counterproductive and likely to lead to a more legalistic approach than is desirable. In this case, on balance, I prefer to apply s.37(1) and the general principles which I have listed above. In so doing, I believe I shall reach a fair and principled

result. Recent UK judicial authority confirms (and I accept) that classification of matrimonial property should not necessarily lead to equal division of it in all cases. Non-matrimonial property is not to be guaranteed from sharing.

(vi) I adopt the observation of Baroness Hale (as she now is) in the seminal case of *Miller* v. *Miller* (7) ([2006] 2 A.C. 618, at para. 144) that—

> "in general, it can be assumed that the marital partnership does not stay alive for the purpose of sharing future resources unless this is justified by need or compensation. The ultimate objective is to give each party an equal start on the road to independent living."

(vii) In *VB* v. *JP* (11), Potter, J. emphasized that a clean break should be achieved wherever reasonably possible.

(viii) Perhaps most helpful in the context of this case are the observations of Coleridge, J. in *B* v. *B* (1). He confirmed that the value and categorization of the available pot should be considered as at the date of trial. He found that ([2013] EWHC 1232 (Fam), at para. 53)—

> "there is no absolutely right or wrong answer or methodology to be applied in this situation. To achieve fairness it is necessary to recognise fully the tension between the fact that the wealth was in part generated by the use of expertise built up during the marriage and in part by the expenditure of effort after the separation. Both elements are important. I do not think this part of the case can be analysed precisely either by reference to the time involved in each phase of the process and/or its relative importance. It is a product of both to some extent. But I make the general observation that the further into the future, post separation, the asset is created or achieves ascertainable value the less, it seems to me, it can be sensibly categorised as 'matrimonial'. *Beyond that drilling down into the deepest subterranean springs of the arguments adds nothing to the achievement of fairness . . .*" [Emphasis supplied.]

(ix) I accept also that an important aspect of fairness is that like cases should be treated alike and (*Miller* v. *Miller* (7) ([2006] 2 A.C. 618, at paras. 6–7, *per* Lord Nicholls)) that—

> "the courts must themselves articulate, if only in the broadest fashion, what are the applicable if unspoken principles guiding the court's approach.
>
> 7 This is not to usurp the legislative function . . . it is to perform a necessary judicial function in the absence of parliamentary guidance . . . there is no reason to suppose that in prescribing relevant

considerations the legislature had any intention of excluding the development of general judicial practice."

The statutory checklist

10 (a) The parties have helpfully agreed the assets and liabilities, and their net values as I have set them out above. So far as the foreseeable future is concerned, W should be able to work full-time before long. She was working full-time until about September 2016, earning about £16,800 p.a. net. She is likely to be able to earn for very considerably longer than H. It seems to me that she is likely before long to be able to earn full-time in the region of £18,000 p.a. net. Having heard and seen her give evidence, I am satisfied that she should do well in whatever field she chooses and, at her age, is likely to be able to increase her earnings significantly in coming years. She will not, however, be likely to acquire substantial pension rights in addition to that income, at least in the foreseeable future. In those circumstances and those mentioned below, it does seem to me that this should be reflected by a small adjustment to the capital award. It is right to recognize that her contributions as the primary carer for C will continue even when she is working full-time. She will have childcare expenses, especially during school holidays. H will contribute too by payment of child maintenance, which may include an element of reward for W's future contributions in caring for C and, once he has relocated to Gibraltar, will be able to provide childcare to assist W. H is likely to be able to continue to work at least for about two years, after which he will be dependent upon his pension income. I accept his evidence that he wishes to retire before long in order to spend more time with C. It is accepted on W's behalf that it is reasonable for him to retire at 60. Until then, I do not believe it likely that H's net earnings or his earning capacity will reduce below their current level, which I find to be about £49,000 p.a. I do not intend to add to that sum anything in relation to rents received by him, since they come from capital assets which I shall take into account in dividing the assets. To include them when considering any potential maintenance entitlement would amount to double counting. Throughout these proceedings H has suggested that his earnings would be significantly reduced for a number of reasons which it is unnecessary to set out, since he accepted at the end of the evidence, when faced with his recent pay slips, that he is earning and probably will continue to earn at that rate. His attempts to deny this were, in my judgment, unfortunate and caused me to examine his other evidence cautiously.

(b) The case has not been presented expressly as needs based. W, however, has mentioned her needs in submitting that it would be unfair for her not to share equally in the whole of H's pension fund (and, until the hearing, all of the capital assets). Both have obligations and requirements to provide for C, financially and otherwise, but I have no reason to

suppose that between them they will be unable to do so satisfactorily under any order likely to be made by me. There is no need for further adjustment to cater for C's needs. In W's Form M5, questionnaire replies and statement, W suggested budgets which were not easy to understand. In her revised open proposals she claims:

(i) A housing need of £417,000. She accepts that the former matrimonial home should be sold. She bases her figures on the asking prices for two-bedroomed apartments in the building in which she now lives, which I find to be an appropriate means of assessing her future need, taking into account the family's standard of living during the marriage. The prices mentioned by her are, however, asking prices. My finding is that she should be able to purchase a good home for herself and C and furnish it, once the former matrimonial home has been sold, for £400,000 (including costs and any stamp duty). Her present home is well furnished and I reject her claim to need £20,000 for refurnishing.

(ii) £100,000 for "an estimated income fund." I find that figure to be entirely unsupportable in principle and amount. Mr. Simpson reaches that figure by calculating that W, on the basis of disparity in the parties' incomes, is entitled to some spousal maintenance. In my judgment, there is no proper basis for that conclusion. He referred briefly in his submissions to the "one third rule," which was generally applied for some years in the 20th century before being abandoned. As I have indicated, I agree with the views of (for example) Mostyn, J. and Baroness Hale that future maintenance entitlement should generally be based upon needs alone. Further, there can be no justification for taking a figure which would leave W with the capital sum (£100,000) when her need for maintenance has ended. Mr. Simpson has applied a notional 3% yield to that sum. There is no justification for a lump sum capitalization of a future need for maintenance for life. Until C is independent, W will be able to claim maintenance for her which, under ordinary principles, can include an element of reward for W's contribution as C's primary carer. The most obvious objection to W's claim, however, is that it is virtually certain that, even if she were entitled to ongoing maintenance at present, any such entitlement would end when H retires after about two years. This is not a case, in my view, for any substantial capitalized sum to reflect a clean break. As I have already indicated, however, it may be reasonable to make some modest adjustment to reflect that she will find it difficult in the foreseeable future to add to her

capital base in order to build for future retirement. I have taken that into account in reaching my overall conclusion.

(iii) £45,000 in respect of outstanding legal costs of this application, the divorce, injunction proceedings and Children Act matters. I shall return to this item later.

(iv) £690 to cover costs of transfer of the Marina Bay property. Since I do not intend to order such transfer, I reject that item.

(v) £20,000 for the cost of a new car. In her form M5 W claimed a need for a new car but has since accepted that she will not have a need to replace her car for the next few years. Her present car is not luxurious. In my view £15,000 should be ample when eventually it is required. I have taken that into account.

(c) H has claimed a modest £310,000 for housing needs, including £30,000 for furniture. Whilst I consider the latter figure to be too high, I fail to see why his reasonable housing needs should be less than those of W. He too needs a home fit to accommodate C. It is for him, ultimately, to decide whether he wishes to have a lesser home in Gibraltar and a holiday home in Spain. W asserts, in my opinion quite unreasonably, that H's housing needs are already catered for. It was entirely unnecessary for her to make that assertion but I reject it. He is living in Spain at present only because he has left the family home. It has clearly always been a temporary arrangement. He is Gibraltarian, has always lived in Gibraltar, his family is here, his daughter lives here, he works here and all of his roots are here. It is nothing short of absurd to say, in the circumstances of this case, that he is unreasonable in wishing to live in Gibraltar, especially when W puts her own housing needs at £437,000 for housing and refurnishing.

(d) The family enjoyed a good standard of living during the marriage. H has reduced his standard of living somewhat since the separation. The family enjoyed good holidays and often ate out. Unattractively, W has, I find, exaggerated the family's standard of living during the marriage and H has sought to minimize it to some extent. I am satisfied that the reasonable needs of both parties will be satisfied by the order which I make, bearing in mind the marital standard of living.

(e) The parties' age difference (23 years) is clearly important. It would be wrong to guess the medium- to long-term future of either party but W does have that very substantial additional time during which she may provide for later retirement. She is unlikely ever to earn at the rate at which H has earned but with the division of capital which I propose to make she will have a base upon which to build for her future retirement. H will have to live with what my order leaves him and with what small

amount he may save between now and retirement. In actuarial terms, he has a better chance of achieving old age than does W. Such fine considerations, however, relevant though they may be in some cases, do not materially affect my decision in these circumstances.

(f) Neither party suggests that the personal contributions of one party during the marriage have been less valuable than that of the other. For these purposes, it is right in this case to regard the marriage as continuing until the date of separation. Thereafter, W has continued to be the primary carer and supporter of C, and H has made generous financial provision for them from his earned income. That will continue to be the case so far as child support is concerned at least until C ceases full-time education. I do not find that the balance of likely future contributions should make a material difference to the outcome in the particular circumstances of this case.

(g) Mr. Simpson, on behalf of W, has suggested that I should take into account W's potential loss of benefit from H's pension fund by reason of the dissolution of the parties' marriage. I have no evidence before me as to the nature of any such loss or its value. It is not likely that H will fail to reach retirement. It is a novel argument that W should share equally in relation to the whole of H's pension fund because to do so would be discriminatory. It would be wrong in principle in my judgment to find her entitled to share equally in H's pension rights simply because she would have shared in them had she remained married. I deal further with the proper approach to H's pension fund in this case later.

Non-matrimonial assets

11 (i) W's concession in relation to the La Linea property is clearly correct, albeit made not until the day before the final hearing. It was inherited by H and should not be treated as a marital asset or as part of the marital acquest. W's insistence until the last hour that she should be entitled to a one-half share of that asset was always unreasonable. It is a property built by H's grandfather in the early part of the last century. His mother was born there. The process for its transfer to H began in 2004. It was reregistered in 2009, delay having been occasioned by what H refers to as Spanish bureaucracy. It is currently rented out for €430 p.c.m., less utility bills (which are paid by H). In addition to that property, some of H's debentures were a gift to him from his aunt. He has not sought to remove them from the sharing exercise. If he did, the result would be trumped in this case by needs.

(ii) The Marina Bay property was bought by H in 1986, some 20 years prior to the marriage. The mortgage was fully repaid by 1998. It is a very small apartment (33 sq. m.; previously a studio apartment but converted to a one-bedroom apartment prior to the marriage). The parties lived there

from February 2007 until November 2007 because there were unfortunate, unanticipated delays in completion of their matrimonial home at Europlaza. That period was only about nine months. I am entirely satisfied that it was occupied by the parties as a stop-gap before their move to Europlaza, which was always regarded as their matrimonial home. Marina Bay was far too small to be their matrimonial home and was never intended to be. The suggestion on behalf of W that this property should, as a result of this brief period of occupation, be regarded as a matrimonial asset and that she should have an equal share of it is, in my view, unsupportable. Since 2007, Marina Bay has been rented out most of the time. The rents were and are used by H towards payment of the mortgage on the Sta. Margarita property (£1,174 p.c.m.) and its expenses. Though it is true that the rents were paid into the parties' joint account, H used the money and always considered that it was used towards the Sta. Margarita mortgage. W told me that H never discussed the finances with her and that may be so but that fact does not assist her case. She claims that the communal pool at Marina Bay continued to be used by the family during spring and summer (at times when it was not rented out) following their move to Europlaza and that they used it for changing purposes and/or for lunch on occasions following the move. I have considered the parties' evidence on that issue carefully and do not accept that these factors amounted to "intermingling" of this asset such that it should be regarded as a matrimonial asset. She would not have expected to be entitled to an equal share of it or, indeed, any share. She had access to its keys, which were kept by H along with all other keys inside the door at Europlaza. At no stage did H give her any impression that she was to be regarded as having any interest in it. Any subsequent use of it was marginal. There were some occasions following the parties' move to Europlaza when W and C used the pool, though it was, under the rental agreements, for residents only. During the first summer, it may have been so used before it was first rented out in 2010 and whilst H was working on it. It was virtually empty during that time. If W and C used the apartment itself at all for changing or eating, I find that such use was minimal. On balance, I find that the parties' families did not stay at the property once the parties had moved to Europlaza. It was not regarded as or said to be the parties' holiday home. I find without doubt that it is a non-matrimonial asset. It was purchased by H as his own investment. W did indeed benefit from the rents received from it during the marriage. Mr. Simpson points to the fact that in his Form M5 H did not suggest that Marina Bay should be treated differently from other assets on the basis which he now submits. Having heard the parties' evidence, this does not sway my above findings. The fact that H did not mention this aspect of his case until the eve of the trial set for January 2017 (which was adjourned) may be relevant to costs but does not affect the force of H's argument. W's case in relation to this property has not, I find, been accurate or reliable. She initially suggested

that the parties used Marina Bay most weekends. She has used every conceivable argument in support of her aim that Marina Bay and Sta. Margarita should be regarded as a matrimonial asset, even suggesting that because the rent (for reasons explained in evidence by H and which I accept) was paid into the same account as his salary meant that it was "mixed" or intermingled with the funds in that account and therefore those properties should be regarded as joint matrimonial assets. I find clearly that there was no such intermingling, the joint account simply being used for convenience and to avoid unnecessary charges. The fact, however, that I find this to have been a non-matrimonial asset does not necessarily lead to the conclusion that W should not receive any share of it, if other circumstances in fairness require that she should. W has, I find, considerably exaggerated her use of the property. She could easily have provided some corroboration of her allegations if accurate.

(iii) There is no issue as to the Chiclana property, which it is agreed should be shared equally. It was purchased clearly with the intention that it should be the parties' holiday home in Spain. Even this was purchased, in 2015, however, at least substantially with funds inherited by H from his aunt. There is subsidence, which requires the building of supporting pillars. I accept that it is currently uninhabitable and would be particularly difficult to sell in its present state. The purpose of its purchase was as a holiday home for the family. I accept that it would not be possible to raise a mortgage on this property in its present state. It is not yet fully registered, though there should be little problem in securing its registration. Although it is agreed that this is a matrimonial asset, it is not irrelevant that H says that he contributed to its purchase some £90,000 from inherited moneys.

(iv) The Sta. Margarita property. In June 2004, prior to the marriage, H paid a deposit of €7,000 off-plan for this property. Its price was €211,247. There were many problems with its purchase. H obtained a mortgage in the sum of €168,997, I believe negotiated in 2007 but finalized in 2009. The mortgage repayments were, I believe, at one stage €1,500 p.c.m. (I believe later €1,074 but nothing turns on that). By August 2015, the redemption figure was €42,249. Completion of its purchase (due in 2006/2007) was delayed until 2009, when I believe he paid the more substantial deposit in the sum of about €42,500. To this extent, H's statement at p.460 of my bundle (that the purchase was complete in 2007) may be misleading. The market had been good. The first tenants moved in in 2010 until when it was empty and had no kitchen or beds. It was never used as a family home. The market crashed and it effectively became unsaleable. It was H's own investment. I have mentioned that the Marina Bay rents were used towards the mortgage (in her oral evidence W did not deny this). H is currently living there. It was not used as a holiday home, as was the Chiclana property (which was purchased during the marriage,

specifically as a joint property). W visited this property only once. The contrast is not coincidental. W also relies (again as a late addition to her case) upon her alleged contribution in helping to find tenants for the property. She may well have posted some adverts on Facebook but I do not accept that she contributed any substantial work in this regard. In her Form M5 she swore that the keys were given to an agent in England to find tenants. My conclusions are, doing the best I can, that this property was always regarded as H's own (ultimately unsuccessful) investment. It was funded mostly from the rents received from the La Linea property but there was some contribution from joint funds. In these circumstances, I find that it is not useful to categorize the property as entirely matrimonial or non-matrimonial. H carried out work to it during the marriage and moneys from the joint account were used in addition to the La Linea rent. In the end, the categorization of this asset will not materially affect my decision as to what order is reasonable for the reasons which I mention below. Its current value is only in the region of £40,000. If I were driven to apportion the property between the parties, I would, on balance, attribute one-third of its net value to W and two-thirds to H. Substantially its purchase was funded by a deposit from moneys built by H before the marriage and the rents from the non-matrimonial La Linea property.

(v) I specifically reject W's assertion, made for the first time during her oral evidence, that the parties at any stage discussed that everything belonging to H belonged to W. W also said that H never discussed money and would not talk to her about where money came from.

(vi) It is accepted that the former matrimonial home at Europlaza is, and was always intended to be, a matrimonial asset.

(vii) It seems that H's vehicles were also bought largely from inherited moneys but he has taken no point about this, presumably because he accepts that W must have sufficient provision for her needs and those of C. The same applies to H's savings, which appear to represent at least partly inherited or gifted moneys. H also says that his £25,000 debentures came as a gift from his aunt. Again, he has not taken this point.

(viii) H's pension fund. I have considered the submissions of Mr. Simpson, which I find to be novel, save insofar as they may be based on needs or other general considerations. My experience, over the course of many years dealing with this issue in the United Kingdom and since I arrived in Gibraltar in 2010, is that the invariable conventional practice of those conducting such cases is to calculate the entitlement of a party to a share of the other party's pension pot according to the part of that pot which can be said to have been acquired during the marriage. That part is treated as part of the marital acquest. The remainder is not. In order to arrive at an appropriate figure, the traditional (and in my view, the simplest, most convenient and least expensive) approach is to take the

current value of the pot, then divide that value by the number of months during which H or his employers have been contributing to the fund or during which H has been acquiring his pension fund and, finally to multiply the resulting figure by the number of months from date of marriage (including any period of pre-marital cohabitation where there was a seamless transition to marriage) to the date of separation. Any contributions prior to the marriage or after the separation should not normally be regarded as part of the marital acquest. It may be possible to justify different, much more complex, actuarial calculations but they would rarely be proportionate and would require expert evidence. I am perfectly aware that there has been disagreement between judges in the United Kingdom as to whether the proper approach is instead to include the whole pension fund as a matrimonial asset and then to adjust the calculation to reflect the pre-marital and post-marital contributions. In most circumstances, and I find in those pertaining in this case, it would make no difference to what I regard as the fair result. This approach is neither discriminatory nor unfair. For the sake of completeness, however, I find the former approach simpler, easier and more likely to result in consistency. Whichever method is used, of course, the overall result may be affected by other circumstances of a particular case, most often the parties' respective needs. In some offsetting cases, for example, it is fair to reduce the value of the pension pot to reflect its illiquidity when other assets are liquid (that has not been argued in this case, correctly, in view of H's age and the fact that the pension fund could be liquidated soon). H's approach results in W receiving only about 15% of the whole pension fund. It is not, however, as Mr. Simpson submitted in his letter dated May 5th, 2017 "arbitrary, discriminatory and inherently unfair." It reflects W's contributions. Indeed, H's calculations give W the small extra benefit of taking the relevant contribution period to the (in my view arbitrary) date of decree nisi, rather than the date of separation. She would have expected to share substantially in H's pension rights in the future had the marriage continued and she, as I have said, will continue to contribute substantially as the main carer for C for at least some 11 years or so, assuming that C proceeds to attain a level of results which will probably last for at least about another 11 years, bearing in mind all of the matters which I have already mentioned (including that it is unlikely that W will be able to build a pension fund for herself, at least in the foreseeable future), and taking a step back to consider whether the result is fair, I have concluded in this unusual case it is not. All of the above circumstances together make the case unusual. I have decided that, if I were deciding W's entitlement according to division of each individual asset (as has been the approach adopted by the parties), fairness would require a small increase in W's share of H's pension fund so that she receives £90,000 of it (being just about 19.64%).

(ix) Mr. Simpson also suggests that the pension entitlement had no value until 2014, when H's entitlement crystallized, and that if H wished to deny that his whole pension entitlement is a matrimonial asset he should have obtained expert evidence as to its value at the date of marriage. I have never heard such a submission before and reject it. Such an approach would be unnecessary and disproportionate and was only suggested during the course of submissions. That his pension entitlement final life accrued in 2014 is not, in my view, material.

(x) I note that the latest figure relating to the pension fund (see Bundle at 386) is dated October 28th, 2016. Neither party has suggested that there will have been any material change since then. It is, however, based upon a final salary of £54,993. I do not know whether H's likely salary decrease in his final years will affect the figure. Neither party has raised this point and I shall assume that it is not an issue. Without commutation of any part of the fund, the estimated pension (based on the stated final salary) is £36,662 p.a.

Other considerations

12 C has been seeing Mr. Trinidad, educational psychiatrist, in relation to her emotional well-being and behaviour. Though I have little information about this, it is unlikely that it will be in her interests to continue seeing him for long. This item of expenditure in W's latest budget I regard as likely to be temporary. It is of concern, however, that she is needing such help. The parties really should now concentrate upon putting their differences aside and, whatever their feelings about and towards each other, enabling C to enjoy a good and happy relationship with both for the remainder of her childhood. It will almost certainly be emotionally damaging for her to know, or even sense, that her parents continue to be at war with each other.

13 In the interim, H has been providing generously for W and C. He pays interim maintenance totalling £1,140 p.c.m. and pays the mortgage instalments and all the bills for the former matrimonial home and the other properties. The capital assets will thereby be enhanced.

14 If Marina Bay were sold, H would lose its rent, which goes towards the mortgage for Sta. Margarita.

15 The values of the properties is subject to significant uncertainty as a result of Brexit, the effect of which may be to reduce those values and to make the properties even less saleable. It is possible but generally regarded as unlikely that their values and saleability will be enhanced.

The yardstick of equality

16 A strict division of all the assets (ignoring outstanding costs) would result in an entitlement for W of about £766,516.50. Her case has been strained in an attempt to achieve such a result, which I am satisfied would be unfair to H.

17 For the reasons set out above, however, the La Linea property and the Marina Bay properties should be left out of account and W should receive £90,000 in relation to the pension fund.

18 The result is that the yardstick of equality might be applied to the following:

Europlaza	£580,471
Chiclana	£148,629
	£729,100
H's debentures/accounts/cars	£66,843
W's accounts/car/ring	£8,555
Total	**£804,498**

19 One-half of that sum is about £402,249. To that figure should be added £90,000 in respect of H's pension fund and £13,500 with regard to the Sta. Margarita property, making a total of £512,499 which I round up to £512,500. That is about 30.41% of the total assets. It leaves H with £1,083,876, being 69.33% of the assets. The £90,000 is rather more than is justified by an arithmetical calculation, as I have indicated.

Conclusions

20 (i) In my judgment, the sum of £512,500 constitutes a fair, indeed generous, proportion of the assets for W purely based upon contributions and consideration of matrimonial assets and particularly bearing in mind that H, under my order, will be left with Chiclana, Sta. Margarita and La Linea, all of which are difficult and uncertain properties. Against that figure must be deducted the modest figure of roughly £8,500 in respect of the assets which she already has. I make this adjustment below.

(ii) I have considered very carefully indeed whether I should increase this figure. The fairness of awarding something for clean break is, in my view, balanced out by the fact that I consider, for reasons which I have mentioned, the figure which I have reached under the sharing principle is generous. Simply looking at the percentage figure of 33.43% does not reflect all the circumstances which I have already mentioned. H will retire before long and what he is left with out of property largely resulting from inheritance or gifts will have to last him for the rest of his life. W and C will, I am satisfied, be able to live reasonably in a good, mortgage-free home. I also take into account that my order will provide that H shall continue to pay the mortgage and current spousal maintenance and

outgoings of the former matrimonial home at Europlaza as he currently does, for a period of six months from decree absolute or until its earlier sale. After six months, he will continue to pay the maintenance and outgoings until sale but will have credit for the maintenance and one-half of the outgoings from W's share of the proceeds after sale. I take into account that W's share of the proceeds will be guaranteed.

(iii) The parties have agreed (and I accept as appropriate) the sum of £700 p.c.m./£8,400 p.a. maintenance for C. Added to the £18,000 p.a. net which I find W should be able to earn in the near future, this will give her a net income of £26,400 p.a./£2,200 p.c.m., in addition to any child benefit to which she may be entitled (which I have not taken into account). I have considered her latest budget. She will have no mortgage. I do not accept that she will have the costs of Mr. Trinidad every month continuing for long. She will have the security of a lump sum to fall back upon if at times, for some reason, her outgoings exceed her income. If H has extensive contact with C, he will be contributing further to her maintenance whilst she is with him and thus reducing W's outgoings.

(iv) With some hesitation, after "standing back" and considering all the circumstances as a whole, I have decided that no further adjustment is required or would be fair. Assets of £512,500 should cover her reasonable housing needs and moving expenses and leave her with a significant lump sum, even after payment of her outstanding costs, to cater for any extra needs which may arise, or any occasional extra expenditure. I take into account the good standard of living enjoyed by the parties during the marriage and that upon H's retirement it is possible that he will apply for a reduction in child maintenance. That will depend on all the circumstances at that time and I do not intend to encourage such an application. The final figure will be in full satisfaction of any costs orders which may have been made between the parties hitherto. W's and C's needs and welfare will be catered for without any gap. H will find himself with insufficient to move back to Gibraltar until he eventually sorts out the Spanish properties or takes a lump sum from his pension scheme. In the end, however, he will be left if he wishes, and entirely fairly, with sufficient to purchase a home equivalent to W's in Gibraltar and the whole of his pension.

(v) W's costs of the financial remedy litigation are £36,000, of which she has paid about £1,750, leaving outstanding £34,250. She has total outstanding costs (including those relating to divorce, injunction and children matters) of £45,000. H's costs are £18,000 of which he has paid about £2,000, leaving £16,000 outstanding. His total outstanding costs of all matters amount to £20,000. If either party wishes to address me further in relation to costs, I shall consider any submissions made after handing down this judgment. It is my intention, however, to make this judgment comprehensive, subject to any such submissions. Having considered the

case in depth, I find W's financial remedy costs to be disproportionate. Her approach has been to take every possible point in order in her attempt to justify what I consider to have been an unsupportable position. Her outstanding costs are, nevertheless, a significant debt to which I must have regard, particularly when considering her current needs. Although I have not accepted H's position entirely and have made some criticisms of his case, it is far closer to my conclusions than that of W. I do not know the total of W's costs of all the litigation between the parties and cannot carry out a detailed assessment. Nor would that, in my view, be desirable. There is likely to be some justification for her costs exceeding those of H to some extent. It may well be that the taxed costs of the injunction proceedings should be borne by H. Otherwise, the starting point should be that each party should bear his or her own costs. My order will include any obligation which H has under any previous orders for costs in the matrimonial litigation, thereby wiping the slate clean. I agree with the recently expressed view of Baroness Hale that costs may be approached either by taking them into account when considering the sharing principle or at the end of the case. She preferred the latter course in the case she was concerned with and I consider that to be the fairest course in this case. I propose, accordingly, to deal with this aspect of the case as part of the whole.

(vi) Against the figure of £512,500 must be deducted roughly £8,500 representing her own assets, listed in the schedule of assets, leaving £504,000 payable to W from the proceeds of sale of the Europlaza property.

(vii) Upon payment of that sum to W, her maintenance will cease. In the unlikely event that W fails to achieve the earnings which I have anticipated or fails to do so within the timescale I have mentioned, my capital order is sufficient, in my judgment, to tide her over until she does. Mr. Simpson has drawn my attention to an apparent anomaly in s.38(3) of the Matrimonial Causes Act in Gibraltar, which appears not to give this court power to prevent a party from applying, before a maintenance order ceases, for its period to be extended. The equivalent provision in the UK Matrimonial Causes Act specifically gives the court such power. I make it clear, however, that my order is intended to provide a clean break once the £504,000 has been paid to her or six months after decree absolute, whichever is the earlier. I should not expect any application to extend that period for maintenance to succeed unless there were exceptional circumstances. Both parties seek a clean break order and I am satisfied that any potential for further conflict between these parents of C, who is my first consideration, should be minimized. I do urge them to do everything possible to avoid further emotional and financial investment in litigation.

(viii) W's share in Chiclana shall be transferred to H forthwith.

(ix) I shall require H to apply in the face of this court before I hand down this judgment for all forms of financial remedy orders, for the purpose of dismissal and to enable the property adjustment order in his favour in relation to the Chiclana property. The order should record his application and the (final) dismissal of all other claims by him.

(x) After very careful consideration, I am satisfied that this order will amply provide for the needs of the parties and C and is a fair outcome for them all.

21 I ask that counsel draft the consequent order. I am willing to listen to any further arguments in relation to costs (or indeed any errors in my calculations or otherwise) when I hand down this judgment. It is unlikely, however, that such arguments will persuade me to alter this judgment unless they are substantial.

22 Finally, I comment that in cases other than "big money" cases parties should always approach the division of assets and maintenance without an excess of technicality or legality, recognizing that children should be the first consideration, bearing in mind throughout proportionality and with a view to compromise, without which costs and delays are bound to escalate, to the financial and emotional detriment of the parties and children.

Order accordingly.