

ENGLAND AND WALES / JUDGMENT

A v B (No. 2)

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- ----- Between : IN THE MATTER OF THE MATRIMONIAL CAUSES ACT 1973 A
- and - B (No. 2) Applicant Respondent
- -----
- ----- Rebecca Bailey-Harris (instructed by Thomson Snell and Passmore) for the Applicant Sally Harrison QC (instructed by BPS Family Law LLP) for the Respondent Hearing dates: 11 and 12 April, 10 May 2018
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Judgment

MR JUSTICE BAKER : 1. 2. 3. 4. 5. 6. The issues to be determined in this judgment are whether it is fair in all the circumstances for the court to make an order on a claim by a former husband for a financial remedies order against his former wife under the Matrimonial Causes Act 1973 and, if so, the form and content of the award to be made in the exercise of the court's discretion. The circumstances include the striking fact that the parties were divorced in 1992 and the applicant did not file his application for financial remedies in Form A until February 2016. By a preliminary application under rule 4.4(1) of the Family Procedure Rules 2010, the respondent applied to the court for an order striking out the applicant's claim. That application was refused by this court earlier this year for reasons set out in a judgment now reported as A v B [2018] EWFC 4. Following that judgment, in accordance with the course proposed by Lord Wilson in Wyatt v Vince [2015] UKSC 14, I gave directions for an "abbreviated hearing" of the claim. That hearing took place before me in April 2018, following which I reserved judgement until today. The following background to the case is an expanded version of the chronology set out in the earlier judgment.

A is now fifty-nine years old and B is sixty-one. They met in 1980 when A was serving in the Royal Navy in Scotland and B was working for a well-known retailer. In the Spring of 1982, B transferred to the company's store in Glasgow to enable the parties to live together. Subsequently she was promoted to area manager. The parties were married on 6 April 1983 and shortly afterwards purchased a two-bedroom house near Glasgow. About two years later, they sold that house and bought a larger property near Stirling. In July 1986, B gave birth to the parties' first child, a boy, E. A month earlier, A had left the navy and in September the family moved to Essex. B had been appointed area manager in South London. A started a mobile car valeting business. In her statement, B says that this was a very difficult time financially, as she was the only one working full time and the parties were unable to sell their house in Scotland for some time and therefore stayed with her parents. In 1988, however, the property was sold and the parties bought a bungalow in Essex. The following year they moved to a larger 4- bedroom property in the same area. In November 1989, B gave birth to the parties' second child, a daughter, F. B went back to work and continued to earn a higher income than A. It is her evidence that they kept separate bank accounts and that she paid the mortgage and household bills. A's working hours were more flexible and he therefore carried out the greater part of the child care, with the assistance of a child minder. In 1991, the marriage broke down. B had started a relationship with another man, C, and in the course of that year she moved to live with him. A remained in the family home with the two children, who were then aged 5 years and 18 months. It is B's case that she continued to pay the mortgage and household bills, and also paid the premiums on four endowment policies in the parties' joint names. Their son, E, continued to attend the school where he had just started. F remained with the same 7. 8. 9. child minder who had helped to care for her before the marriage broke down. According to A, the children initially had contact with their mother on Friday evenings. At that point, B and C were living in small rented accommodation where it was difficult for the children to stay. Later, they started having overnight contact and in due course settled into a routine where the children lived with their father and had weekend contact on alternate weekends with their mother. Shortly after the separation, A filed a petition for divorce, although no copy of the petition has been found. The petition was undefended and decree nisi was pronounced on 3 April 1992 and made absolute on 22 June of that year. It is common ground that A did not issue any separate application for financial provision at the time of the divorce petition or at any point thereafter until February 2016. A has contended that such an application was included within the divorce petition. Until shortly before the first hearing before me, however, there was no independent evidence that the divorce petition had indeed included an application for financial relief. In 1992, B was made redundant. She states that, following her redundancy, she received a payment of £30,000. It was her evidence that she paid £10,000 of that sum to A, and produced a bank statement showing a debit of £10,000 in November 1992. In cross-examination, A said that he does not recall receiving this sum. It is B's case that, although initially she had wanted A and the children to remain in the family home, she came to realise that this was unsustainable. It is her case that she met A and told him that she could no longer afford the arrangement. By this stage, A had started a relationship with another woman. According to B, A suggested that he should move to live with his new girlfriend, allowing B and C to move back into the house in order to sell it. A states that B told him that she could not afford to keep paying the

bills and that he would have to move out. He said he felt he had no choice – he was told he had to move out and only agreed to do so because he felt under pressure. He wanted to keep things amicable. He had found the divorce stressful and did not want to get involved in legal exchanges. In cross-examination, he said that, with hindsight, he thought he had been naïve. Following these discussions, A and the children moved to live with A's girlfriend in Kent, and B and C moved back into the former family home. In February 1994, the former family home was sold. In his Form E filed in these proceedings, A stated that by moving out he had had been “giving her the benefit of all the equity in the family home, notwithstanding that I was looking after the children”. It is B's case, however, that there was a negative equity and that the shortfall of about £6,000 owed on the mortgage was paid by C. It was A's evidence that he has no recollection of there being a negative equity on the sale. It is also B's case that, at that stage, she and A agreed to cash in and divide the four endowment policies in their joint names. A's evidence on this issue was unclear. At one point he did not recall retaining any of the policies, but in cross-examination he accepted that there had been four policies and that whatever the parties had owned at that stage had been shared. In the proceedings before me, A disclosed a page of his savings account passbook showing that a payment of just over £10,000 was paid into his account in September 1994. On behalf of B, it was submitted that this was likely to be the proceeds of one of the policies transferred to A in accordance with the parties' agreement. 10. It is B's case that, although there was no formal agreement or order resolving financial issues after the end of the marriage, she and A reached an amicable arrangement about the finances. In cross-examination she said: 11. “I wasn't aware I had to sign anything. I had no idea I was leaving myself wide open. A did the paperwork on the divorce. We'd met in a pub to discuss it. It was amicable. As far as I was concerned it was the end. It didn't cross my mind to get anything in writing” Thereafter, the children continued to live mainly with A throughout their minority. B continued to pay maintenance for the children and in 1995 increased the payments to £500 per month. A's relationship with his then- girlfriend was short-lived and he and the children lived in a succession of rented properties. He had a series of jobs which he says were arranged around his role as the children's primary carer. This included caring for E after he suffered a fractured leg when he was aged 10, which necessitated medical treatment surgery for some years, culminating in two operations. On B's behalf, it is accepted that the children spent the majority of their time living with A, but it is not accepted that he was a single carer. The children had regular overnight staying contact with their mother, and it is B's case that she was a hands-on mother who visited A's home to help the children with homework. Furthermore, between 1996 and 2001, A lived with another woman, K, who did not work and as a result he was able to work full time. Shortly after that relationship ended in 2001, A met another woman, D, with whom he started a long-term relationship, although they did not live together for a number of years.

12. Meanwhile, B's successful career in retail had continued. In 1997 she was made retail director of a company which owned a chain of stores, earning a salary of £60,000. In 1999, B and C were married. In 2000, B was appointed retail director of a well-known store, at a similar salary. In 2001, C was involved in a management buy-out of the company for which he worked, and received substantial shares. In 2003, B was made redundant again and, in

view of C's significantly improved financial position, she decided to retire from paid employment. She states that thereafter she spent part of the time caring for the children. She received further redundancy payments which were invested in property in the names of herself and C. In 2004, E reached the age of 18 and B reduced the child maintenance payments to £375. Relations between the adults remained on cordial terms. The children E and F had – and continue to have – a good relationship with both of their parents. 13. By 2006, C had amassed capital assets and, in B's words, was "comfortably off". In March 2006, A was admitted to hospital suffering from chest pains which were said to be attributable to stress. Shortly afterwards, A and B had a meeting in a restaurant during which B offered to speak to C about providing help for A. In a series of conversations, it was agreed that the level of maintenance would be increased to £600 per month, that B and C would clear A's credit card debts, and that C would purchase a property in which A could live with the children. The details of the conversations are disputed and I shall consider the evidence about them later in this judgment.

14. While these discussions were taking place, E was involved in a serious road accident. He was in a coma for some time and afterwards underwent a long convalescence. A gave up work to care for him. Relations between the adults remained close and in the Autumn 2006 C paid for all four of them – A and D, and B and C – together with E, F 15. 16. and C's children to go on holiday to the Maldives. Meanwhile, A and D had found a suitable property convenient for F's, school, hereafter referred to as "X House", which B and C agreed to purchase. A and the children moved in in November 2006 after returning from the holiday. After the property was purchased, B and C funded a significant extension of the property, spending, according to B, over £200,000, and increasing the size of the property from four to six bedrooms. There is a disagreement between the parties as to the reason for this extension. B contends that the reason was simply to increase the investment value of the property. A argues that the property was extended to make it sufficiently big to accommodate not only him and his children but also D and her children. In response to this argument, B points out that D did not in fact move into the property until 2009. It is B's case that, although some of D's children lived at the property from time to time, this was not the reason for the extension of the property. B asserts that, after the extension was completed, A rented out rooms at the property to D's children and also lodgers. He retained all the rental income himself without accounting for it to B or C. Meanwhile, B continued to pay maintenance for E and F until 2009, at a point when E was aged twenty-three and F rising twenty. At an earlier date, D had started a small soft furnishings business and in 2011 A started working with her. In June 2012 A and D spent about £3,500 putting a workshop in the garden at X House. In his statement, A says that he "does not believe that B and C would have been so callous as to encourage D and me to spend money on a workshop at the property from which to operate our small business as we did in June 2012 if they knew they were going to ask us to leave within a couple of years". 17. In 2013, A and D were married. On 27 September 2013, A sent an email to C in the following terms: "Having got married, D and I decided to sort out our wills situation. Obviously, D needed to amend hers and I have never had a will. Some friends

of ours recommended a lady who does their wills. She came round and during the discussion the subject of the property came up. I explained the situation and told her the story. She said that as things stood, legally, God forbid should something happen to you and B together (i.e. die in an accident) I potentially have no security to stay in the property. She said that what I needed for security is a 'right to occupy'. I have attached a copy of a draft one she has sent to me for your perusal. The last section ... mentions the children, this is only because I said that at the time the house was purchased I recall it being said that the house was going to be part of the children's inheritance however I could live there. I obviously don't know your plans for any of the children I only mentioned this to [the woman who had given him advice]. We also understand that it is a strange situation for D to be in and that if something happened to me she would not expect to be given the right to stay in the house albeit we are married now. We would like to think that should the situation arise she could have a grieving period whereby she can make plans and alternative housing arrangements. If you could let me know your thoughts on the above I would be really grateful." 18. Three days later, C replied in the following terms, setting out his and B's case as to the basis on which the property had been purchased: "We agreed to purchase a house for you and the two children to live in, when they were both still at home. At the time, one of the many options we considered was to leave the house to the children, but we decided against this, as we knew they would need a helping hand when the time came to buy their own homes. In the financial crash of 2008, we lost a lot of money, my business went into administration in March 2009 and a number of our investments became worthless overnight as you know, I'm retiring next year In these circumstances, we will have no choice but to sell the property. We've tried to allow you and D to stay as long as possible, but in 2014 or 2015 we won't be able to afford to keep it any longer. We're already housing your and B's son and [his wife and child] and it won't be long before his sister moves out We intended to discuss it with you in due course, but your email has accelerated matters. I understand this isn't what you were looking for, but I can assure you that B and I will try to be flexible and as far as possible fitting with yours and D's future plans." In this email, the reason given by C for wishing to sell X House was financial necessity. In her oral evidence, however, B conceded that it was not correct that in 2013 they had not been able to afford to keep the property. The reason they identified X House as a property they wished to sell was because A was requesting a formal right to occupy. In his statement in these proceedings, A says that C's reply came as a complete shock and a bolt out of the blue, but that he felt that he had no choice but to accept these terms, as he had on previous occasions. He adds that, at that point, he did not have the funds to afford legal advice. It seems that there was a discussion between the parties at that point, although the terms of that discussion are unclear. No further discussion about the matter took place for some time. In 2014, D sold her property for £455,000. Subsequently, she purchased another house. In March 2015, C sent an email to A asking what his and D's plans were. On 24 March 2015, A replied as follows: 19. 20. "We do have a plan. I am sure you are aware that a move from the property for us is not just a house move, it is also a business move. This means that the criteria for a new property are quite specific with regards to indoor and outdoor space. We have found a property which we feel will accommodate the

business and also give us living space. This property however requires quite a lot of work to be done prior to moving. This work will have to be done in stages over a period of time due to the cost and getting the finances together as we only have a limited budget. Taking this into account, our best guess on a timescale to vacate the property is late 2016 / 2017.” 21. C replied stating that, when they had talked eighteen months earlier, they had mentioned a timescale of eighteen months and that, although he and B did want to put A and D under undue pressure, another eighteen months to two years was too long. He asked for more details of their plans. A replied setting out more details of the property under consideration, and reminding C that he had said he and B would be as flexible as possible. To this, C replied: 22. 23. “I think we’ve been very flexible. I have no income anymore, so I have to sell assets. That being said, the last thing we want to do is to fall out with you, so I’m prepared to honour your backstop date of early 2017, let’s say end Feb, as long as you’ll help us market the property whilst you’re still in residence.” A replied (27 March 2015): “That’s great, we really appreciate your understanding and likewise would not want to fall out with you either. We will of course help with marketing the property prior to us vacating.” A says that at this point he was still unable to afford legal advice. He adds that he was at that point was under the impression that B and C were in financial difficulty, although he maintains that it is now clear that their financial position was, and continues to be, significantly better than his own. He says that he feels that they misled him and bullied him into agreeing to move out of his home and place of work. Subsequently, A took legal advice and says that he was told that he could pursue financial claims under the Matrimonial Causes Act 1973 if they had been made in the original divorce petition. He hoped that he and B could resolve things amicably and therefore suggested they attend mediation. B says that she was shocked when A got in touch with her in January 2016 suggesting that they attend mediation regarding financial issues from the divorce. On 3 March 2016, she issued a section 21 notice for A to vacate the property before 7 May 2016. In fact, on 8 February 2016, A had issued a Form A seeking all forms of financial relief. On 9 May 2016, B filed an application to strike out his claim on the grounds of lack of court jurisdiction in accordance with s.28(3) of the Matrimonial Causes Act 1973 and FPR 4.4(1)(a) and 4.4(1)(b). The FDA was heard on 18 May 2016 by DDJ Hudd. At that stage, directions were made for the filing of statements and the hearing of the application to strike out was listed before a judge of the Family Division. 24. The application came before this court initially on 7 October 2016. At that point, there was insufficient time to hear it and the matter was adjourned. On the evening before that hearing, however, A disclosed a statement from his former solicitor at the time of the divorce proceedings, supporting his contention that he had made an application for financial relief within his divorce petition. She said that it was her personal practice to tick all the boxes in the petition, including the prayer for what was then called ancillary relief, and that she would have definitely done so on that occasion. In the light of that last-minute evidence, B through her solicitors abandoned her claim under rule 4.4(1)(a) but indicated that she wished to pursue her alternative claim for a strike out under rule 4.4(1)(b). That application was relisted for a further hearing, at the conclusion of which judgment was reserved. On 26 January 2018, I handed down the judgment referred to above refusing the application to

strike out the claim, reserving the costs of that application to be determined at the conclusion of the substantive hearing. Subsequently on 6 February 2018, I gave case management directions for the determination of A's claim for financial remedies. Those directions were complied with and the substantive hearing of the claim took place before me on 11 and 12 April 2018. Written submissions were prepared by counsel and supplemented at a further oral hearing on 10 May 2018, at the conclusion of which I reserved judgment. Throughout this period, A has continued to work with D in her soft furnishings business. It has not yet made any significant profits, although A stated in evidence that he believed that the business had turned the corner and would shortly become more profitable. It is his case that the property which D has purchased would not be suitable for running the business. Meanwhile, A has incurred debts amounting to around £40,000. 25. 26. The Law 27. A's claim under the Matrimonial Causes Act 1973 is for financial provision in the form of a lump sum under s.23 and a property adjustment order under s.24. In determining that application, I have regard to the matters set out in s.25. Under s.25(1), the court must have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family, and in particular must have regard to the matters listed in s.25(2) (a) to (h): "(a) (b) (c) 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; the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; the standard of living enjoyed by the family before the breakdown of the marriage; (d) the age of each party to the marriage and the duration of the marriage; (e) any physical or mental disability of either of the parties to the marriage; (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family; (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

- (h) ... 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." 28. 29. The statutory provisions have, of course, been the subject of voluminous analysis and interpretation by the courts in the 45 years since the Act was passed. Strikingly, however, neither counsel has identified any previous reported case in which the facts were closely aligned to those of the present proceedings and only a handful of cases in which a claim has been brought to court many years after the marriage came to an end. The current interpretation of s.25 is governed by two decisions of the House of Lords in *White v White* [2001] 1 AC 596 (hereafter "White") and *Miller v Miller; McFarlane v McFarlane* [2006] 1 FLR 1186 (hereafter "Miller"). In *White v White* [2001] Lord Nicholls of Birkenhead at page 605 identified the fundamental principle: "... the legislation does not state explicitly what is to be the aim of the courts when exercising these wide powers. Implicitly, the objective must be to achieve a fair outcome. The purpose of these powers is to enable the court to make fair

financial arrangements on after divorce in the absence of agreement between the former spouses The powers must always be exercised with this objective in view, giving first consideration to the welfare of the children.” 30. In Miller, Lord Nicholls made further observations about the requirement of fairness. At paragraph 4, he observed: “Fairness is an elusive concept. It is an instinctive response to a given set of facts. Ultimately it is grounded in social and moral values. These values, or attitudes, can be stated. But they cannot be justified, or refuted, by any objective process of logical reasoning. Moreover, they change from one generation to the next. It is not surprising, therefore, that in the present context there can be different views on the requirements of fairness in any particular case.” At paragraph 26, he added: “Fairness has a broad horizon.” 31. In White, Lord Nicholls identified a crucial aspect of fairness at page 605: “there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. [W]hatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties’ contributions. This is implicit in the very language of paragraph (f): ‘the contributions which each ... has made or is likely ... to make to the welfare of the family, including any contribution by looking after the home or caring for the family’. If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer.” 32. In Miller, Lord Nicholls developed the analysis of fairness as follows (at paragraphs 9 to 16): “9. The starting point is surely not controversial. In the search for a fair outcome it is pertinent to have in mind that fairness generates obligations as well as rights. The financial provision made on divorce by one party for the other, still typically the wife, is not in the nature of largesse. It is not a case of ‘taking away’ from one party and ‘giving’ to the other property which ‘belongs’ to the former. The claimant is not a supplicant. Each party to a marriage is entitled to a fair share of the available property. The search is always for what are the requirements of fairness in the particular case.

10. What, then, in principle, are these requirements? The statute provides that first consideration shall be given to the welfare of the children of the marriage Beyond this several elements, or strands are readily discernible. The first is financial needs
11. This element of fairness reflects the fact that to a greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the party should be divided primarily so as to make provision for the parties’ housing and financial needs, taking into account a wide range of matters such as the parties’ ages, their future earning capacity, the family’s standard of living, at any disability of either party. Most of these needs would have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter

12. In most cases the search for fairness largely begins and ends at this stage. In most cases the available assets are insufficient to provide adequately for the needs of two homes. The court seeks to stretch modest finite resources so far as possible to meet the parties' needs
13. Another strand, recognised more explicitly now than formerly, is compensation. This is aimed at redressing any significant prospective economic disparity between the parties arising from the way they conducted their marriage. For instance, the parties may have arranged their affairs in a way which has greatly advantaged the husband in terms of his earning capacity but left the wife severely handicapped so far as her own earning capacity is concerned ...
15. Compensation and financial needs often overlap in practice, so double-counting has to be avoided. But they are distinct concepts, and they are far from co-terminous. The claimant wife may be able to earn her own living but she may still be entitled to a measure of compensation.
16. A third strand is sharing. This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends, each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less." 33. In her speech in *Miller*, Baroness Hale of Richmond identified the same three potential reasons - needs, compensation, and sharing - for the redistribution of resources from one party to another following divorce, whilst acknowledging that one must be careful to avoid double counting. At paragraph 137 she said: "The cardinal feature is that each is looking at factors which are linked to the parties' relationship, either causally or temporally, and not to extrinsic unrelated factors, such as a disability arising after the marriage has ended." She continued at paragraph 138: "the most common rationale is that the relationship has generated needs which it is right that the other party should meet. In the great majority of cases, the court is trying to ensure that each party and their children have enough to supply their needs, set at a level as close as possible to the standard of living which they enjoyed during the marriage This is a perfectly sound rationale where the needs are the consequence of the parties' relationship, as they usually are. The most common source of need is the presence of children, whose welfare is always a first consideration But another sort of need is having had to look after children or other family members in the past. Many parents have seriously compromised their ability to attain self-sufficiency as a result of past family responsibilities. Even if they do their best to re-enter the employment market, it will often be at a lesser level than before, and they will hardly ever be able to make up what they have lost and pension entitlements. A further source of need may be the way in which the parties chose to run their life together. Even dual career families are difficult to manage with completely equal opportunity for both. Compromises often have to be made by one so that the other can get ahead. All couples throughout their lives together have to make choices about who will do what, sometimes forced upon them by

circumstances such as redundancy or low pay, sometimes freely made in the interests of them both. The needs generated by such choices are a perfectly sound rationale for adjusting the parties' respective resources in compensation." 34. 35. The principles identified by the House of Lords in *White and Carter* must be applied to all applications for financial remedies after divorce. But the application of those principles will obviously vary considerably depending on the circumstances of the individual case. I turn next to consider the limited authorities put before me involving the consideration of applications for financial remedies many years after the breakdown of the marriage and divorce. I shall consider them in chronological order. 36. 37. 38. In *Pearce v Pearce* [1980] 1 FLR 261, the wife's claim for financial provision was brought nine years after the parties' separation, during which period she cared for the children exclusively. For the first eight years, the husband had been an undischarged bankrupt and made no financial contributions to the wife. Then he inherited money from his father and the wife applied for a lump sum order. The judge at first instance awarded her £12,000 and this was upheld on appeal. In the Court of Appeal, Ormrod LJ, whilst discouraging applications for financial remedies long after divorce, acknowledged that in some such cases justice required an award to be made. In that case, the fact that the husband never made any financial provision for the wife who had been left with the responsibility of bringing up the children outweighed the lapse of time, and the fact that the husband's subsequent financial resources had come to him by way of inheritance long after the end of the marriage. In *Hill v Hill* [1998] 1 FLR 198, the Court of Appeal held that an order made following the parties' divorce in 1969 under the law preceding the reforms introduced in 1970 which extended the courts' powers to make financial provision and property adjustment orders following divorce did not preclude a wife obtaining leave to apply for lump sum and property adjustment orders in circumstances in which the parties resumed cohabitation 25 years after decree absolute. This decision is further authority for the proposition that an application for financial remedies may be brought years after the divorce, but the judgment provides little assistance to this court because the issue before the Court of Appeal was whether or not leave should be granted to the wife to bring the application, not the merits of the claim nor the quantum of any award. In *M v L (Financial Relief after Overseas Divorce)* [2003] EWHC 328 (Fam) [2003] 2 FLR 425, Coleridge J considered a claim by a wife for financial relief under Part III of the Matrimonial and Family Proceedings Act 1984. The parties had married in 1966 and separated in 1970 after having two children. Although they lived in England throughout the marriage, the husband petitioned for divorce in South Africa because he had retained domicile in that country, and was duly granted a decree. The only order for financial provision made by the South African court was for child maintenance. In 1976, the husband purchased a flat for the wife and children in England and spent considerable sums on improvements. He granted the wife a lease for 11 years, by which time the youngest child was aged 22. After the lease expired, the husband renewed for a further 10 years, and after the expiry of the second period the wife remained in the property and had become a statutory tenant. Meanwhile the husband had remarried and had another child and lived on a substantial income from family trusts, valued at £4.7 million, of which he was the main

beneficiary, with assets of his own valued at £2.2 million. The judge made an order that the property be sold; that the wife should receive 50% of the net sale proceeds, approximately £280,000; that she should receive a further lump sum of £30,000 for repairs to the property prior to sale; and that she should receive what the judge described as “a modest pension for life” in the form of periodical payments of £1000 per month, capitalised at £150,000. 39. In his judgement, Coleridge J observed (at paragraph 31) that the husband “has obviously acknowledged, to himself at least, a moral obligation towards the mother of his two children and has met it in his own way and largely without complaint.” He concluded that the “very simple financial arrangement” which the parties had arrived at prior to the South African divorce which was incorporated in the order made in those proceedings could not be characterised as a fully effective clean break agreement. He justified his order in these terms (at paragraphs 55 to 56): “55. In my judgement, the wife is, in fairness, entitled to an order now as a result of the compounding of four main factors. First, her contribution and role as mother justifies full recognition for the reasons I have identified. Secondly, she has, I find, a real financial need which to some extent arises out of that contribution and which, if not at least partially met, will lead to serious hardship. Thirdly, the wife has, admittedly through his voluntary payments, remained financially dependent on the husband throughout and, although concepts of estoppel are not directly applicable, by analogy it would be very unfair to the wife to allow him to simply walk away from that dependency now ...

56. And the final factor is that, in my judgement, there remains, even now, a liability on the husband arising out of the former marital relationship (which produced the children) and it is the husband’s obligation to meet it if he has the means to do so. In that respect the husband’s financial position is such that, although a division of capital on the basis of modern precepts would be grossly unfair to him, limited provision based on need would be easily within his ability to pay.” 40. Finally, there is the recent case of *Wyatt v Vince*, supra. I have already referred at length to the decision of the Supreme Court in my earlier judgment. As is well known, that case concerned a couple who had been married for two years in the 1980s during which time they had two children and lived in poverty. After the breakdown of the marriage the wife and children remained in that condition with no financial support from the husband. He, after living as a new age traveller for a number of years, started a green energy business which ultimately became extremely successful so that, at the date of the proceedings, he was worth in excess of £50 million. After expanding the principles to be applied by the court when determining an application to strike out an application for financial remedies under rule 4.4.(1), Lord Wilson made some observations about the principles to be applied in cases of this sort and their application to the facts of that case. At paragraph 30, he noted: “The wife’s application faces formidable difficulties. (a) The marital cohabitation subsisted for scarcely more than two years. (b) It broke down 31 years ago. (c) The standards of living enjoyed by the parties prior to the breakdown could not have been lower. (d) The husband did not begin to create his current wealth until 13 years after the breakdown. (e) The wife has made no contribution, direct or indirect to its creation ... (f) [The] wife’s delay in bringing the application appears to be inordinate.” At

paragraph 32, Lord Wilson said out the following principles. “Consistently with a potentially life-long obligation which attend a marriage, there is no time limit for seeking orders for financial provision or property adjustment for the benefit of a spouse following divorce. Ss23(1) and 24(1) of the 1973 Act provide that such orders may be made on granting a decree of divorce (or at any time thereafter). Yet there is a prominent strain of public policy hostile to forensic delay. The court will look critically at explanations for it; and, even irrespective of its effect on the respondent, will be likely, by reason of it and subject to the potency of other factors, to reduce or even to eliminate its provision for the applicant. Nevertheless it remains important to address its effect on the respondent. In some cases, albeit not in the present, a respondent can show that he has assumed financial obligations or otherwise arranges financial affairs in the belief that the applicant would make no claim against him and that he has done so in a way which, even if it were possible, it would not be reasonable for him to put into reverse.” At paragraph 33, Lord Wilson noted that “It is a dangerous fallacy ... That the current law always requires rich men to meet the reasonable needs of their ex-wives In order to sustain a case of need, at any rate if made after many years of separation, a wife must show not only that the need exists but it has been generated by her relationship with her husband. In that case, he warned that it was not clear to him that the wife would be able to sustain her claim based on need. This was not, however, the end of her claim. At paragraph 34, Lord Wilson observed: “But the wife has a point which may prove to be much more powerful the discharge of its duty under section 25 of the 1973 Act, the court will be required, by subsection (2)(f) to have regard to ‘the contributions which each of the parties has made ... to the welfare of the family, including any contribution by looking after the home or caring for the family’. Such contributions are not limited to those made prior to the separation or even during the marriage.” For the reasons explained in his judgment, and as considered in my earlier judgment, Lord Wilson concluded that it was not relevant when determining an application to strike out a claim for financial remedies to consider whether the applicant had a real prospect of success. He added, however, that had it been relevant to ask that question, “my opinion would have been that it had a real prospect of comparatively modest success, perhaps an order which would enable her, like the wife in the Pearce case above, to purchase a somewhat more comfortable, and mortgage-free, home for herself and her remaining dependents.” 41. Subsequently, the wife’s claim was settled for a lump sum of £300,000. The parties’ assets and their open proposals 42. 43. 44. There is no dispute about the value of the parties’ assets in this case. A has no assets at all in his own name, save for a pension in which the value of his preserved benefits is just under £60,000. His wife, D, has assets, including another property but A has no interest in it. He has liabilities, including legal costs, of £40,000. B’s assets are valued at about £4.7 million, plus a pension valued at £780,000. Her assets include a number of properties in her own name, and other properties which she jointly owns with C. These latter jointly-owned properties include their own main 45. 46. 47. home, valued at £2.5 million, and X House, valued at £725,000. B’s share of both properties is 50%. The parties’ open offers are as follows. A’s claim is for occupation of X House for life. He does not seek an order transferring the property to him absolutely. Within the framework of the 1973 Act, and given that the

property is owned jointly by B and C, his solicitors have proposed three possible means of satisfying his claim. First, it is proposed that the court makes an order that B transfers her interest in the property to him upon his undertaking to leave his interest to M and L by will. In addition, under this first option, A proposes that the court makes an order for a contingent lump sum payable by B in the event that C starts proceedings against A in respect of the property under the Trusts of Land and Appointment of Trustees Act 1996. The second option proposed by A is an order that B be ordered to settle her interest in the property upon him. The third option is an order for payment of a lump sum to him by B to the value of the property (£725,000) or such other sum as the court considers fair in order to meet his claim. In addition, A seeks a lump sum payment of £140,000, comprising £40,000 towards his liabilities and £100,000 towards his needs in retirement. In their open offer on behalf of B, her solicitors offered to pay a lump sum of £40,000 within 28 days, but qualified this offer by saying that the lump sum would reduce pound for pound by the extent of the legal fees incurred by B from the date of the offer (3 April 2018). In the offer letter, the solicitors indicated they expected the fees would be at a level that the entirety of the lump sum offered would be expended in costs by the conclusion of the proceedings. Accordingly, in the agreed summary of issues, it was recorded that B seeks the dismissal of the application outright, together with possession of X House. The principal issues 48. In the course of the hearing, a number of issues between the parties were resolved. In particular, A accepted that the funds for the purchase and renovation of X House were provided by C and not derived, as he had previously asserted, from savings accrued by B through her employment. On the other hand, B accepted that the reason why she and C had proposed a sale of X House in 2013 was not because of their financial situation but rather because A was asserting a right occupy the property. B also accepts that A has need for pension provision, although she does not accept that she should be expected to meet that need. 49. The principal issues remaining between the parties at the conclusion of the hearing were as follows.

- (1) Was there an agreement between the parties in 1992 to 1994 which amounted to a final resolution of the financial consequences of the breakdown of their marriage?
- (2) During the discussions prior to the acquisition of X House in 2006, what, if anything, was said by B and C to A about his right occupy the property?
- (3) Why did A agreed to vacate the property in 2013 and again in 2015?
- (4) Does A need X House for his personal and business accommodation?
- (5) To what extent did A suffer disadvantage in his employment and is that disadvantage sufficient to found a claim in compensation? The financial arrangements made after the divorce 50. 51. Following the breakdown of their marriage and the divorce, there was no formal agreement between the parties, nor any court order, concerning the division and allocation of their financial resources. Neither party considered going to lawyers about the financial arrangements. A said in evidence that the divorce had been stressful for the children and he did not want “to get involved in a legal exchange”. B said in evidence, as

quoted above, that she was not aware she had to sign anything and that, as far as she was concerned it was the end. It did not cross her mind to get anything in writing. Nevertheless, it is B's evidence that the parties did sort out all their financial affairs, such as they were, at the end of the marriage. On her account, the assets, in the form of the endowment policies, were divided, the debts, in the form of the negative equity on the former family home, were paid off, and financial provision was paid to B by A in the form of a small lump sum of £10,000 together with ongoing child maintenance. A accepted that B had paid child maintenance but had limited recollection of some of these details. The 2006 conversations 52. In 2006, B and C agreed to provide the sum of £400,000 to enable X House to be purchased for A and the children to occupy. There is a disagreement between the parties as to the basis upon which A occupied the property. It is B's case that she and C bought the property as an investment but, because of concerns about A's health, agreed that he and the children could reside there rent free. A disagrees that the property was bought as an investment by B and C. It is his case that the purchase was prompted by concerns which B and C had about his health, and that it was purchased as a home for him for life. 53. In his first statement in these proceedings, A set out his evidence as to the conversations leading to the acquisition of the property: "In March 2006 I had chest pains and was admitted to hospital ... severe stress was diagnosed. That month I met with B... at her invitation, taking along my financial details. I told her that it was financially hard for me to run the house and that I had accumulated credit card debts. B told me that she would speak to C about my finances and housing situation and come back to me. A couple of days later she phoned me and said that they would clear my credit card liabilities and also that they were going to buy a house for me and the children, for which I had a budget of £400,000. During further discussions, B clarified that the property would be part of the children's inheritance but would be a home for me for life or as long as I wanted to live there. There was no agreement that the applicant and her husband would regain possession once the children were older. If that was the case, then I would anticipate they would have suggested an age such as eighteen or twenty-one, but they did not. There was never any discussion of any limited 54. 55. timescale at all for my living there. In all our discussions it was absolutely clear that this was a home for me for life and one which the children could come back to in the event of their own future relationships ending. This lifted huge pressure from me and gave me the security for my future which I had never been able to give myself." In his oral evidence, A said that he believed that the first mention of X House being his for life was in a phone call with B after she had spoken to C. The second occasion was in a restaurant when B and C were both present. B had said that it was his home for life, and C had added "or until he doesn't want to live there". The purpose of the renovation and extension of the property was to provide a home large enough to accommodate not only A, E and F but also D and her children. In his Form E, A stated that the property X House and the costs of renovating and extending the property were paid for by B and C. He also said, however that B "was able to pursue her career and build up significant assets from which she could afford to buy X House as a home for me". In cross-examination, A conceded that this was incorrect and the funds for the acquisition and improvement of X House were provided by C. He also accepted

that a similar statement later in his Form E, about the source of funds used at a later date to purchase another property for E and his girlfriend, had also been mistaken. In his statement in these proceedings, A said that they (meaning B and C) had paid for the purchase of X House and the subsequent improvements. He accepted in oral evidence that the source of the funds had been C's assets rather than money saved by B. He accepted that what he had said in his Form E and statement had been misleading but insisted that this had been unintentional. 56. In her second statement in these proceedings (at paragraph 35 to 37), B set out her case on this issue as follows: "C and I were concerned as to the effect that A's health was having on the children. We discussed what we could do to support the children. We decided that we should offer to buy a home for A to live in with the children whilst they spent the last two years at home Given our existing property portfolio, it made sense for us to look to buy another investment property and to be able [to] use it to provide a stable and secure home for the remaining years of the children's dependency I spoke to A and suggested that we meet and that he bring with him a list of his debts. They amounted to £8,248 in full. After A and I had met, I took the list home to C. He said we should pay A's debts for the sake of the children. I went back to A with the offer to pay his debts. I told him that we were prepared to buy an investment property that he could live in whilst the children were still at home, he agreed. At no time during the discussions was there ever any suggestion that the property [which] would be acquired would be A's property, or that it would be his home for life. On the contrary, it was always clear that the purpose of the purchase was an investment property used to provide a secure home for the children for so long as they needed it. C was not involved directly in the discussions with A but I did not make any decisions without his input; it was his money. C and I decided to invest between £300,000 and £400,000 into a property. I told A that we should all look for something suitable around this value." 57. In cross-examination, B added to this explanation. "The main aim was to get A back on his feet. He'd hit a wall. The children had needs. L was doing A-levels. C said: 'let's pay off A's debts.' Later that morning he said: 'let's buy a property for A and the children.' I said in that conversation with A that we wanted to invest in property. I said: 'and C thinks it a great idea we invest in property, the children can stay there while still at home and you can stay while looking after the children.'" Questioned further about this by Mrs Rebecca Bailey-Harris on behalf of A, B said that it had been years ago and she could not remember exactly what she had said. She added: "I didn't spell out how long it was for however long the children were at home. I wanted to stabilise E. Give him a bachelor flat, but also stabilise F to get her back to school. Not a time limit. Just while the children were still at home. I did know how long that would be. I had no discussion with A how long it might be." 58. In the course of the proceedings, B produced a copy of a letter sent to her and C in October 2006 by a solicitor whom they had consulted about the proposed purchase of X House. In the letter, the solicitor said inter alia: "As regards ownership of the property I note that whilst the property is being purchased in your joint names, it is in fact for benefit of [B's] children who will be residing there with the father. My initial concern was to any potential right interests the children's father may accrue by virtue of his occupation of the premises. As discussed, although third parties may not be registered against the title deeds,

by virtue of their occupation and particularly where such third parties are contributing towards the property, particularly by virtue of a direct contribution towards the purchase price, contribution towards monthly payments (if any), making rental payments, making alterations or additions to the property to increase its market value or generally meeting usual outgoings in respect of the premises will have an effect as to the rights and interest accrued. Unfortunately, there is no set equation for working out a person's interest in a property and it would ultimately be for a judge to determine but obviously if you could restrict the right that could be accrued or deal with them head-on by means of a tenancy agreement or otherwise, then this would be a preferable option. However, as I note that there will be no assistance with the purchase price, no rent being paid and that any substantial improvements to the property will be funded by yourselves then I would hope that any rights or interests being accrued by [A] will be of a minimum. Further, I note that the property is to be transferred into the children's names imminently in any event. By transferring the property into the children's names you will transfer to them all the rights and interests in respect of the property and as such they will be free to deal with the property as they see fit without the consent of any third party (to include yourselves) and without even your knowledge." 59. In evidence, B explained that in initial discussions with the solicitor they had discussed transferring the property into the names of the children, but decided against doing so. In cross-examination, B said that she did not tell the solicitor that there was to be a time limit on A's occupation of the property. She said that she and C must have told the solicitors there would come a time when A would have to leave the property but agreed that it was not mentioned in the letter. She acknowledged that the letter was advising them of the risk that A might acquire a property right. She said that she and C understood the letter as telling them that the solicitor was concerned A would acquire rights although they would be kept to a minimum if he didn't pay any money. She agreed with Mrs Bailey-Harris that they did not formalise the position by means of a tenancy agreement or take any other steps to ensure that A did not have any interest in the property. At this point in her evidence she added: "we just wanted to let A get back on his feet. Why not carry on? Why not help the father of my children? We thought we were just being kind. There was an impact on the children of A being stressed. We knew we had enough assets to give him plenty of time. We were very friendly with him to have enough time to get out. We assumed that would happen but it was never formalised." B insisted that the purpose of the renovation and extension of the property had been to increase the value of their investment and not to provide accommodation for D and her children. She pointed out that D had not moved into the property until 2009. Why did A agreed to vacate the property in 2013 and again in 2015? 60. 61. I have recited in some detail above the emails that passed between A and C in 2013 and 2015 concerning A's occupation of X House. In the email exchanges, A agreed on more than one occasion to move out, only asking for more time to make necessary arrangements. The question arises as to why he agreed to vacate. His case is that, in sending the email in September 2013, he was to be seeking formal legal security for his existing right of occupation. It is his case that C's response came as a complete surprise but that he felt under pressure to agree to vacate X House at a future date. Equally, he felt under

pressure in the subsequent exchanges by email in 2015. The fact that he agreed to go should not be regarded as an acknowledgement that he had no right to stay but, rather, as a reflection of the respective positions of the parties. The alternative interpretation, advanced by Miss Sally Harrison QC on behalf of B, is that in his initial email in 2013, A was not asserting that he had been granted a right to occupy the property for life but was rather asking C to grant him a right to secure his position should anything happen to him and B. When C refused to grant him a right to occupy but instead asked him to leave, A did not demur but rather agreed to go if he was given time to make alternative arrangements. Does A need X House for his personal and business accommodation? 62. It is A's case that he has a need to continue the present occupation of X House for his personal and business use. He and D continue to run their business in soft furnishings, using the workshop at the property and other rooms at X House for that purpose. After a number of years when the business made little profits, A now contends that it has turned the corner and he anticipates greater profits being earned in future. Although D has acquired another domestic property, apparently initially with the intention of using it for the business, it is said that her property is not now considered suitable to accommodate the business. 63. On behalf of A, Miss Harrison submits that A has had plenty of notice that B and C wish to recover possession of X House, that D's alternative property was acquired with the intention that it could provide personal and business accommodation, and that in the circumstances it cannot reasonably be said that X House is needed by A. To what extent did A suffer disadvantage in his employment and is that disadvantage sufficient to found a claim in compensation? 64. 65. It is A's case that he took a series of jobs which enabled him to fulfil his role as primary carer for E and F, that as a result he did not progress as far in his career as he would have done had he not had those responsibilities, and that he ultimately gave up work to care for M after his serious road accident. In response, B challenges the assertion that A has suffered significant disadvantage in employment as a result of his responsibilities towards the children; that he received significant assistance from others in caring for the children, including his successive partners and from B herself; that he has been supported by B and C in various ways throughout the period since the divorce; that he has been able to supplement his income by letting out rooms in X House; and that he is now choosing to work in D's business for limited remuneration when, as he acknowledged in evidence, it would be open to him to find alternative employment at a higher salary. Further submissions 66. On behalf of A, Mrs Bailey-Harris submits that the claim to a right to occupy X House for life or for so long as he wishes, to be effected by a transfer to him of B's interest in the property upon his undertaking to leave it to their children by will, is based primarily on a relation-generated need. Mrs Bailey-Harris relies on the authority of *Miller and Wyatt v Vince* in support of the proposition that a claim can be based on a relationship-generated need notwithstanding the fact that it is made after many years of separation. It is submitted that the unmet need arises from a promise about A's occupation of X House which A says was made by B in 2006 and broken in

2013. It is submitted that no weight should be placed on A's acceptance of the situation in his email sent in 2013 and his subsequent agreement to leave the property in 2015 because he was at those points under pressure from B and C. It is submitted that X House is required for his accommodation and business needs. The property purchased by D in 2015 is now considered unsuitable for running the soft furnishings business. 67. Further or alternatively, it is submitted that A has foregone employment opportunities as a result of his role as a primary carer of the children and is therefore entitled to compensation from B under the principles expounded in *White and Miller*. Furthermore, A has been able to build up a pension on a scale available to B. For these reasons, he seeks a lump-sum order in addition to the order claimed in respect of X House. 68. A also seeks a further lump-sum to meet his liabilities. But on his behalf, Mrs Bailey Harris suggests that this claim can be addressed in large part by the court's determination as to the costs of the strike-out hearings. On his behalf, she seeks an order that B should pay A's costs of the first appointment in May 2016 and both of the hearings in respect of the application to strike out A's financial remedies claim under rule 4.4(1). She submits that, in the light of the decision in *Wyatt v Vince*, the scope for a successful strike-out application is limited and should not have been pursued by B in this case. On behalf of A, Mrs Bailey Harris did not accept the assertion that there had been a lack of diligence in obtaining evidence from A's previous solicitor as to whether the divorce petition included an application for financial relief. In her statement filed shortly before the first hearing of the strike-out application, the solicitor stated that she understood that A had struggled to make contact with her and pointed out that, since she acted for him in the divorce proceedings 25 years earlier, she had married and changed her surname. 69. On behalf of B, Miss Harrison submits, first, that A is demonstrably not a reliable historian and that the Court should reject his evidence on the key issues in the case. She points to errors in the documents filed on his behalf, for example his assertion in his Form E that B had been: 70. "given all the equity in the family home, notwithstanding that I was looking after the children" when in fact there was only a negative equity in the property which was paid off by C. Miss Harrison invites the Court to reject the assertion that A was bullied into vacating the former matrimonial home and submits that the evidence suggests that there was a free and amicable agreement as to financial matters after the divorce. She draws attention to other aspects of his evidence which she submits was vague or unreliable - for example, his evidence about B's redundancy payment, and about the endowment policies. On the principal issue of fact between the parties - concerning the discussions that took place in 2006 prior to the purchase of X House - Miss Harrison invites me to accept the evidence of her client which she contends was clear and cogent and is supported by the extraneous evidence. She further invites the Court to accept B's evidence as to the reasons for renovating and extending X House and to reject A's contention that the works were carried out to provide a home that could accommodate D and her children as well as E and F. Miss Harrison submits that the terms of the emails sent by A in 2013 and 2015, in which he agreed to move out of the property in due course, are inconsistent with a genuine belief that he had a right to occupy the property for life. She submits that it is inconceivable that, if A genuinely

believe that he had such a right and that X House was required to meet his needs, that he would have looked at other accommodation to buy and agreed to leave the property. She submits that his suggestion that he felt bullied into agreeing to leave is contradicted by the terms of the emails themselves which demonstrate the generosity of B and C in allowing him to remain in the property for the time being while he found alternative accommodation. She points out that A recognised that generosity in his response – “That’s great, we really appreciate your understanding”.

71. Miss Harrison submits that A has exaggerated his case that he has suffered economic disadvantage and missed career opportunities as a result of his childcare obligations. She points to the fact that for much of the children’s minority A was in a series of relationships with other women who assisted in childcare and thereby allowed him to 72. 73. 74. take up paid employment. In addition, B was significantly involved with the care of the children at all times. It is Miss Harrison’s submission that A has had every opportunity to readjust financially over the last twelve years. Rather than take the opportunity to maximise his earnings and make provision for his retirement whilst living rent free, he has chosen to spend his earnings, live beyond his means and fallen into debt again. She criticises A for persisting in working in D’s business even though it seems so far that it cannot sustain a viable income for two people. Miss Harrison contends that A is unable to accept the obvious conclusion that working long hours to support the very limited income which the business has generated to date makes no economic sense. She points to the fact that A has acknowledged that he could find employment sufficient to meet his needs and make provision for his retirement but has chosen not to do so. B should not be seen as an insurer against all hazards and was not responsible for those elements of A’s needs which resulted from his own choices: *North v North* [2007] EWCA Civ 760 [2008] 1 FLR 158 Miss Harrison also points to the benefits that A has enjoyed as a result of his occupation of the property, living rent free there for the past 12 years and enjoying income from lodgers and family members staying at the property. In those circumstances, she submits that it is unreasonable for him to look to B to continue to support him by the continued occupation of X House, or to meet his liabilities or provide for him in retirement. It is B’s case that she was unaware that A was entitled to make any further claim following the division of the joint assets after the divorce, or that he would subsequently assert a right to occupy the property for the remainder of his life. Had she been aware of this possibility, she and C would never have agreed to the acquisition of X House in 2006, nor to the extensive renovation works that were subsequently undertaken. On her behalf, Miss Harrison contends that, in reality, this case a proprietary estoppel claim in all but name but that such an estoppel claim could not succeed because the facts demonstrate that A has suffered no detriment. In all the circumstances, she submits that it will be wrong to make any financial remedies order in this case. So far as the costs of the strike out application, Miss Harrison submits that A should pay the costs of the first hearing because his failure to obtain and disclose evidence as to the contents of his divorce petition led to considerable legal costs being incurred on B’s behalf. As for the second hearing, whilst acknowledging that the strike out application was

unsuccessful, Miss Harrison submits that the appropriate order is no order as to costs. Further discussion and conclusion 75. I accept Miss Harrison's submissions as to the reliability of the parties' evidence. In the main, B was an impressive and measured witness with a reasonably clear recollection of events, notwithstanding the fact that many of them took place a long time ago. On the other hand, I found A to be a hesitant, vague and at times inconsistent witness. I take into account the fact that he was clearly feeling unwell for a period during his evidence. At one point, he collapsed in the witness box and was taken to hospital for a precautionary check. Making all allowances for that factor, however, I was unimpressed with his evidence. I do not think that he was being 76. 77. 78. 79. deliberately evasive, but overall I do not think his evidence was reliable on a number of the key issues. I accept B's evidence that she paid £10,000 from a redundancy payment to A. The fact that A was unable to recall this payment, which must have been of considerable benefit to him given the limited resources available in 1992, indicates that his recollection of events is unreliable. I further accept B's account of the conversations that took place about A moving out of the family home. I do not accept A's evidence that he only moved out under pressure. I find that it was an amicable agreement that reflected the financial realities. I also accept B's evidence that the former family home was sold with a negative equity and that the net liabilities on the property were paid off by C. The fact that A erroneously stated in his Form E that B had benefited from the equity in the property is further evidence that his recollection of events is unreliable. I also accept B's evidence as to the division of the endowment policies. The fact that A was unable to remember what had happened about the policies is yet further evidence of his unreliability as a historian. Despite the absence of a formal agreement, I find that the parties did reach an informal agreement concerning financial matters in the period 1992 to 1994 with which each was satisfied and which was fair in all the circumstances. A contended that he had felt pressurised into accepting the arrangements. I do not accept his evidence that he felt under pressure. The matrimonial home was sold with a negative equity and B (using funds provided by C) paid off the outstanding debt. The jointly- owned assets (namely the insurance policies) were divided equally between the parties. I also accept B's evidence that she paid A a lump sum amounting to one third of her redundancy payment. In addition, she agreed to pay periodical payments for the children who were living principally in the care of their father. In my judgement, this amounted to a comprehensive resolution of the financial arrangements arising from the marriage and divorce. I am confident that, if the parties had been asked at the end of 1994 whether there was anything outstanding to be resolved between them, they would have said no. As B said, "it was the end". The fact that the parties had resolved their financial arrangements by the end of 1994 does not, by itself, preclude either party seeking financial relief under the Matrimonial Causes Act 1973, but it is a significant factor to be taken into account when considering any subsequent claim. Importantly, having considered carefully the evidence given by both parties, I accept B's account about the conversations in 2006 concerning the terms on which X House was to be acquired. I reject A's case that either B or C expressly said to him that he could occupy the property for life or for as long as he needed it. I accept B's evidence that her concern was to

help A get back on his feet so he could continue to care for and support the children. I find that nothing was said expressly about if and when A would be expected to leave the property that was being acquired. A may have come to assume that he would be able to live there indefinitely, but neither B nor C made any promises or statements to that effect. I find that, when A sent the email in 2013 asking C to execute a formal a right to occupy the property, he was not requesting him to put into writing a right which he already enjoyed, but rather to grant him a right which would be binding on a successor in title should anything happen to B and C. 80. 81. 82. 83. There are three further factors which support this conclusion. First, it is consistent with the letter sent by the solicitors to B and C in 2006 as quoted above. If B and C had told A that he could remain in the property for life or for as long as he needed it, they would surely have mentioned this to the solicitor. There is nothing in the solicitor's letter to suggest that they did. On the contrary, the contents of the letter demonstrate that they did not. The second factor is the substantial renovation and extension of the property carried out by B and C. If it had indeed been agreed that A could occupy X House for the rest of his life, it is in my judgement highly improbable that they would have spent over £200,000 on improving and expanding the property. That level of expenditure supports B's assertion that the property was purchased as an investment. Thirdly, if the terms agreed by the parties in 2006 were as A now alleges, he would surely have drawn attention to them in the email exchanges in 2013 and

2015. I accept Miss Harrison's submission that A's conduct in 2013 and 2015 – his agreement to move out of the property and his subsequent assertion that he and D had acquired alternative accommodation – is inconsistent with his case to this court that he genuinely believed he had a right to occupy X House for life. I also accept Miss Harrison's submission that A's accusation of bullying is disproved by the terms of the emails themselves which demonstrate the reasonableness of B and C in allowing him to remain in the property for the time being while he found alternative accommodation. Looking at the overall history of events after the acquisition of X House, I agree with Miss Harrison's description of B and C's conduct towards A. They were fair and generous in agreeing to allow him to rent out rooms at the property and keep the income and erect a workshop in the garden. I take into account the fact that, as B conceded in cross-examination, it was not correct, as asserted by C in the emails, that the parties could not afford to keep X House and needed to sell it. Having considered that aspect of the evidence carefully, I find that it does not affect my overall assessment of the circumstances surrounding the acquisition and occupation of the property. It is now clearly established that, in certain circumstances, a party to matrimonial proceedings may be awarded financial remedies many years after the divorce. There are, however, a number of ways in which the facts of this case can be distinguished from those of the three reported cases cited above – *Pearce, M v L*, and *Wyatt v Vince* – in which an order was made many years after the parties were divorced. One distinction without a difference is the fact that the applicant in this case is a man. There is no reason why a man should not succeed in such a claim if the circumstances justify an award. There are, however, a number of other differences of far greater significance. First, as set out

above, I find that, unlike the parties in *Pearce*, *M v L*, and *Wyatt v Vince*, A and B had reached a comprehensive agreement concerning the division of the limited resources following the divorce in 1992 to 1994. In *M v L*, the only financial provision given to the wife was under the limited child maintenance order made in South Africa. In *Pearce* and *Wyatt v Vince*, the wives were left without any financial support whatsoever. In contrast, in the present case, A and B divided the limited capital assets, namely the four endowment policies by agreement; B agreed to give A a small lump sum out of her redundancy payment; she took on the responsibility of paying the debts arising out of the negative equity in the former matrimonial home; and she also agreed to pay substantial child maintenance to A. I 84. 85. 86. reject A's assertion that he was bullied into this arrangement. As stated above, I find that the parties reached a fair and amicable resolution of all financial issues that existed at that stage in their lives. Secondly, in contrast to the applicants in *Pearce* and *Wyatt v Vince* - each of whom was left caring for children during the intervening years with little or no assistance - in this case A has received considerable assistance by way of financial payment and other support from B throughout the children's minority. In particular, in 2006, he was provided with a rent-free property of substantial size. The property was renovated and extended at no cost to himself. His debts were paid off. The level of periodical payments was increased. Thereafter, he was allowed to have lodgers living in the property and keep whatever rent they paid. In *Pearce*, it was said of the husband by Ormrod LJ that he: "has never attempted to discharge obligations in relation to these three children. The whole responsibility has been placed on the wife, whose life must be made very difficult all these years." In contrast, in the present case, A has been assisted in discharging his obligations to the children. The responsibility for caring and supporting the children has been shared between the parties, and any difficulties which A has experienced on occasions have been substantially ameliorated by B's generosity. Thirdly, although A undeniably has financial needs, they are not on a scale experienced by the wives in the three reported cases. Furthermore, they are in my judgment not needs which B can fairly be asked to meet. A's wife D has a property in which A and D could plainly reside. Furthermore, in so far as A and D need assistance to support their business, I do not think it would be fair to expect B to provide it. As result of the financial support which B has provided hitherto, A has been able to choose to continue working in the business started by D, notwithstanding the limited profits it has so far generated. His evidence to this court was that the business has now turned a corner and he expects it to make higher profits in future. If it does not, and given his good track record of employment, it would not be unreasonable to expect him to seek alternative paid work again. Fourthly, although I accept that A has arranged his working life around his responsibilities towards the children, I do not accept that he has suffered a disadvantage in his career so as to found a claim based in compensation. I accept B's evidence that, for a significant part of the children's minority, A was in a series of relationships with women who assisted in the childcare and in those circumstances he was able to work full-time. It is clear that his current employment working alongside D in her soft furnishing business is a career choice which he has been able to make because of the financial support he has

received from B. It could therefore be argued that, far from being put at a disadvantage in his career by being deprived of financial support, he has been provided with support by B at a level which has enabled him, at least latterly, to follow the career and life of his choice. 87. Fifthly, unlike the husband in *Wyatt v Vince*, it is in my judgment plain that B has assumed financial obligations towards A and arranged her financial affairs on the assumption that A could not and would not make any claim against her. I accept her 88. 89. 90. 91. evidence that, had she known that A would make a claim, she would not have agreed to the extensive provision that she made in 2006. As noted above, in *Wyatt v Vince*, Lord Wilson at paragraph 32 recognised “the prominent strain of public policy hostile to forensic delay”. He observed that, in cases where there is a long delay between the end of the marriage and the prosecution of the claim for financial remedies, “the court will look critically at explanations for it; and, even irrespective of its effect on the respondent, will be likely, by reason of it and subject to the potency of other factors, to reduce or even to eliminate its provision for the applicant.” In this case, I find that the reason for the delay was that both parties considered that they had resolved the financial issues arising on their divorce in the informal agreement that they reached in 1992 to 1994, and it was not until 2015 that A was alerted in 2015 to the possibility that his claim may have survived. Furthermore, and in contrast to earlier cases, B has made a significant contribution, including a financial and material contribution, to the care of the children throughout their childhood and beyond, and has provided additional support to A which has not only helped him to look after the children but also has given him a measure of freedom to choose his employment. In so far as A now has needs, they are not the consequence of the parties’ relationship, nor of his responsibilities to the children, but rather of the way he has chosen to run his life. I conclude that the circumstances do not justify any order for financial provision for the applicant. That is the fair outcome of these proceedings. The claim is therefore dismissed. As noted above, both counsel made submissions as to the costs of the earlier strike out applications. It is possible, however, that one or both of the parties may wish to make supplemental submissions on that issue in the light of my judgment. I shall therefore direct that any such supplemental submissions shall be filed no later than 7 days from the date on which this judgment is handed down.

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