[2015] EWHC 1670 (Fam)

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

No. FD13D00008

Royal Courts of Justice

Thursday, 4th June 2015

Before:

MR JUSTICE HOLMAN

(Sitting in public)

B E T W E E N :

EKATERINA FIELDS — Applicant

- and -

RICHARD FIELDS — Respondent

---

*Transcribed by **BEVERLEY F. NUNNERY & CO.***
(a trading name of Opus 2 International Limited)
Official Court Reporters and Audio Transcribers
5 Chancery Lane, London EC4A 1BL
Tel: 020 7831 5627 Fax: 020 7831 7737
info@beverleynunnery.com

MR L. MARKS QC and MISS R. BUDDEN (instructed by Charles Russell Speechlys) appeared on behalf of the wife.

MR S. TROWELL QC and MR M. SIRIKANDA (instructed by CHR Family Solicitors) appeared on behalf of the husband.

J U D G M E N T

(As approved by the judge)

MR JUSTICE HOLMAN:

Introduction

1 This is a wife's claim for financial remedies after a divorce. The parties were in a relationship for about nine and a half years and have two young children. They are rich, but not by the standards of today very rich. Both leading counsel agree that it is a "needs based" case. The wife has no claim for compensation as such. If the available assets are shared equally there would be insufficient for the wife appropriately to re-house herself and the young children, so she must, as the husband accepts, receive more. She also needs significant periodical payments, i.e. maintenance or alimony. My statutory duty is to have regard to all the circumstances of the case and to give first (although not paramount) consideration to the welfare of the two children while they remain minors. I must in particular have regard to the matters mentioned in s.25(2) of the Matrimonial Causes Act 1973 in relation to the parties, and to the matters mentioned in s.25(3) in relation to the two children. I must strive to reach an overall outcome which is fair to each party and to their children.

2 This is a case which should have been very easy to settle. Although the assets cannot be divided equally, there are enough to provide more than adequately for each of them. The husband has a relatively high and currently secure

income. Although, as so often after divorce, neither will be able to sustain the same standard of living and lifestyle in two separate homes and establishments as they could and did before separation, each will retain considerable prosperity. As I have repeatedly pointed out to them, settlement offered many advantages. It would have avoided the very obvious litigation risk for both sides in this case. It would have facilitated a much more tailored and detailed outcome than I can give in judgment. It would have given them ownership of the outcome instead of having it imposed upon them. It could have saved some of the costs, even at the start of the hearing itself. It would have avoided a very painful and wounding confrontation in the courtroom. It would have avoided the publicity to which I refer below. But despite my affording repeated opportunities to negotiate and despite legal representation of the highest calibre, the parties have not been able to agree on a negotiated outcome. Instead, they have now spent over £1 million on legal costs, a figure which would have been even higher if the husband, being resident in America, was not exempt from paying VAT. As will be seen, that £1 million could have been far better deployed in meeting their respective needs or aspirations. As the so-called "liquid capital" in this case now approximates to a little over £3 million, the £1 million spent on costs is nearly twenty-five per cent of what the total liquid capital could have been (viz £3 million plus the £1 million now spent). I cannot be told, and do not have the slightest idea, what may have been offered or counter-offered or discussed in any negotiations. I do know that the open position of the wife right up to the outset of the hearing was too

3 For reasons which I have explained in my judgment in *Luckwell v. Limata* [2014] EWHC 502 (Fam) at paragraphs 2 to 5, there is, in my view, a pressing need for more openness in divorce financial remedy proceedings. I will not repeat those reasons, but incorporate them into this judgment by reference. The family courts must be more transparent and there is no good basis for making an exception of financial cases. Such cases are heard in public on appeal to the Court of Appeal and the Supreme Court, and the law reports and press reporting are riddled with considerable intimate and financial detail of many financial cases on appeal. Accredited journalists are, in any event, entitled to be present even when the court is sitting in private, subject to strict and limited exceptions. To permit the presence of accredited journalists, but then tightly to restrict what they can report, creates a mere illusion of transparency. For these reasons I decided at the outset of the hearing to exercise the discretion under Family Proceedings Rules, rule 27.10, to direct that the bulk of the hearing (including now the delivery of this judgment) should be in public.

4 As I said in *Luckwell v. Limata* at paragraph 5: "Protection of commercially sensitive or other confidential information of third parties may raise special considerations." This is reflected also in paragraph 5.4 of the Practice Direction 27B on "Attendance of media representatives at hearings in family

proceedings" and the reference there to "price sensitive information (such as confidential information which could affect the share price of a publicly quoted company)." A part of the evidence and submissions in this case did involve consideration of information of that kind. At those points of the hearing I did, for reasons which I gave and without any resistance by the journalists who were present at the time, exclude not only any public but also the press. With these exceptions, this has been an entirely open and transparent hearing. Press attended almost all the hearing and a very small number of members of the public attended short parts of it.

5 I am aware that as it progressed the case attracted considerable coverage in some newspapers and online, which I was told that the parties found distressing. I regret their distress; but it cannot, in my view, override the importance of court proceedings being, so far as possible, open and transparent. Courts sit with the authority of the Sovereign, but on behalf of the people, and the people must be allowed, so far as possible, to see their courts at work. There is considerable current, legitimate public interest in the way the family courts daily operate, and that cannot be shut out simply on an argument that the affairs of the parties are private or personal. Precisely because I am a public court and not a private arbitrator, I must be exposed to public scrutiny and gaze. But the exposure is very avoidable by the parties themselves. That is one of the many advantages of settling a case. The system already provides judicial assistance with settling at the totally private and totally privileged Financial Dispute Resolution or FDR stage. These parties had two whole days

of such a hearing before a very senior High Court Judge in December 2013 and January 2015. That was their opportunity for judicially assisted in-court resolution without any publicity. If a case really cannot be settled, there are now sophisticated and specialist out of court mechanisms for private arbitration, including that provided by the Institute of Family Law Arbitrators. The advantages of arbitration include convenience (the parties can choose their own place and date), probably earlier resolution, probably costs savings, and certainly complete privacy.

6 Despite their inability to settle with each other, both parties have engaged with me, as the court, with courtesy, charm and, so far as possible, good humour and I thank them both for that. I also sincerely thank the teams of lawyers on both sides. Although they appear to have been unable to broker or facilitate settlement, their presentation of their respective client's case in court was of the highest order, and the final written and oral submissions of both Queen's Counsel, ably supported by their junior counsel, were outstanding.

The essential facts

7 The husband is an American lawyer. He is now aged about fifty-nine and a half. The wife is Russian and was brought up there, but is now also a British citizen. She is now aged about forty-two and a half. These respective ages and the age gap are important aspects of this case. The husband had been married

and divorced four times previously and has two fully adult children from his first and second marriages, who are not relevant to outcome. At the age of eighteen the wife fled from Russia and soon met her first husband, an American banker, with whom she lived in London. She and that husband have no joint children. These parties first met in September 2001. The husband was then almost forty-six and the wife almost twenty-nine. The husband was obviously rapidly captivated by her, and from November 2001 they began to live together.

8 On 2nd November 2001, within weeks of first meeting, the husband signed a deed of gift prepared by solicitors on their joint instructions under which he would pay her £500,000 by five annual instalments of £100,000 in July of each year. In fact the husband never made those payments. Instead, in September 2002 and by agreement, he transferred to the wife his shares in a certain company which it is not necessary to identify. Although the percentage shareholding in that company is very small (I believe around one per cent), those shares currently yield an income of about $180,000 gross per annum. The shares themselves were later transferred by the wife to her father and then by her father to a trust called "the Parfenova Trust", which was established for the benefit essentially of the parties' two children. That has the effect that there is considerable income now to provide for, or contribute to, the needs of the children; and it is idle to dwell now on whether that fund and income should be regarded as having originated from the husband (the shares being

originally his before these parties ever met) or from the wife (he having transferred them to her in lieu of the promised £500,000).

9 The parties married in November 2002. Very shortly afterwards the husband appears to have "lost almost everything" as a result of a failed business linked to the collapse of Enron. This catastrophe, which coincided almost exactly with the date of the marriage, has had the effect that all the assets which the parties now have (apart from the wife's modest flat in Moscow, inherited from her mother) have effectively been accumulated during the course and subsistence of the marriage. Faced with that business failure, the husband, who is obviously very hardworking and resourceful, felt that he and the wife had no option but to return, in his case, or move, in her case, to live in America where he resumed work as a practising lawyer and began to earn at a high level.

10 In December 2005 the parties bought in joint names the apartment close to Central Park, Manhattan, which they still own and which became the family home.

11 In 2007 the husband developed the idea of establishing a vehicle and structure for institutional investors to fund the legal costs of certain types of heavy civil litigation (mainly in America) in return for a share of any proceeds of the claims. He, in turn, generates salary, bonus and potential performance fees by

providing management for the invested funds and by identifying suitable claims in which to invest. This has since been his business activity and job, and the source of his income and of most of the capital now available. It is important to stress that the husband works very hard indeed in the business, some seventy to eighty hours a week, six days a week, with only about three weeks' holiday a year and a great deal of punishing travel.

12 The parties have two planned children: a son born in early 2008 and now aged seven; and a daughter born in mid-2010 and now aged just five.

13 In January 2011 the husband met another lady (not his present lady friend) by whom he was obviously attracted, although that relationship completely ended later that year.

14 In March 2011 the husband filed a petition for divorce in New York, although the wife was unaware of it at that time. In late March 2011 the parties travelled to London with the children and rented a flat in Chelsea. The husband then returned to New York. The wife and children have lived in London ever since and the parties have never since lived together, so the effective breakdown of the marriage was in April 2011 and the total duration of the relationship was about nine and a half years from early November 2001 until early April 2011. The parties give conflicting accounts of the circumstances of the breakdown. Essentially, the wife says that the husband

tricked the wife into moving to London so he could scuttle back to New York and live there with his new girlfriend. The husband says that the wife had long known that their marriage was breaking down and chose to move to London as she had always preferred living here to living in America. In my view, this issue is irrelevant to outcome and I have declined to hear sufficient evidence about it to enable me to make any finding. The marriage ended, and it no longer matters why or in what circumstances.

15 In July 2011 the wife presented her own petition for divorce here in London. After initial skirmishes as to jurisdiction, the parties later agreed that there should be a divorce here in England and the present proceedings have ensued. The children live with their mother and have regular contact with their father. The main focus of the proceedings has been upon finance. As I have already mentioned, there have been two in-court attempts to facilitate settlement by a very senior judge in December 2013 and again in January 2015. As I understand it, the long gap between those two dates was deliberate in order to await quantification of performance fees during 2014. Deeply regrettably, there was no settlement.

16 The scale of the case is indicated by the asset schedule, which is now substantially agreed as to the current components and their values. In that schedule and in this judgment, an agreed conversion rate has been applied of $1.525 to £1. The schedule shows so-called liquid assets of about £3,285,000

after provision for all the legal costs. I say so-called, because that figure includes the equity in the Manhattan apartment of about £727,000, but the husband does not wish to sell that apartment and in my view should not be required to do so. The so-called illiquid assets are valued in the schedule at a further £2,952,000. These include the equity in the wife's flat in Moscow which she does not use, but does not wish to sell and may not easily be able to sell; and also a highly speculative valuation of about £1,450,000 for some shares in a company called Immunoscience, which may in fact one day realise far more or far less. These figures total about £6,237,000. (This total exceeds the total figure in the schedule in paragraph 49 below by about £37,000 since the agreed asset schedule failed to deduct notional tax on part of the husband's pension funds as I explain in paragraph 44 below.)

17 The husband's gross income is of the order of $2.1 million per annum or about £1,377,000 per annum. Since he is entitled to tax relief upon court ordered payments of alimony to his wife or former wife (but not to his children), his net income is influenced by the actual level of such periodical payments or alimony. In addition, there is an anticipated receipt of performance fees. The wife does not work and has no income other than receipts from the husband or from the Parfenova Trust for the children.

The section 25 factors

18 I will now elaborate some of that narrative by reference to the particular matters mentioned in s.25 of the Matrimonial Causes Act 1973, although not in the order in which they are listed in that section. It is important to stress that in this case nearly all those matters are of significance and impact on outcome. For instance (and only by way of example), the parties' respective ages, their health (or in the language of the statute, "disability") and that of one of the children, and the standard of living enjoyed by the family before the breakdown are each of greater significance in this case than in many. The matters are not listed in s.25 in any order of importance or priority nor are they by me.

19 There is not in this case any conduct of either of the parties of the kind contemplated by paragraph (g) such that it would be inequitable to disregard it. I have already stated that whether or not the husband "tricked" the wife into coming to London in 2011 is, in my view, now irrelevant and I make no finding as to it. There is an issue to which I will later refer as to whether the husband disadvantaged the wife, whether or not deliberately, when he ceased operating through a company, JCML, in which she owns about twenty-three per cent of the shares, and began to operate through a new company, JAML, in which he owns one hundred per cent of the shares. That is a circumstance of the case which may impact upon outcome, but it is not conduct within the scope of paragraph (g).

20 There is no loss of any benefit to either party of the kind contemplated by paragraph (h).

21 The duration of the marriage was about eight and a half years and of the cohabitation nine and a half years (paragraph (d)). That is a significant period and this cannot be characterised as a short marriage case.

22 The ages of the parties is significant in a number of ways, particularly in relation to the ages also of their children. In the case of the husband his age needs to be considered also in relation to his health. This is described in a letter dated 4th March 2015 from his doctor, Dr Fred Pescatore MD, (bundle 2, E19 and E20). The letter is available for other courts and those directly involved in this case to see, and I need not read out the details of his conditions in this public judgment. The doctor says that the husband "sees a variety of different specialists for his conditions which are exacerbated by his travel/work schedule and the high demands his professional life dictates. Over the course of the many years I have seen [him] his medical condition continues slowly to decline." The doctor describes his "baseline medical condition as poor, yet stable" to which further debilitating conditions have now been added. The husband takes a range of drugs and treatments which themselves carry a range of side effects which are unpleasant, if not debilitating, and most of which he has experienced. The doctor continues:

> "Whether it be one, five or ten years, my patient is very likely to see a sharp deterioration in his health…he is likely to develop [a range of listed and potentially serious conditions]…As these conditions progress, they will likely affect his ability to work. He will be less able to travel and to travel frequently as he does now. In my opinion, he must slow down his level of activity immediately…working at the rate he does now will only hasten his demise."

At his age of fifty-nine and a half and with that medical history and prognosis, I could not reasonably expect or assume that the husband should continue to work as hard as he does for much longer, and certainly not past the age of about sixty-five. He, however, has said that he does not currently envisage that he will retire for many years, although he would like to slow down. He frankly says that he loves deal making and he needs the money and enjoys the standard of living it can provide. He knows that he has a long term commitment to his still young children. By the time the daughter is even eighteen, the husband will be seventy-three. Although s.25(1) refers to the welfare of a child while a minor (viz to the age of eighteen), the reality is that dependence of children who may be anticipated to undertake university and/or professional or vocational training continues much longer.

23 The wife is currently forty-two. I will refer to her own health and earning capacity below, but by the time the daughter is even eighteen the wife herself

will be fifty-five. The age gap between the parties (seventeen years) is significant, and actuarially the wife is likely to outlive the husband by many years. Security is an important feature of this case, especially if a combination of the husband's age and health may (however speculatively) mean that his current high income reduces or ceases well before the children are adults.

24 The wife also experiences or suffers from a range of health conditions and some disability which, likewise, I will not describe in detail in this public judgment, although her counsel, Mr Lewis Marks QC, very deliberately referred to and stressed this in public in the presence of the press during his final submissions. The wife's health is described in a number of documents (bundle 2, E8 to E18) including reports dated 31st March 2015 and 28th April 2015 from her GP, Dr Robert Hancock FRCS, and reports from a gynaecologist, an orthopaedic surgeon and a specialist women's health physiotherapist. The GP, Dr Hancock, reports that, as a result of previous diagnosed illnesses in 1996, the wife now suffers chronic fatigue syndrome:

> "This still persists and the patient requires at least ten to eleven hours sleep every day, and up to twelve to fourteen hours when she is unwell. She is unable to carry on normal activities, needs frequent rest throughout the day and needs help to manage her children and household."

Tests more recently in 2012 indicated another condition or conditions which "unfortunately have compounded the problem for this patient…" Dr Hancock continues that the wife also has problems with both her knees, for which she has been seen by the orthopaedic specialist and the physiotherapist:

> "She has difficulty with stairs and cannot run. The problem is compounded by the reduced mobility of her right ankle due to a childhood injury."

Additionally, she has suffered certain gynaecological problems consequent upon child birth. She is likely to require surgery and "this currently restricts her ability to carry, push and lift and she is to avoid standing for long periods of time." A lung condition is also described "which has an impact [upon] her resistance to physical and emotional challenges." The more specialist reports essentially corroborate the above picture. Mr Lewis Marks QC and Miss Rosemary Budden strongly emphasise this range of ill-health and disabilities in support, in particular, of the wife's aspiration and need to have a flat rather than a house as she cannot easily cope with stairs; her inability realistically to work and hold down a job; and her need for considerable help from nannies and staff as she cannot lift her children and objects, such as cases or a bicycle, as more able-bodied parents can. The problem is, they submit, exacerbated yet further by the disabilities and particular needs of the daughter which I will later describe.

25 Common to both parties and to the children is the standard of living enjoyed by the family (paragraph (c)). Throughout the marriage that was high. The husband frankly admits that he is generous and a high spender who, essentially, spent to the limits of his income and means and did not save. He says, indeed, that they overspent and that that high level of spending cannot go on. He says at paragraph 51 of his s.25 statement dated 18th March 2015 (bundle 1, C203):

> "I acknowledge that [the wife] and I enjoyed a very good standard of living during the marriage, but we lived well beyond the level at which we should have lived…"

He describes their New York apartment as a comfortable, three bedroom and three bathroom property near Central Park on the Upper West Side of Manhattan. They spent a good deal of money on renovating it.

26. At paragraph 18 of her statement dated 20th March 2015 (bundle 1, C170) the wife says:

> "We enjoyed a luxurious lifestyle. We employed a cook, a cleaner and (after the children were born) two nannies…We enjoyed frequent foreign holidays, always flying business class, and ate in the finest

> restaurants…[the husband] encouraged me to spend freely and would buy me lavish gifts of jewellery several times each year…"

She describes their high end BMW, Maserati and Range Rover cars. She says that, at the request of the husband, she kept meticulous records of their spending using a software programme, and so she can say that in 2009 they spent $930,868 excluding tax or £595,000 at the then exchange rate; and in 2010 $877,008 or £567,000. (These were the last two complete years of the marriage.) She asserts that at that time the cost of living in London was higher than in New York and that the cost then of an equivalent lifestyle in London would have been about £800,000 per annum.

27. Paragraph (f) requires the court to have regard to 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. The entire financial contribution has been made by the husband, and indeed the capital which the wife currently owns is all derived from the husband except her Moscow flat. The wife, however, made, and will continue to make, a no less important contribution by looking after the home and caring for the family, or now, the children. At the time of the effective separation in April 2011, the son was aged just over three and the daughter only about ten months. Although the husband has such contact as he can and it is very important to the children, the reality is that he lives in America and the wife and children live in London, and by far the greater responsibility for looking after the children day in and day out has fallen, and will

continue to fall, upon the wife. That responsibility is intensified in this case by the particular needs of the daughter to which I will shortly refer, and is not diminished by the great assistance given by the nannies whom the husband funds and will continue to fund. It is always artificial to balance a financial contribution on the one hand with a "caring" contribution on the other. This case is, in my view, a typical example of a case in which the only fair view is that they have each made, and will continue to make, contributions in their different roles and spheres which are evenly matched or balanced. The financial contribution of the husband is self-evident. The caring contribution of the wife not only requires, but deserves, to be equally recognised and weighted.

28. I turn next to certain of the sub-section (3) matters in relation to the children to whose welfare I must give first consideration. Their financial needs are subsumed in my later overall consideration of the wife's financial needs. They are beneficiaries of the Parfenova Trust to which I have referred, whose current annual income is of the order of $180,000 gross per annum. They have no other income, property or other financial resources. The parties expected and do still expect them to be educated within, now, the English private system. They both contemplate that the son will attend a boys' boarding public school at the age of about thirteen, and Eton College has been referred to. The son currently attends a private school in the general area of Knightsbridge/Chelsea. Both parents like that school. The son is very happy there and ideally the parents would like him to remain there. It would, in my view, be realistic for him to be able to do so if the wife moved as relatively far away as

Battersea (the area proposed by the husband for the wife's new home) but no further, and provided she had the assistance of a nanny with the school run. The daughter currently attends a small private nursery close to the son's school and very close to the wife's current rented flat. She must, in any event, move to a new school this autumn, being now five. Although far off in time, the parents would no doubt wish their daughter to receive comparable secondary schooling to their son, consistent with her then educational needs. Currently she has particular educational needs, although not so-called "special needs". There are private day schools which could meet her needs, but the only one actually to have offered her a place at the moment for next autumn is one in the Hurlingham area. This is accessible to the Battersea area, but some distance from the wife's current home and from the son's current school if he were to remain there. It is a matter of the utmost regret to me that these parents, as loving parents rather than conflicted spouses, have not been able to negotiate and search collaboratively, if not actually together, for a suitable combination of schools and accommodation such that a fair, sensible and child focused package had been identified of two suitable schools and a suitable home all in a sensible geographic relationship to each other. I urged this course upon them during the first week of the hearing, but nothing happened, and indeed the husband returned to New York for the weekend. As it is, I will just have to announce my decision in something of an educational vacuum and leave the parents to work out schooling (which must be decided consensually) from there.

29. I turn next to the health and developmental circumstances of the children, which subsumes the rather limited reference to "disability" in paragraph (c) of s.25(3). The wife says of their son that he is a delightful, sensitive and vulnerable boy. He is very kind, intelligent, thoughtful and caring. She says that he is an emotionally fragile child who craves stability and routine and has found the repeated moves from home to home (she has moved several times within London) very difficult. He has found it hard that his parents live in different continents. That is, perhaps, a sad picture of the emotional effects upon a young child of his parents' separation and divorce, but it does not have particular impact upon financial outcome in this case.

30. The position with regard to the daughter, now aged just five, is very different and is best described in the wife's own words in paragraphs 4 and 5 of her s.25 statement dated 20th March 2015 (bundle 1, C167 and C168). The description is borne out by exhibited material from a paediatrician, physiotherapist and psychologist, and none of it is disputed by the father. The mother writes that:

> "[The daughter] has significant development difficulties and is highly dependent on me and her home environment. She was born prematurely and is still very small for her age. She has hyper-mobile joints which make her unstable. She is nearly five and is still unable to do simple tasks like building a tower of blocks, drawing with a crayon, doing a four piece jigsaw puzzle or putting an ornament on a branch of a Christmas tree. Her speech is poor, although she can now, following intensive speech and language therapy, make

three word sentences. We hope that she will start Reception in September, one year behind her peers. I very much hope that she can remain in mainstream education by remaining a year behind. She is very active, has the most joyous personality, a great memory and a great sense of humour. She loves music and attempts to sing. She is a very affectionate child.

I have been making an extraordinary effort to support her development, with weekly speech and occupational therapists (four each week) next door to us, weekly swimming with a male instructor nearby, to develop her general tone which is quite weak, a specialist speech and mouth therapist to work on her weak tongue muscles (for example she cannot lift her tongue up at all), and now an English teacher to prepare her for Reception starting September 2015. Her nanny works with her on learning the alphabet, and on developing her motor skills and takes her to our communal garden or to nearby Hyde Park several times a week to learn to throw and catch the ball and to use the scooter…"

The chartered psychologist, Mr Dirk Flower, writes in a letter dated 22nd January 2015 (bundle 1, D9) that "the delay continues to be about two and a half years behind her peers". Since she was then not yet five, that delay is obviously very considerable. I accept that this general delay and the delayed development in her physical stability and motor skills do mean that now and into the foreseeable future the daughter does require particularly intense care and attention, which the mother, with her own health

problems as already described, cannot fully provide unaided. There is, therefore, a particular need in this case for a nanny or childcare help continuously seven days a week. As Mr Marks submitted, this is not a situation in which a nanny may look after the children during the week while the parents work, and the parents take over at the weekend or on holidays.

Section 25(2) paragraph(a)

31. I now turn to "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."

32. The husband is already working very hard indeed in a well remunerated business, which makes good use of his skills as a lawyer and as a negotiator. Although his actual earnings including performance fees may indeed increase, it would not be reasonable to expect him to take steps to acquire any increase in his earning capacity. The wife has no income, save that which the husband or the Parfenova Trust provide. Further, in my opinion, she has no realistic current earning capacity and no increase in that capacity which it would be reasonable to expect her to take steps to acquire. Although she attended university in Russia, she did not complete her degree because she had to flee. She did later obtain a degree in business

studies in London when she was twenty-four. When she was eighteen she worked for a period as a personal assistant to an Englishman in his meetings with Russians. She speaks fluent Russian and French, and English which is fluent but quite strongly accented. She is tied for several years to come by the needs of her children and she is hampered by her own ill-health. Mr Stephen Trowell QC, on behalf of the husband, suggested that she might be able to work as a translator or work for an estate agent or in a jewellery shop, but, when pressed, Mr Trowell acknowledged that she might at best earn about £20,000 gross per annum in such employment. Having regard to the size of the husband's income and to her employment history and health and to the needs of the children, it seems to me most unreasonable that she should currently be expected to work to generate a marginal £20,000 gross per annum so as to relieve the high earning husband to that extent of paying that amount (netted down). By the time the daughter is in her teens the wife will be in her fifties and I cannot currently foresee that she can reasonably be expected to start in paid employment then. That conclusion is, however, capable of reconsideration in the light of all the circumstances later prevailing.

33. During the course of her oral evidence and while pressed by Mr Trowell as to her earning capacity and working, the wife made a comment to the effect that what she is good at is being a wife and she will look for a third husband. Mr Trowell later characterised that comment as flippant. It might also have been characterised as quite revealing. But it is, of course, totally impermissible and impossible for me to entertain any assessment as to whether or not the wife might or will re-marry. I must

and do treat her as an indefinitely or permanently single person and make provision for her accordingly. There will be a high level of joint lives spouse maintenance in this case, and if, as to which I cannot and do not speculate at all, she does later re-marry, it will automatically cease.

JCML/JAML

34. The husband established his current business activity in 2007. Essentially, investors fund legal costs of parties engaged in certain types of heavy civil litigation (mainly in America) in return for a share of any proceeds. The ultimate investors were the shareholders in JIL, a company incorporated in Guernsey and publicly quoted on the AIM. The principal investors through JIL were, and probably still are, large institutional investors, although as the shares are publicly traded there may now be other non-institutional investors. The parties themselves are not significant investors in JIL, although they do each own a small shareholding in it.

35. The role and business activity of the husband was and is to provide management services to JIL and to identify suitable cases in which to invest. This management role was initially provided by another company, also incorporated in Guernsey, called JCML. The husband co-founded the whole enterprise jointly with another man. Initially the husband's share of JCML was about forty-five per cent, the shares being initially held in a trust. The remaining shares were mainly owned by the co-founder and/or his wife, and partly by JIL itself and by some other employees of JCML. In

2010 these parties' shares were transferred from the trust to the wife who later transferred half of them to the husband. The net result was that they each held and still do hold about 22.72 per cent of the shares in JCML. In 2010 the wife also executed a power of attorney to empower the husband to deal with her shares in JCML on her behalf. Under an investment management agreement between JIL and JCML, JCML was entitled to be paid a management fee plus potentially performance fees in addition if the investments returned profits in excess of a specified "hurdle". A performance fee was earned in 2014 and has been paid and is now part of the assets in this case.

36. In the autumn of 2013 (long after the separation and during the subsistence of these proceedings) there was a series of transactions which have had the effect that the management services are no longer provided by or through JCML, but by or through a new and different company, now called JAML. This is also incorporated in Guernsey. The husband owns one hundred per cent of the issued shares in JAML. Management fees and any performance fees referable to investments made by JIL since the management agreement was terminated with JCML are now received or receivable by JAML and not by JCML. Unsurprisingly, the wife views this change in the structure as a hostile act, not least because, in order to implement it, the husband used the power of attorney which the wife had earlier executed in 2010 before the separation. Her belief and position is that these changes were engineered by the husband so as to cut her out of the profits to which she would have been entitled as a 22.72 per cent shareholder in JCML. Even if the changes were not engineered for

that reason, it is the case of the wife and of Mr Marks and Miss Budden on her behalf that the changes have certainly had that effect. She and they argue that, even if there was a commercial reason for a change in the structure so as to substitute JAML for JCML, she could and should, in any event, have been given 22.72 per cent of the shares in the new company.

37. At the outset of the hearing Mr Marks sought to adduce a statement from the co-founder of the business (he has since exited it) in support of their case. I read that statement on what lawyers quaintly call a *de bene esse* basis, i.e. so that I could have some knowledge of what it said before deciding whether or not to admit it. I refused to admit it for reasons which I gave more fully in an ex tempore judgment on 12th May 2015. Essentially, my reasons were, first, that the statement was produced far too late; second, that it opened up a line of enquiry that would occupy too much of the time allocated for the hearing; and, third, that the issue is essentially irrelevant to outcome. I ordered all copies of the statement to be returned and destroyed and I have put it right out of my mind.

38. The husband's account is, in summary, that it was the board of JIL who required the management to be provided by a new and enlarged and strengthened company, which became JAML. Support for that is to be found in a long, detailed and formal letter dated 15th October 2013 (bundle 2, H32-H38) from the board of JIL to its shareholders giving notice of an EGM to authorise that the investments were managed by a new investment manager, namely (as it became) JAML. That letter is

signed by the chairman (then and still now) of JIL, who is an English Queen's Counsel of some renown. I do not doubt the integrity of the letter and of what it says. It includes the following on the third page (bundle 2, H34):

> "The company [viz JIL] has been informed that the New Investment Manager intends to raise new funds (which may include both a public fund and a private fund or managed account) with similar investment objects to the company [viz JIL] in the short to medium term.
>
> Whilst the management structure of the Existing Investment Manager [viz JCML] has served the company well, the Board is of the view that the company [viz JIL] will benefit from receiving services from the New Investment Manager which will, as compared to the Existing Investment Manager, have increased resources and capacity as a result of its ability to undertake multiple mandates.
>
> The New Investment Manager is expected to have employees with a diverse range of skills and experience enabling it to undertake detailed due diligence and monitoring of both proposed and existing investments. In addition, the investment cost sharing and co-investment opportunities that may be offered to the company arising out of the New Investment Manager's other mandates may result in a broader range of investment opportunities being available to the company than would otherwise be the case."

39. It still seems to me now, as it did at the outset of the hearing, that the issues between the wife and the husband about these changes are sterile and not relevant to outcome. I am not satisfied that the husband did anything with the motive of tricking or cheating the wife. There was a good commercial reason for making the changes, namely the wish of JIL, which the letter from its chairman evidences. JIL could at that time have terminated altogether the management agreement with JCML and taken their business elsewhere. It is, however, a circumstance of the case that the husband is now carrying on essentially the same business through JAML, in which the wife does not have a share, that he previously carried on through JCML, in which she did and does.

40. The public letter from the chairman of JIL from which I have quoted makes reference, including in the passage which I have quoted, to the new investment manager (viz JAML) raising "new funds" and having "other mandates". JAML has indeed now entered into a management or investment advisory agreement with another investor, whilst continuing also in its role as manager for JIL. JIL knows this as its published accounts say so. The actual identity of this new investor (which is an institutional investor) is confidential and I will call it X. The result is that the business of JAML has expanded into providing services to both JIL and X and it may receive performance fees from either or both. It may, however, be several years (or never) before JAML earns and receives performance fees from X, since the

investment of X is recent and it can take many years for the litigation in which the funds are invested to result in any success and a return to the investors.

41. With that very summary but sufficient narrative of the business structure, I now turn to the valuation of the companies. The parties jointly instructed Mr Robert Sharp FCA of Valuation Consulting LLP as a single joint expert. During the course of his oral evidence, Mr Sharp modified his valuation of JAML in constructive response to certain points put to him by Mr Marks in cross examination. There is no other expert or valuation evidence in the case. The revised figures of Mr Sharp have not been discredited or shown to be obviously wrong, and I must and do, therefore, take the final evidence of Mr Sharp as being the valuations for the purpose of this judgment. The point needs to be made and stressed, however, that Mr Sharp's figures, like many such valuation figures, are inherently speculative. Neither JCML nor JAML own any significant underlying assets such as valuable real estate. They are simply vehicles through which management fees and, if earned and payable, future performance fees are received. The value of the companies depends entirely upon the success or otherwise of the litigation in which the husband and his colleagues in JAML (he works with a team, who themselves share in the income and any performance fees) invest on behalf of JIL and now X. The values placed on the companies are merely an attempt to place a current value on a speculative future income stream, and there is no question of the shares currently being sold or the value (whatever it may be) realised. On that basis, the net of tax value of each party's 22.72 per cent share in JCML is £241,234 in the case of the husband and £227,938 in

the case of the wife, or a total of £469,172. The slight difference in net values is due to the higher rate of UK than US capital gains taxation inherent in the net values. This is not liquid and is not available for distribution. The husband's shares in JAML are now valued at £762,000 net of tax. Those, too, are not liquid nor available for distribution.

The other assets

42. I will summarise a lot of detail shown in the largely agreed asset schedule. The apartment in New York is valued at $3,800,000 or about £2.5million. The mortgages secured upon it total $2,463,000 or about £1.62million. The agreed net equity is about $1,108,000 or £726,600. It is agreed that the wife's half share will be transferred to the husband. There are contents in the apartment or in store which are, or will become, the property of the husband and which I leave out of account. These include a Steinway baby grand piano, which the wife would like to have and to have shipped to London. That piano was bought and owned by the husband before this relationship or marriage, and there is no justifiable basis upon which she should now have it, nor would it make sense to ship it to London when she may, if she wishes, buy a similar piano here.

43. There is a box in the asset schedule headed "JCML performance fees due to parties". The bottom line is a net figure of £2,551,348, apportioned currently as to £1,352,303 to the wife and £1,199,045 to the husband. I have been told that that

figure of £2,551,348 can be treated as if it is a liquid sum in the bank now. The parties have sums in banks and similar accounts or assets totalling about £204,339 of which £141,556 belongs to the husband and £62,784 to the wife. Against that there are liabilities of about £196,722, of which £115,782 are liabilities of the husband and £80,940 liabilities of the wife. The husband is therefore in overall credit to about £26,000. The wife is in overall debit to about £18,000. The equity in the wife's flat in Moscow is said to be about £54,000.

44. The husband has pension assets shown in the agreed asset schedule under a heading "Fields law firm" and described in the agreed schedule as "illiquid". The net of tax value shown in the schedule is £191,542. Because of the age he has now attained, the husband is lawfully permitted, if he wishes, to draw down these assets now. If he were to do so they would be taxed at his current marginal rate, and the schedule failed to deduct the tax which would be payable at that rate on one of the funds, namely the JCML 401K Fund. If, as Mr Marks urges, I am to treat that fund as a liquid asset available to the husband now, then that correction must be applied, reducing the aggregate net of tax value of both funds to about £153,000 (viz deducting forty per cent from the gross value of the JCML 401K Fund of £95,873). There is a further complication as to the liquidity of part of the pension assets as they consist of shares in JIL, to which I refer below. Leaving that complication temporarily to one side, in my view these funds should correctly be treated as "liquid" as Mr Marks now contends, rather than as "illiquid" as portrayed in the schedule provided that allowance is made for the full tax that would be payable if the

funds were liquidated and realised now. If a net sum or fund is accessible and able to be spent now, it is, in my view, correctly to be treated as net cash even if it was historically "pension". There may of course be very good reasons on the facts of a given case why the court should ring-fence it for future pension income, but in the meantime it - like any other liquid and accessible investment or sum - is no more than net cash. It may also be, as Mr Trowell and Mr Sirikanda argue in their "Husband's note in respect of availability of his pension assets" dated 2nd June 2015, that it would not be wise of the husband to draw down these assets now, when they would be taxed at his highest marginal rate, and that they are better preserved until his "retirement" and a time when his marginal rate is or may be lower, whenever that may be. That, however, does not impact upon the actual availability of the assets now, albeit that the current tax notionally payable must of course be deducted.

45. The further complication is, however, that part of the Individual Retirement Account ("IRA") consists of shares in JIL. The point has not been the subject of any evidence or argument and was only raised at a very late stage by notes sent in to me the day before yesterday, long after I had fully prepared this judgment. But it is said that there would or may be problems with the husband currently selling the JIL shares within the IRA. It is said that it could be construed as a lack of confidence by him in the prospects of JIL and therefore adversely affect the share price. I am prepared to assume, without so holding, that there may be short term problems about realising the JIL shares within the IRA.

46. To reflect all these considerations I propose to sub-divide the total net pension assets of £153,000 as follows: "illiquid", the shares in JIL, net £72,726 (viz shares at $184,846 less forty per cent); "liquid", the remainder of the funds, net £80,465 (viz the cash in the IRA at $58,314 less forty per cent, plus the net funds in JCML 401K of $87,724). (This approach arguably understates the net value of the funds. If the hypothesis is that the JIL shares in the IRA cannot currently be realised, then it is arguably over-generous to deduct notional tax at the husband's current marginal rate.)

47. The husband owns issued, but unvested shares in a company called NAPO Pharmaceuticals. The principal asset now of NAPO appears to be its stake in a piece of litigation against another company called Salix. The shares in NAPO only vest with the husband upon certain conditions or contingencies, which include that there is a successful outcome to the litigation against Salix. NAPO lost that case at trial and so outcome is dependent upon the success or otherwise of an appeal or appeals. The value, if anything, of this asset of the husband is highly speculative, but, after heavy discounting, Mr Sharp attaches a net of tax value to it of about £27,000.

48. The final asset is shares and options in a company called Immunoscience. The main activity of Immunoscience is seeking to develop a treatment for HIV and AIDS. The current value of the husband's shares is highly speculative. If Immunoscience is successful, the profits and value of its, and therefore the husband's, shares could be very great. If not, not. Mr Sharp's valuation produces an overall net value of the husband's Immunoscience interests of £1,448,348. This is, however, highly illiquid

and speculative. The parties have agreed that whatever the husband may ultimately receive net from his Immunoscience investment will be shared evenly between them, and provisions must be drafted to that effect by way of a safeguarded, deferred, contingent lump sum. Immunoscience could one day be a bonanza for both of them, but meantime I leave it entirely out of account in considering the remaining provisions of the order. The impact of any such bonanza upon the level of periodical payments then in payment, or upon a possible clean break at that stage, would fall to be considered in the circumstances prevailing if and when the bonanza arises.

49. A very simplified and condensed summary of the approximate overall net capital position is, accordingly, as follows.

	Husband	**Wife**	**Total**
NY flat	363,300	363,300	726,600
Bank accounts etc	141,556	62,784	204,340
Liabilities	(115,782)	(80,940)	(196,722)
JCML fees etc	1,199,045	1,352,303	2,551,348
Moscow flat		54,000	54,000
JCML shares	241,234	227,938	469,172
NAPO	27,000		27,000
JAML shares	762,000		762,000
"Pension" funds			
(i) liquid	80,465		80,465
(ii) illiquid	72,726		72,726
	2,771,544	1,979,385	4,750,929
If Immunoscience added	1,448,348		
	4,219,892		6,199,277

Income

50. The husband's annual gross income, excluding any performance fees to which I refer below, has averaged about $2.1 million in the last three years. As the funds under management have increased with the investment by X, I see no reason to predict any lesser income in the foreseeable future. During his oral evidence I asked the husband to calculate over the lunch break his best estimate of his income in 2015. He predicted between $1.8 million to $2.3 million, the difference being the size of any bonus from JAML. Unsurprisingly, Mr Marks invited me to select the upper figure of $2.3 million. In my view, I should not do so, particularly as the husband has strong grounds for easing up his own work pace and therefore drawing less from the company than he otherwise might have done relative to his colleagues. I take his income, for the purpose of this judgment, as about $2.1 million gross per annum or about £1,377,000. I do not have a precise calculation of the net amount before tax relief on spousal alimony, but it is of the order of $1.3 million or £850,000. The order which I will in fact make as to periodical payments is needs based and at a high level. I wish to stress that the ultimate award would have been no different and no higher even if the husband's annual gross income were assumed to be $2.3 million or even some higher figure of that order. Similarly, it makes no difference if the net income is not precisely $1.3 million and whether it is somewhat more or less than that figure.

Section 25(2), paragraph (b)

51. I turn now to "the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future."

52. The parties have no financial obligations and responsibilities, save to each other and to their children. A very significant issue in this case is the scale of their respective needs. It is not in issue that the wife needs and is entitled to a sufficient sum with which she will purchase an appropriate owner-occupied home. She would, understandably, like to live as near as she can to her present rented flat in the Chelsea/Knightsbridge area and to the son's present school. She says, very adamantly, that she cannot live in a house with stairs because of her knee problems, and that any flat higher than the ground floor must be served by a lift for the same reason. Unfortunately, the sets of illustrative property particulars initially proffered by each party were polarised. Those put forward by the wife are around the £5 million mark or more and are unrealistically far too expensive, particularly as the stamp duty land tax payable on a purchase at £5 million is itself over £500,000. The particulars first and most strongly advocated by the husband were of houses in the area of Battersea at around £1.8 million to £2 million. I accept that they are not suitable, being houses, if for no other reason.

53. I have therefore something of a dearth of evidence in the middle ground between these two polarised ranges. There is a flat on the market in Carlisle Place, London SW1 close to Victoria Station (bundle 2, HP31). The asking price is £2.3

million. Neither party has inspected it, but it could be suitable. There was some consideration of mansion flats in Prince of Wales Drive, south of Battersea Park. Unfortunately, many of those blocks are not served by lifts. One in York Mansions, which is served by a lift, was recently sold in April for £2 million (bundle 2, HP33-HP35). As it appears only to have one bathroom it would not itself have been suitable as the wife could not reasonably be expected to share the only bathroom with her children and also the nannie(s). Particulars of another flat in York Mansions with four bedrooms, two bathrooms and served by a lift indicate an asking price of £2.9 million. The wife could, of course, purchase more for less by moving further into the suburbs, but she and the children have lived ever since 2011 in very central Chelsea/Knightsbridge. The son is at school there. The family home in New York was and is in a good area of Manhattan, close to Central Park. There is, in my view, a limit to how far the wife can reasonably be expected to move out from the centre. These considerations and the available material indicate to me that the very least price at which the wife can reasonably be expected to buy for herself and the children is about £2.3 million, which would require SDLT of just under £200,000 and indicate a minimum sum for purchase and costs of moving in of about £2,550,000. Whilst little weight attaches to a comparison of the price of properties in central London and central New York, I observe that the gross value of the Manhattan flat is itself about £2.5 million (with no SDLT included in that sum).

54. As to her regular income needs and outgoings, the wife has put forward a budget. The bottom line, including all the costs of the children except their actual

school fees, is about £400,000 per annum exclusive of any provision for rent or mortgage, i.e. if she purchases a property with no mortgage and, of course, no rent. To most people that must read as an eye-watering amount for the annual cost of a mother and two children. It includes £75,000 per annum for holidays for herself and the children; over £50,000 per annum for nannies and other staff; and over £60,000 per annum for clothes for herself and the children, beauty treatments and hairdressing. However it needs to be set against the scale of expenditure and the standard of living during the marriage, which, it will be recalled, was recorded in detail in a spreadsheet and was running at the equivalent of about £800,000 per annum in London in 2010/2011 when the younger child was still only a baby. It also needs to be set against the husband's own budget and needs for himself which is also high.

55. The husband pays the mortgage on the New York flat and also rent on a flat in Miami. He no longer resides in New York, but in Miami, because the level of taxation is significantly lower in Miami than in New York. Mr Trowell fairly makes the point that, although it may seem extravagant to continue to maintain the New York flat whilst also renting in Miami, an off-setting tax saving is achieved. The husband's expenditure includes the very high cost of medical expenses and medical insurance in America, for which the combined figure in his budget totals £100,000 per annum alone. His budget also includes a figure of £100,000 per annum as pension provision for himself. Despite or because of these considerations, he states (bundle 1,

D65) that his total annual expenditure upon himself and the children when with him is about £560,000 per annum, and projects about £715,000 in the future.

"Stockpiling"

56. Mr Marks lays stress upon the respective ages of the parties and the likelihood that the wife will survive the husband by many years. In any event, even if the husband is blessed with a long life, his earning capacity must ultimately diminish and the level of maintenance reduce, probably during the dependence still of one or both of the children. Mr Marks submits that, as well as meeting her annual needs, payments must also be made to the wife to enable her (in his words) to "stockpile". He submits that, just as the husband has included £100,000 per annum in his budget under a heading "Pension", she needs to be able to make some similar provision of pension or stockpile for herself. In principle I accept and agree with that argument on the facts and in the circumstances of this particular case, having regard in particular to the respective ages of the husband, the wife and the children in relation to each other. If, however, there is an element of stockpile, it must of course be saved and in some way ring-fenced, so that it is indeed available for future needs and can be identified and taken into account if or when the husband's income drops and he seeks to reduce the level of periodical payments or discharge them altogether.

57. In parallel with the stockpiling submission, Mr Marks submits that whatever I can make available to the wife from the currently available assets will not, he

submits, be sufficient to enable her to purchase a suitable home. So he submits that she will have a need to raise a mortgage which must of course be funded. The evidence of her actual capacity to raise a mortgage is very slender. A letter from a broker dated 7th May 2015 (bundle 1, D130) says that she "may" be able to raise a mortgage of around £2.4 million in order to fund a £5 million house purchase in London assuming she is in receipt of maintenance payments of £430,000 net of tax. There are other caveats in the letter. It is unclear to me whether the writer appreciated the age of the payer husband, that he lives and works in America, or the rather gloomy account of his current health. I dare say, however, that there is some lesser amount that the wife may be able to borrow on a low loan to value. At paragraph 40 of their written closing submissions, Mr Marks and Miss Budden set out a table illustrative of the wife needing to fund a purchase at a gross price of £4 million. At my request, Mr Marks elaborated that table for a range of gross prices at intervals of £500,000 between £2.5 million and £4 million. If, illustratively, she wished to purchase for £2.5 million and had cash in that sum, then a relatively modest mortgage of about £240,000 would be required in order to pay the stamp duty with an LTV of only ten per cent. At £3 million, the required mortgage would be about £800,000 with an LTV of twenty-seven per cent.

58. I will not make any identified provision in the order for funding a mortgage. I will make identified provision for stockpiling. Investing the element of stockpile in a mortgage would, in my view, be an acceptable and indeed wise way of saving and ring-fencing it. Accordingly, the amount which I identify and provide for stockpiling

may, if the wife so wishes, be applied in funding a capital repayment mortgage over any sensible period of years. It must be clearly understood that the stockpile is intended to enable the wife to build up funds so as to be self supporting upon the husband's death, or if he earlier retires and his income markedly reduces. If the wife does invest the stockpile in a more valuable home by financing a mortgage, then in due course she is likely to have to trade down so as to release funds for income. The current high levels of maintenance which I will order are not going to be available lifelong for the wife, and she must clearly understand that now.

Outcome

59. The wife and the children, to whose welfare I must give first consideration, have an overarching need for a home, which, in my view, as already explained, will require not less than £2,550,000 inclusive of SDLT and moving in costs. Towards that the wife currently has £1,352,000, leaving a shortfall of (rounded) £1.2 million. The husband must pay that sum to the wife by a lump sum, with credit for the value of any JIL shares which he transfers to her. It will be noticed that £2,550,000 is almost precisely the total of the liquid assets in the box headed "JCML performance fees due to parties" in the asset schedule, so the entire amount in that box must be retained or received by the wife. It is important to stress that, although the wife will therefore receive £2,550,000, she will not be left with assets to that value out of that sum. If she purchases a flat at even £2.3 million she will have at once to pay out about £190,000 in SDLT, a sum which simply flows to the UK Treasury and is lost

forever to the wife. So the net capital position of the wife after receiving a lump sum of £1.2 million and purchasing, as she must, at not less than £2.3 million gross, will be housing capital of £2.35 million. The husband, by contrast, already owns his flat in New York and will have no SDLT or equivalent tax to pay.

60. I appreciate at once that that lump sum will largely clean out the husband's most liquid assets, but he will be left with the equity in the New York flat (the wife transferring her share in it to him), namely £726,000. That is not the home in which he actually lives. He has his pensions which include the liquid element of £80,000, and he will retain his shares in JAML (valued at £762,000, but illiquid) and in NAPO. If the wife, on the other hand, invests the whole sum in the purchase of her flat, her only remaining personal asset will be her Moscow flat. They will both retain their equal shareholding in JCML and they have agreed that any later bonanza from Immunoscience will be equally shared. A revised schedule after payment of a lump sum of £1.2 million, payment of £190,000 by the wife in SDLT, and transfer of the New York flat, and notionally attributing the Immunoscience shares half each is as follows:

REVISED SCHEDULE AFTER PAYMENT OF LUMP SUM AND SDLT AND TRANSFER OF NEW YORK FLAT, AND ATTRIBUTING IMMUNOSCIENCE HALF EACH

	Husband	**Wife**	**Total**
NY flat	726,600		726,600
Bank accounts etc	141,556	62,784	204,340
Liabilities	(115,782)	(80,940)	(196,722)
JCML fees etc		1,352,303	1,352,303
Lump sum		1,200,000	1,200,000
Payment of SDLT		(190,000)	(190,000)
Moscow flat		54,000	54,000
JCML shares	241,234	227,938	469,172
NAPO	27,000		27,000
JAML shares	762,000		762,000
"Pension" funds (i) liquid (ii) illiquid	 80,465 72,726		 80,465 72,726
	1,935,799	2,626,085	4,561,884
If Immunoscience added as half each	724,174	724,174	1,448,348
	2,659 ,973	3,350,259	6,010,232

(Note: the difference between the bottom line totals in the two schedules (£189,045) is due to (i) the loss of £190,000 in SDLT, and (ii) treating JCML fees of £1,199,045 in his hands as a lump sum of £1,200,000 in hers.)

61. Mr Marks submitted that part of the required payment could be expressed as backdated periodical payments, thereby, he submits, generating tax relief for the husband which could augment the available funds and permit a higher sum to be paid and/or reduce the impact on the husband. Mr Trowell, on instructions, resolutely resisted that proposal. His expressed reason is that it is a device and may not in fact have the suggested tax saving effect. Mr Marks suggested that the true reason for the resistance is that the backdating would imply and require a higher level of periodical payments than the husband offers or wishes to pay. However that may be, I will not backdate any periodical payments. The husband is currently paying the ordered amount. The wife does not have significant debt. The backdating would, in my view, be a device, and I am not prepared to adopt it when it is opposed for whatever reason by the husband. If, as a result, he has lost some tax relief to which he could legitimately be entitled, that is his loss. The required amount will, accordingly, be payable entirely as a lump sum.

Periodical payments

62. The wife's overall budget for herself and the children, but excluding the school fees, is £400,000 per annum. There are some obviously high individual items within it, although I will not identify any specific such item. It seems to me that a fair, but generous, overall budget is £350,000 per annum (excluding school fees) when the case is looked at in the round and even when compared with the higher global rate of

expenditure during the marriage and the husband's claimed expenditure now. Within that budget, at least £80,000 per annum (and in fact more) is directly referable to the children, including the costs of nannies, private medical insurance, medical expenses and therapy costs for the daughter, and of course the children's clothes and their share of the food and other outgoings. The children do have an available income of their own from the Parfenova Trust, which is currently ample to pay all their school fees and in addition to pay £80,000 per annum to the wife (whether paid quarterly or monthly) towards the other undoubted outgoings and needs of the children. I will assume that the trust will indeed pay £80,000 per annum to the wife for the children in addition to all the school fees. That leaves a shortfall of £270,000 per annum for the wife's current needs and expenses, which the husband must pay by way of periodical payments or alimony.

63. Additionally, it is in my view justifiable that the wife should be able to stockpile and it is a current need of hers to be able to do so. The annual amount should be £100,000, enabling her to build up a fund of £1million over ten years plus any return on the funds incrementally invested over that period. That £100,000 must be ring-fenced as I have explained, but she may, if she wishes, apply it to funding a mortgage on the purchase of a home. Mr Marks' table indicates that with capital of £2.5 million, she could purchase at £3 million plus SDLT with the aid of a mortgage costing just under £100,000 per annum to service. The "stockpile" would not be merely the element of capital repayment in any given year, but the likely increase in value of the underlying home.

64. The global periodical payments of £370,000 per annum (viz 270,000 plus 100,000) should be apportioned as to £25,000 per annum for each child (they also having their own income from the Parfenova Trust) and £320,000 for the wife. The payment of £320,000 will legitimately attract tax relief for the husband. The rate of tax is 41.5 per cent, so that the net cost to the husband of paying periodical payments in the sum of £320,000 per annum is £187,200. The total net burden of the aggregate periodical payments upon him will accordingly be £237,200 (i.e. £187,200 plus £50,000 for the children). I am satisfied that, after making those payments, the husband will have sufficient net income for his own needs.

65. Lest this judgment is misinterpreted or misunderstood as providing daily maintenance for the wife at the rate of £320,000 per annum, I wish to stress that the global periodical payments or alimony for the wife herself includes £100,000 per annum to enable her to stockpile, which is an important current need. The element of periodical payments to provide for her own daily expenditure needs is £220,000 per annum.

Performance payments

66. These are speculative and unpredictable. The wife must of course continue to receive her share of any performance payments due to, and receivable by, JCML. Mr Marks argues that any performance payments received by the husband from JAML is

not future income or bonus for current work, but the product of continued exploitation of an idea and a business which the husband created during the marriage and in which the wife had her 22.72 per cent share. So he submits that the wife should continue to receive at least 22.72 per cent of whatever performance fees the husband receives from JAML, subject to an overall cap which Mr Marks suggests as £10 million. Mr Trowell, on the other hand, strongly submits that any future performance fees earned by the husband through JAML (which was only created nearly three years after the separation) are not intellectual property built up during the marriage, but should properly be viewed as a form of bonus for the husband together with colleagues in JAML for their current and future labour and endeavour. Mr Trowell cites in support some observations by Mostyn J in *B v. S* [2012] EWHC 265 at paragraph 76, where he said:

> "…the only reason there is income after separation is because of work done after separation."

Taking the example of a footballer, Mostyn J pointed out that while his skills may have been developed during the marriage, it is only because he continues to play football that he gets paid the salary:

> "The footballer has to fill the unforgiving minute with sixty seconds' worth of distance run <u>after the marriage.</u>" [Mostyn J's emphasis]

In this case, likewise, the husband has to work very hard day in day out to earn certainly his salary and speculatively the performance fees.

67. I have made needs based provision for fair, but generous, levels of periodical payments out of the husband's regular salary and bonus, which meet the wife's needs, including her need for stockpiling. In my view it is neither necessary nor justifiable that she should, in addition, share in any performance fees which may later be received by the husband from JAML. In their closing written submissions, Mr Trowell and Mr Sirikanda did offer that the wife should receive, by way of periodical payments and within the periodical payments order, an extra sum equalling twenty-five per cent of any net performance fees paid to the husband referable to the current (but not any future) investment of JIL or X and subject to a cap of £100,000 in any one calendar year. That, however, was in the context of offered periodical payments in the global sum of £200,000 per annum apportioned as to £180,000 for the wife and £10,000 for each of the children. Since I have ordered periodical payments nearly double that amount, it would not be fair to hold the husband to his offer with regard to performance payments.

Summary

68. The upshot is that the husband must pay or cause to be paid to the wife a lump sum of £1,200,000, with credit for the value of any shares in JIL which he transfers to her. He must pay or cause to be paid joint lives periodical payments (i.e. alimony) to

the wife in the sum of £320,000 per annum, and periodical payments for each child in the sum of £25,000 per annum per child, on the basis that all their school fees are paid by the Parfenova Trust and that the trust pays to the wife for the children the annual sum of £80,000. The element of periodical payments for the children should be index linked. The element of periodical payments for the wife should not be. It is a high award and includes the stockpiling element which will itself be invested. Changes in the RPI or any other index here do not result in any change in the husband's income in America from which the periodical payments are to be paid. The wife must transfer to the husband her interest in the New York apartment upon the husband undertaking to seek to obtain her discharge from any further liability under the mortgages thereon and, in any event, to keep her indemnified against any such liability. Each party will retain their current shares in JCML and the wife will be entitled to receive all or any further performance payments referable to those shares. There must be drafted and safeguarded provisions to ensure that any net bonanza from Immunoscience is equally shared, whenever it is received and irrespective of whether, by then, the wife has remarried. All other assets, debts and liabilities shall remain where they currently are. The wife will have no current entitlement to any performance fees referable to JAML. I make clear, however, that if, in the future, the husband's non-performance fee income reduces and he seeks to vary downwards the periodical payments, the wife will be entitled at that time to rely on any anticipated performance fees as a source from which the periodical payments at their then appropriate level should be paid.