

JERSEY / JUDGMENT

H -v- J (Matrimonial) [2013]

JRC 194B (03 October 2013)

[2013] JRC 194B

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judgment

the registrar: 1. This is an application by the wife for ancillary relief. The parties were married in August 1994, the wife is aged 46 and husband 49. There are two children, A born in 1996 aged 16 and B born in 1999, aged 14. A Decree Nisi has been pronounced on the 19th December, 2012 on the grounds of the husband's unreasonable behaviour. 2. The children continue to live with their mother at the property C, Grouville, Jersey, in which the wife's mother, K has a life interest in the property. The wife is by occupation a physiotherapist assistant but is off work due to stress. The husband was a policeman but is now unemployed and in receipt of Long term incapacity allowance (LTIA) at a 60% rate and income support. 3. The wife was represented by Advocate Whittaker, the husband by Advocate Godden. There were bundles of documents and additional bundles. I heard from the parties and from D called on behalf of the wife. The hearing was listed for the 11th and 12th September but then was heard further on the 3rd October, 2013 to give the wife more time to clarify her open position and for the husband to consider it. 4. There is a considerable difference in the open positions of the husband and wife. The husband proposes that the Former Matrimonial Home ("FMH") is sold on trigger events in the future namely, the lifetime interest of his mother-in-law, K, coming to an end or both children attaining the age of 18, i.e. 17th August, 2017, whichever is the later. The property would then be sold and the net proceeds divided between him and the wife. He does however seek a lump sum of £10,000 now. Latest open positions 5. The wife's position dated the 27th September 2013:- (i) That there shall be a clean break between the parties. (ii) The respondent shall transfer his interest in the Former Matrimonial Home (the FMH) to the petitioner within 6 weeks of the date of the Order upon condition that:- (a) The petitioner shall bear the reasonable costs of the respondent in relation to the transfer; and (b) She shall take sole responsibility for the repayment of the mortgage with Skipton International and shall use her best endeavours to ensure that the respondent's name is removed from the mortgage documents. (iii) The petitioner shall take over sole responsibility for the repayment of the payments due to K in respect of the contractual obligations of the parties, this in the quantified sum of £70,675 as at the 30th April 2013 and on-going in respect of the rates and utilities in respect of the FMH. (iv) The petitioner shall pay to the respondent the sum of £30,000. This figure is calculated to take into account:- (a) the pension values which are now known in full; (b) the PEP; (c) the addition to the mortgage in respect of the boat G and the car;

(d) the very significant difference in contributions to date on the part of the parties including the unmatched contribution made by the petitioner through H's transfer of the property C; (e) the assumption by the petitioner of:- (1) the liability for the repayment of the monies owed to K by the parties; (2) the repayments of mortgage capital and interest made by the petitioner since 1st August 2012; (f) the failure of the respondent to contribute towards the maintenance of the petitioner and the children from in or about August 2010 to date; and (g) finally, the fact that the petitioner will have by far the greater responsibility and contribution towards the care and costs of maintaining and housing the children until they finish their education, even should there be any payment of maintenance by the respondent. (v) The sum less any payment in relation to costs as referred to below and any deduction in relation to the secured provision set out at paragraph 9 below shall be payable by the petitioner upon the first occurring of:- (a) the second child completing his education inclusive of further education, whether it be the older or younger child to do so; (b) upon any earlier sale of the FMH by the petitioner; (c) upon the remarriage of the petitioner; (d) her earlier election. (vi) The funds presently held in escrow will be divided on the basis that the funds are divided equally between the parties and the respondent will meet the costs of the divorce as set out in the bill of costs for taxation in the sum of £2,712.50, this from his share. Should there be any shortfall then this will be waived by the petitioner. (vii) Each party shall retain those contents of the FMH and personal effects in his or her possession or otherwise in accordance with the agreement of the parties noted by the court on the 9th September 2013. (viii) Each party will thereafter retain all assets held in his or her own name including for the avoidance of doubt any monies had and received and any pension provision that either might have. (ix) The claims for spousal maintenance and financial provision the one party against the other shall stand dismissed. Child Maintenance 6. The respondent shall pay maintenance for the children of the family from the date of the order until each child shall attain the age of 17 years or complete his education whichever shall be the later. This is calculated to be £60 a week while the respondent is in receipt of LTIA and income support in the sum of £15,000 or thereabouts. Maintenance should be paid upon the same terms that the respondent is receiving payment, i.e. weekly or monthly. 7. The level of maintenance shall be reviewed:- (i) Upon the respondent finding employment and his income from all sources increasing to a level greater than £16,000, whereupon the level of maintenance shall automatically increase to 20% of his income net of tax and social security payments only; (ii) Upon any other material change of circumstances of either party or of either child of the family; (iii) Annually upon the anniversary of this order in accordance with any increase in the Jersey Retail Price index, provided that the level of maintenance shall never fall below that paid in the preceding twelve month period; (iv) For each child as and when he should move to further education or training including any time at Highlands College, Jersey. 8. The payment due to the respondent under the terms of paragraph 4 above shall be held by way of secured provision against the payment of maintenance by the respondent:- (i) The respondent shall in addition to the costs of the divorce referred to in paragraph 4 above, pay a contribution towards the costs of the petitioner in connection with these proceedings in the sum of £25,000 which the petitioner believes is a fair estimate of the additional costs incurred by her to date as a result of the litigation conduct of the respondent including issues of non-disclosure and failure to comply with court orders and failure to

negotiate; (ii) Subject to the payment of costs as set out above, each party should pay his or her own costs in relation to the divorce and settlement of ancillary matters. 9. There should be liberty to apply in relation to the implementation of the Order The husband's open position 10. Is:- (i) That the FMH be transferred into the Petitioner's sole name; (ii) That upon the last of the children attaining the age of 18 i.e. August 2017 or K's lifetime enjoyment of the FMH coming to an end by whatever means (whichever is the latter) the FMH be sold and 50% of the sale proceeds after the deduction of the mortgage and fees be paid to the Respondent; (iii) That from the sale proceeds as set out at paragraph 2 the Petitioner will receive an additional lump sum payment equivalent to half of one quarter of the value of the Respondent's States of Jersey Pension; (iv) That the funds currently held in escrow be divided equally with the Respondent paying the cost of the petition from his proportion but only if that cost does not exceed £1,500; (v) That the remaining contents of the Respondent's in the FMH are to be returned to him (the practical arrangements to be agreed) within 14 days of the Final Hearing; (vi) That each party will retain all other assets currently in their possession; (vii) That both parties abandon their claims to spousal maintenance; (viii) That the Respondent will pay 20% of his net monthly income by way of maintenance for the Children once he is in full time employment; whilst the Respondent remains dependent on benefits he will pay a total of £130 per month made up as follows £50 for the Sky TV at the Former Matrimonial Home, £25 for the Children's mobile phone bills and £50 per month payment to the Petitioner for the Children; (ix) That each party bear their own legal costs; (x) That he receives a lump sum of £10,000 on settlement of these proceedings. History of the marriage 11. The parties met in 1992 when the husband was a Manager of a Woolworths branch in London and the wife was finishing her degree in sports science. In 1993 they became engaged and then lived together until they married. They moved to various locations in England due to his work and they bought E, Kendal, for £57,000 with a deposit from the wife's mother of £3,000 and a "furnishing" loan. The wife worked as a home carer and a part time fitness instructor taking 6 weeks maternity leave for each child. The husband was the main financial contributor as a retail manager. In 2003 the husband decided to train as a police officer. He moved to Jersey in 2004 staying with K and in July 2004, E, was sold with net proceeds amounting to £148,000. The wife and children moved to Jersey and for a year after they moved they lived with K. The husband joined the States of Jersey Police Force and the wife took care of the children and did not work, she says, because the husband was on shifts. In 2005 she inherited £50,000 from an uncle which was shared with the boys, and invested the money in premium bonds. 12. The parties hoped to purchase a property in Jersey and put in an offer of £350,000 on a property but could not afford this because the maximum mortgage the husband could raise was £175,000. Because of the price of properties in Jersey, after discussions with K, in 2005 an agreement was entered into whereby as an early inheritance, the land on which K's home was built would be transferred to the husband and wife, the property would be completely re-built to provide accommodation for them and the children but also to provide a granny home for K. The husband accepted that this worked out as a good solution as it provided them with a bigger property than they could afford. The wife says she agreed with her mother to provide any necessary care for her. They paid K £100,000 which she then paid to the wife's brother by way of compensation for loss of his inheritance. The brother apparently used this as a deposit on a property. The husband says that the wife's brother

signed papers accepting full and final settlement of any claim on the property or land on demise of K, but I have not seen any documents confirming whether or not this is so, and the wife does not accept that there was such an agreement and says that nothing was signed to this effect. They were left with about £30,000 from the E proceeds and had to take out a mortgage of £180,000 with Jersey Home Loans to utilise towards the re-build. The wife project managed the rebuild from July 2005 to 2006. The parties entered into a binding contract with K which recorded the payment of £100,000, required the demolition and construction of a new property which would give K full enjoyment during her life without payment of the ground floor rooms and conservatory and garage and garden to the west, set out in oblique lines on a plan. The existing 4 bedroom bungalow, with kitchen sitting room and dining room was therefore demolished. The husband and the wife were to keep the buildings in a good state of repair and decoration, provide and pay for all services of water, electricity, heating and telephone, but K was to maintain her rooms and keep her part of the garden in good order. The husband and wife were to pay parish rates, comprehensive insurance and should they fail to insure K could then insure and would then be due the money from them. K was not to let anyone else live in her part of the premises or lease it.

13. The wife maintains that with the mortgage of £175,000 at five times the husband's then salary, the most expensive property they could have purchased would have been a property worth £305,000. I do not know how much K's property was worth as it stood but the husband agreed that K could have sold her property for more than £240,000. I do not know how much the rebuilding added to the property price. Whilst the home was being rebuilt they all lived in a rented cottage. The whole build cost £140,000 plus £5,000 for planning etc. The granny flat comprises 2/3rd of the ground floor. By 2007 some of the mortgage had been paid off but they moved their borrowing to the Skipton Building Society for £190,000, in effect borrowing a further £20,000 which I will deal with below. Did K give and lend monies

14. K had intervened in these ancillary relief proceedings but she then withdrew from them. Prior to withdrawing, she filed a schedule setting out monies totalling £70,675 she said were owed to her, but her lawyer stated that in addition, and in accordance with the contractual agreement between her and the parties, there are on-going monies owed to her as she continues to pay for services and rates. The wife agrees with the schedule provided by her mother but the husband does not and he filed a response. K then withdrew from the proceedings in July 2013; her position is that it was not cost effective to remain as an intervenor. I was asked to note by her lawyer that she was withdrawing from this case on the basis that the matter is a civil claim that will be pursued in the Civil Court. She has not yet started proceedings against her daughter and soon to be ex son-in-law and I do not know whether she will do so. The wife is offering in these proceedings in effect to offset the £70,675.60 she claims is owed to her mother against the husband's claim in these ancillary relief proceedings. The wife says that under the terms of the contract there were items they should have paid for but they ran out of funds. There has been no opportunity to question K as to whether the monies she says was spent by her as she was not called as a witness. The contract between the husband and wife and K says they are to carry out "grosses reparations", i.e. structural repairs not only to the exterior of the property but also to the interior including the drains, pipes, manhole covers, cable, conduits and other appurtenances. K is obliged to maintain the interior of her part of the building. What liability do the husband and wife have to K? I have

looked through the agreement and list which is for a total claim of £68,075. The husband points out that he and the wife are responsible for "grosses reparations" and he takes issue with K's list. It is extremely unfortunate that K withdrew from these proceedings as I am not in a position to say how much she is owed. For example, of the £10,000 claimed for glazing and conservatory; the husband says these costs were covered in the total cost of the property. There is a sum of £1,500 for decoration but I do not know if it is for the interior as interior decorations are K's responsibility. There is a sum for a wheelchair ramp of £3,195, but under the terms of the contract I am not clear the parties have to provide this and in any case the husband says that this was "created" by her son and is "unlikely to have resulted in such cost or any cost at all" .

Alterations to the shower (disabled access) are costed at £2,451; the husband says he is not aware of any alterations and at the time of the build the shower included a seat and hand rail. This does not appear to be their responsibility if K wished to alter this for her benefit. There are items on the list which are for the interior of the property and which appear to be K's responsibility such as a fridge freezer, microwave, bedroom furniture, curtains, and blinds. She has claimed £100 for garden plants but the husband says these do not form part of the property maintenance or upkeep and this would appear to be so, as there is nothing about keeping the garden in a good state of repair. 15. There are claims for service charges, rates and insurance which contractually the husband and wife were and are to provide. Does the contract mean they are responsible for her telephone calls as well as for paying the line charge? The husband says he did borrow money from K for the boat called F but this was recorded in writing as a loan. He disputes any money is owed to K and of the monies spent by K on or for them, he maintains that it was her choice to give it to them. There is also a claim for rent for June 2005 to March 2006 - the husband says the parties agreed to share this cost of £4,644.27. In addition, K claims monies outstanding of £500 towards F and £1,000 towards settees. I do not accept that on the face of it K is owed the total sum of £70,675.60 and as her lawyer has pointed out it is open for K to pursue the parties for monies she claims are owed by them to her. 16. It has been submitted by Advocate Whittaker that in respect of the advances of monies on the wife's inheritance, these sums can be brought back into account against her mother's estate when her mother dies. Valuation of C 17. The valuation of the C is by Gaudin & Co is now agreed at £750,000 with vacant possession but taking into account K's lifetime interest only £450,000. This lower valuation is based on the fact that she is 83 years old. She has had a stroke and has not been well, but is getting better. Her mother was 97 when she died. Health Issues of the Husband 18. The husband says that a factor in the breakdown of the marriage was his mental health issues. He says this stemmed from being a passenger in a police car which crashed answering a high priority call. He suffered back and shoulder injuries, and the female driving the other car involved in the crash died. The accident he said affected his state of mind and he said that because of this and the physical injuries he stopped playing sports and became withdrawn. The wife says he was offered counselling but he went straight back to work and there were no issues, so what happened in 2010 when the marriage was breaking down had nothing to do with the accident. She said he stopped playing sport because he was on shift work. The wife says his behaviour changed from 2010 because he had begun an affair, so this was the reason for the change in his behaviour not health issues and she does not accept that he was suffering from depression. However, it is a fact that from periods in 2010 onwards until he left the

police force in 2012, the husband was signed off work from time to time for depression and symptoms of cognitive limitation. Reports dating from September 2010 to March 2012 were produced which had been provided by AXA health to the HR department of the States of Jersey Police Force. From 2010 he worked intermittently and resigned from the police on 20th August, 2012 effective on 20th September, 2012. He maintains that the way the police treated him contributed to his illness. He says he continues to have health issues and he is now on LTIA with a 60% entitlement, to be reviewed on the 5th March 2014. He is permitted to work whilst in receipt of LTIA. Health issues of the wife 19. Before 2010 the wife's health was good. The breakdown of the marriage has had a psychological effect on her and she has suffered from depression. She has been signed off from work since May 2013. The wife is in receipt of Short Term incapacity allowance ("STIA") but she anticipates being well enough to return to work when these proceedings are over. Break down of Marriage 20. The wife was very upset as she had supported the husband during his mental health problems only to discover he was having an affair. She felt she was manipulated by him as she says she supported him fully in 2010 and 2011 because of what she thought of as his fragile mental state. The wife says she then discovered the husband began an affair in 2010 and he has had various sexual encounters with women since. He gave evidence that he is not co-habiting with a L but she is a "friend with benefits". By the end of October, 2010 he was spending more time away from the wife and she says from there on he spent monies on himself but reduced spending on her and the children. In early 2011 he returned to work but he was then signed off and by July 2011 left the house completely. 21. The wife says the husband became unreasonably hostile to her and the children and he accepts that his behaviour was not "exemplary". The mother said during 2011 she was down playing incidents of abuse so as not to affect his job as a police officer but she spoke to the Police Welfare Advisor, and Children's Service prepared an initial assessment report. The Children's Service report made recommendations for the husband to follow, failing which the mother was advised to seek legal advice regarding injunctions or other means of protecting herself and the children. The husband however said that the report was slanted and he did not realise "what depressions can do". He attended an ADAPT course from July 2012 which he did not complete. 22. In July 2012 he was suspended by the police, having returned to work in March 2012. He had disputed that this was so but at the hearing agreed he had been suspended. By August 2012 the police gave him the option to resign due to ill health or face disciplinary proceedings. It appeared that this was because he had failed to comply with orders not to associate with certain people, although he had previously said this was because the "level of his work was suffering" as a result of health issues. Had the disciplinary proceedings against him been successful, he could have been dismissed from the service and resulting in loss of his pension. He resigned, his resignation becoming effective on 20th September, 2012. The wife says he put himself in the situation and he could still be earning £30,000 to £40,000 if he did what the police wanted but he said he was unable to do this as they were his friends. 23. The husband returned to the property on several occasions after he had left in July 2011 and on occasions the police were called due to his behaviour. The wife did send a text to the husband's mother in August 2013 expressing her anger about the husband. She said she was not proud about doing this. The husband's finances 24. As a policeman, the husband's income was £45,000 gross, earning about £4,000 per month. In October 2007 the parties moved

the mortgage from Jersey Home Loans to Skipton International and it was increased by a further £20,000 minus fees. The husband had said he could not recollect what the £20,000 was spent on but the wife maintained that he used the monies to purchase the speedboat, G, for £10,500 and pay off the monies on his BMW. In his response to the schedule of deficiencies he did concede that "some of the funds may have been used to purchase the same (G)". I find that the monies were used as claimed by the wife. On 21st September, 2010, K lent him £12,500 to purchase a boat known as F, to be repaid within 12 months from the sale of G. F was the subject of an insurance claim at the end of 2011 and the insurers paid K £8,500. From about mid-2010 until 2011 he apparently lived on his boat or with friends. It is not clear where exactly he lived but in May 2012 he entered into a licence agreement for an annex in St Mary costing £800 per month, but there was no standing order set up for payment - cash payments of £800 were made from time to time. Although he was on sick leave from time to time until he left the police force in September 2012, his pay fluctuated but he did have his pay. From the middle of 2011 he paid the mortgage of £1,525 per month and mortgage insurance, together with Sky and half the telephone bills for the boys. His final wage in October 2012 totalled approximately £5,870 to include overtime and holiday allowance. He stopped paying the mortgage when his salary ceased. He produced a schedule of payments made by him from December 2011 to July 2013. In December 2011, the husband encashed a PEP he says at the wife's request, but she maintains without her knowledge, for £10,258, his earning in December 2011 being £4,214 to pay his personal debts. Having heard the evidence, I accept it was without her knowledge. The husband accepted he was not good with money, left the wife to deal with the finances, and said he could not pass an ATM without using it. The wife said that the husband was always a spender, was keen on presenting an image and she did not have a say in how he spend his wages; they had separate bank accounts. 25. He has borrowed regularly from his parents including to pay his legal fees, and they have helped him with the cost of accommodation after the breakdown of the marriage and paid off his overdraft in Preston and other bills. Over the years they have helped him but from 2005 to 2010 he did not need their help. In November 2012 they had helped with rent and deposit of £1,600 and paid directly to a letting agency in April and May 2013. He said that his parents "could tell where I was a liability to myself" and "they helped me as a gift." However, he now does owe his parents who are pensioners money they have paid for his legal fees. 26. He has not yet filed his income tax returns for 2011 and 2012 and said "I will keep ducking until they catch up with me". 27. The husband in his affidavit sworn the 3rd September, 2013 stated his current income is £199.57 per week from income support and £449.40 per month from LTIA, totalling £305 per week or £15,700 per annum. However the Social Security letter dated 3rd June, 2013 states his LTIA is £112.35 per week and it is paid every 4 weeks at £449.40, rather than monthly so his total income is £311.92 per week or £1,351.65 per month, about £16,273 per annum. He produced a licence agreement for rooms at M costing £800 per month or £184.61 per week. He gets income support to help him with his rent. His schedule of expenditure shows spending of £1,712 per month. However this includes £75 per month payments for the children, and he spends £175 per month on a Car HP (his Audi had cost £300 per month), £25 on car insurance and £17 on motorbike insurance. The evidence he gave regarding payments for cars did not make economic sense and he acquired cars which he could not afford. In 2011, while off work, he exchanged a BMW for a new Audi

convertible costing £26,000, and in 2012 for a Mini Cooper sport convertible car - now worth about £15,410 with a car loan of £9,951. He was asked, if he was claiming he was short of cash at that moment he purchased the Mini, why he could not have sold the Audi, paid off the finance and bought a car for about £6,000 but he said that this was not something he could have done. He could sell this, getting a cheaper car and saving on HP payments, but said he wanted to keep the Mini as it was the "last remnant of a lifestyle". He could sell his motorbike which is worth £1,650 and which costs him £17 per month although he said it needs repairs done on it. He has now sold his first boat, G (bought on the mortgage) in February 2013 and the net funds of £4,992 are held in escrow by Le Gallais & Luce. The dinghy he said had gone missing and it then transpired that the wife had given it away. The wife queried his expenditure on petrol of £80 per month - he does not have to travel to and from work at present. 28. The husband accepted that he has a "friend with benefits" L and gave evidence he does not cohabit with her at present nor does he plan to do so, she is unemployed and she is not a "regular partner" and he does not give her or her children any money. I accept that he is not cohabiting with her at present but he accepts he spends time with her and other friends who live in the area where she resides, is seen out with her and he did not deny he takes her children to school. Whether he does cohabit with her after this court case is over remains to be seen - he gave evidence that he was aware of surveillance by D. 29. The husband gave details of jobs he has applied for since leaving the police, and I accept that he would rather be working. If he got a job now he would lose income support but would still keep LTIA as a top up. Disclosure 30. There has been an issue about disclosure but I do not consider that there are hidden assets. The husband says that the wife had the files and paperwork was being sent to C which made it difficult for him in respect of disclosure. He found the matters emotionally draining, he was depressed and lacked concentration. He accepted he had not dealt with matters properly and wished he had done so. He filed responses to a schedule of deficiencies. He said that some disclosure was on time. He accepted that his and the wife's cost were increased due to his lack of disclosure but pointed out that he did not employ someone else (D) to assist him as the wife had done. He said there was no intention of misleading, but when asked about the lack of Income tax returns for 2011 and 2012 he said "I'll keep ducking." He also stated he felt that the information required was oppressive and there was a vendetta against him, in response to why he had not provided bank statements and addresses of where he lived when requested. An additional bundle of documentation was produced on his behalf just before the hearing on the 9th September, 2013. He was asked why he had made no reference to the Preston bank account in his affidavit of means of November 2012, nor did he provide bank statements from any accounts to accompany the affidavit, nor did he refer to his motorbike. With regard to the Preston Bank account he said he was not using it, and no statements for the Barclays Preston account 608 were provided for the hearing, apart from one showing a balance of £18. The account was opened when he was 16 so his signature had changed and he said that he had been unable to get statements in time although he should have produced them months before. He accepted that by failing to mention the account at all, it looked suspicious but the fact that he also failed to provide statements is also suspicious. He accepted that he forgot to mention the motor bike although the wife was aware he had it. In February 2013 he was still being asked to produce bank statements from November 2011. 31. He was also asked why there was no reference to the

Scottish Widow's Pension in the affidavit, nor the Black Horse loan. He said he "never took pensions out" and it has only just been clarified that the pension Bee wise was part of his Scottish Widows' pension; the last letter from them was for July 2012 so no updated value has been provided. He accepted he had not supplied the credit card details for his Visa card and was asked for these again in the schedule of deficiencies but said that he did not know how to get these from Visa and "didn't know where his address would be". As he had lawyers acting for him I find this answer surprising. He also gave an incorrect figure in his affidavit of means for his gross income for 2011. He provided a letter from the police but only in February 2013 confirming that he had not received any other benefits or payments at the point of leaving the police and will receive none apart from his pension. Information in the additional bundle produced on the 9th September, 2013 included a letter and copy of the licence for the property in which he is residing dated the 8th April, 2013 which he could have produced at that time. There was a six month delay in providing a letter from his G. P, but he said he owed his doctor money. He only agreed to the revised valuations about 2 days before the hearing. The wife's finances 32. After coming to Jersey the wife did not work but oversaw the rebuild. In addition she said the husband was on shifts so it would have made it difficult for her to work. The wife found a part time job as a physiotherapist assistant in May 2012 because of the lack of maintenance from the husband. Her take home wage was £920 per month. She is now in receipt STIA of £750 per month. Her total income needs are currently £2,661 per month, a large deficit but she is now paying £338 for the mortgage, a reduction of £1,027. I accept that the wife is careful with money; she has no credit card and runs an old car. In 2005 the wife had inherited £50,000 from her uncle when she had kept separate from the husband by putting it in premium bonds for herself and the boys. She had utilised the money from July 2012 to August 2013 towards family expenses, paying the mortgage and legal fees. However, by November 2012 she owed her mother £8,000. In July 2012 she organised a two month mortgage holiday as she said the husband refused to pay it. 33. In June 2013 she asked the husband if the mortgage could be moved to interest only. This was agreed for them each to pay £169.46 from 1st August, 2013 but the husband did not pay and the wife pays the full amount of interest of £338 per month. The wife has made capital payments of £10,000. In or about July 2013 the husband stopped paying the life insurance on the mortgage and the wife has had to meet all payments (apart from Sky and towards the boys' phone) by her using capital and borrowing from her mother. 34. In May 2013 the wife's personal injury claim was settled for £8,500 but the cheque "went astray" and payment was finally made about 5 months later. The husband was informed about the £8,500 in July 2013. The wife decided to bury her wedding and engagement rings worth about £1,000 in St. Brelade's churchyard. 35. K has been at Palm Springs since December 2012 but now has one overnight stay a week at the C. The wife's evidence is that her mother wants to return to the home full-time and she would look after her which will impact on her earning capacity, but she may be able to get a Home carer's allowance if she spend 35 hours a week looking after her mother and she does not earn more than £139.85 per week. She did give evidence that at some stage in the future she wanted to work full-time, but she wants to get back to her part-time job as soon as possible to give her a focus. 36. The wife has a boyfriend but she sees him only once or twice a week and she says she has no intention of cohabiting with anyone, and the boys are her priority. She made a point of saying that D is not her boyfriend. She

employed him 18 months ago as she wanted to know if the husband's relationship with L was over and he carried out surveillance for her and he was present when the husband came to collect some belongings from C. He also "assisted her to get through the proceedings." I am surprised that she has spent as much as she says in employing him - apparently about £7,000. The Law 37. The law governing ancillary relief cases is set out in articles 27 to 33 of the Matrimonial Causes Law (Jersey) 1949 as amended ("MCL"). 38. When exercising these powers, the Jersey courts must have regard to the section 25 criteria set out in the Matrimonial Causes Act 1973 ("MCA 1973"). Subsection 1 state that the welfare of the child is not a paramount or overriding consideration, but is regarded as a consideration of the first importance to be borne in mind throughout the consideration of all the circumstances:- "first consideration" is "given to the welfare while a minor of any child of the family who has not attained the age of eighteen." 39. Each case depends on its own facts and Thorpe LJ in the House of Lords case of White-v-White

[2001] 1 AER 1985 said:- "each case depends on its own unique facts and those facts must determine which of the eight factors is to be given particular prominence." 40. The decision of the House of Lords in Miller-v-McFarlane

[2006] UKHL 24 ,

[2006] 2 AC 618 emphasised the concept of fairness when applying the s 25 factors. Lord Nicholls held that the requirements of fairness are as follows: first consideration shall be given to the welfare of the children of the marriage in accordance with s 25(1); the needs of the parties; compensation, which is aimed at redressing any significant economic disparity between the parties; sharing, although the yardstick of equality is as an aid, not a rule. In the Court of Appeal case of Charman-v-Charman

[2007] 1 FLR 1246 , it was held that in most cases where there are modest or limited assets, fairness begins and end in consideration of the parties' needs, with first consideration being given to the welfare while minors of the children of the family. The result must be fair as between the parties but there is no rule that an order must produce equality of outcome. A Court must apply the section 25 criteria in search of the overarching objective of fairness. This is a needs case. 41. In J-v-M

[2002] JLR 330 the then Bailiff said that:- "The touchstone in all cases involving a division of matrimonial assets is fairness. There is no place for discrimination between the husband and wife... Nonetheless the ruthless application of the principle of equality wills seldom lead to fairness." 42. Both parties agree that the house should not be sold now but should be transferred to the wife. I have considered the authorities provided by the husband and wife in their original bundles and also the further authorities produced on behalf of the wife, although I will not refer to them all in these reasons:-

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire. Maintenance 43. The wife hopes to return to work but say she has a limited income. I was referred to In the matter of S

[2011] JRC 119 but in that case the wife was seeking spousal maintenance. Her job remains open. She could seek full-time employment given the boys are now 16 and 14, although she says they still need some support. She says she has responsibilities to her mother who has started to be re-integrated home and if K returns she may be eligible for a carer's allowance if she meets the criteria referred to above. Whatever she does, she has a limited earning capacity. Her retirement age is 67. 44. The husband is on LTIA due to be reviewed in March 2014. He also gets Income support to assist with his housing. He is looking for a full-time job but it is clear he will not have the income he had when he was a policeman. He is looking for jobs mainly in security or compliance although the wife suggested he should widen his scope as any job is better than no job. I am not clear as to what his earning capacity will be. His retirement age is 67 but he can draw on his police pension at 55. In F-v-M

[2007] JLR Note 21 it was held that disability allowances will not be discounted from income when determining the level of child maintenance. I was also referred to the informal, CSA 2000 tariff used by this court as referred to in the case of S-v-G

[2003] JLR Note 29 . 45. In the case Croft-v-Moy

(1971) JJ 1793 , it was held that there is no fixed principle as to the proportions of overall provision to be secured and unsecured. In that case the court refused to make a secured provision order as it had regard inter alia to the fact that the husband had properly maintained the wife and children voluntarily pending suit. Capital 46. C is in the joint names of both parties. The husband agrees that C was sold to them at an undervalue. They used proceeds from their former home £142,000 and spent money on re-building the property. Neither party wants C to be sold now. I was referred to the case of Howarth-v-McBride

(1984) JJ 1 which states that if there is a difference in valuation it is wiser to take the lower figure. However there are agreed values, with and without the lifetime interest of K. I was also referred to the case of Stanaway-Ivey-v-Overland

(1980) JJ 233 and asked by the wife's advocate to use the lower figure of the valuations. In this case however, both valuations are agreed and at some stage K's life interest will end so the house will be worth £750,000. 47. I accept that the husband cashed in the PEP without the knowledge of the wife to pay off personal debts and will add back half of this to the wife as it was a joint asset. 48. Both the husband and wife each have a small pension which is not payable until 65 and of a similar value. 49. The husband's PECRS pension has a CETV value

of about £140,000. The husband agrees that the wife receives some compensation for this pension. In *Southern (nee Brownbill)-v-Southern and Kingswell*

[1999] JLR 94 it was held that the value is the CETV but there may be a discount. In *S-v-W*

[1999] JLR Notes 9a, it was held that a person's entitlement on divorce should be calculated using a compensatory approach. Advocate Godden referred to *Maskell-v-Maskell*

[2001] EWCA Civ 858 where it was held that only 25% of the pension fund could be taken as capital. However in the case of *Downes-v-Marshall*

[2010] JRC 115B the then Bailiff viewed the PECRs final salary scheme as "gold plated" and an immensely valuable asset which should not be discounted. The husband's pension comes into payment shortly i.e. in less than 5 years and I will take the full value into account and not a discounted figure. It will go up by the cost of living.

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future. 50. Both agree that a home should be provided for the boys - the husband says until they are 18 or the mother's lifetime enjoyment ceases. The youngest will be 18 in 2017 but in any case it may be that K's lifetime interest will continue after this date and the boys hope to go on to further education. 51. The husband will be renting; he has an ongoing licence costing £800 per month. The wife and children's housing needs are currently met. If as both parties propose, C is transferred to her sole name, she must raise money to take over the mortgage. K is prepared to provide her with a sum of £100,000 towards this end without requiring monthly repayments or interest on the sum. She must continue to comply with the contractual financial obligations to her mother. She must also raise sufficient to cover the cost of transfer and meet the balance of the outstanding mortgage. 52. In the case *C-v-D (Matrimonial)*

[2013] JRC 056 the Royal Court on appeal varied the order of Registrar Obbard whereby a Mesher order had been made because this relied in part on the husband making mortgage payments. The transfer of the home into the sole name of the wife was not possible because the wife could not obtain a mortgage of sufficient size in her own name. She was thus awarded the matrimonial home with her being entitled to the entire equity on sale and responsible in the meantime for outgoings. This would not release funds to the husband to pay his debts. The main priority was to preserve a home for the children aged 9 and 6. The equity in the former matrimonial home was £231,000 but at the appeal had dropped to £181,641. The wife in this case can service a mortgage. 53. In the case of *O-v-O*

[2005] JLR 535 the parties had been married for 16 years. The net proceeds of sale were expected to reach £235,000. On appeal the Royal Court ordered a sale with the wife to receive 90% to purchase an alternative home and the husband 10%. In addition there was to be a charge of £45,000 in favour of the husband realizable when the youngest child reached 18 or completed full-time education. It was held that the parties limited assets were insufficient to provide for an equal division. Even in "big money" cases which established that where

assets exceed the parties' financial requirements there should be no distinction between the parties, it did not provide that the assets should necessarily be divided equally. In this case the court said:- "Once the children are grown up, we see no reason why the wife should not move to a smaller property, if need be, in order that the husband should be able to realize something from the matrimonial home to which he has contributed." 54. The Court went onto consider whether the charge should represent a percentage of the value of the new property but said:- "We have concluded that it would not be right to do so because the husband will be making no contribution to the purchase of the property other than his share of the initial capital, whereas the wife will continue to contribute through paying the mortgage, carrying out repairs any improvements etc.". 55. The wife is not seeking spousal maintenance but the husband has a responsibility to pay child maintenance. The wife is at present having to meet the children's needs. I accept that the wife also has a responsibility in relation to care for her mother and needs to pay for expenses in relation to the contract signed with her mother in respect of C. Liabilities Monies owed to K 56. The husband says there is no liability to K as the monies given were gifts and if there had been no divorce she would not have sought recompense. It was K who decided in July 2013 to withdraw from the proceedings and said the matter would be better dealt with in civil proceedings. The Court has been invited by the wife's advocate to take into account what she says is owed but unfortunately the situation is not clear and had she remained a party or given evidence this could have been dealt with in these proceedings. In the matter of GG

- [2010] JRC 202 there was a disputed debt to the petitioner's mother in relation to payments to reduce the mortgage. The court was unable to resolve the issue and considered it was up to the mother to pursue the matter "should she think fit". Hopefully the parties can agree any amounts that may be outstanding. The husband's debts 57. He wants £10,000 on settlement to come out of his share to meet some for his current liabilities. He says he owes his parents £17,034 in respect of payments for his legal fees and although the wife says these are gifts, I accept his evidence that they are loans. His Mini Cooper is valued in his schedule as being worth £15,410 but the settlement figure on his Black Horse loan is £9,951 and it is open for him to sell the car and clear the debts. He has a small amount outstanding on his Barclays credit card. 58. He may owe Income Tax for 2011 and 2012 but as he deliberately has not filed returns I am not in a position to say what if anything he owes. The wife's debts 59. The wife owes £8,303 to her mother. The wife has met some of her legal fees from her assets which included the inheritance from her uncle of £50,000. She will need £30,000 to pay outstanding legal fees.
- (c) the standard of living enjoyed by the family before the breakdown of the marriage. 60. The standard of living was reasonable but the husband was a policeman until 2012.
- (d) the age of each party to the marriage and the duration of the marriage. 61. The husband is aged 49, and the wife 46 years old. It has been a long marriage; they have lived together from 1993.

- (e) any physical or mental disability of either of the parties to the marriage. 62. The husband has mental health issues. He is on 60% LTIA, to be re-assessed in March 2014. He does portray himself as a victim. The wife is also unwell, caused by the breakdown of the marriage and the effect of the husband's unreasonable behaviour. However she does not think her ill health will be an issue in the future. She is on STIA but wants to return to work gradually.
- (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. 63. The parties have put monies from the sale of their former matrimonial home into C. 64. The wife says she has an unmatched contribution; the husband says he provided the majority of the income but he is not seeking a special contribution. In her skeleton argument Advocate Whittaker wrote:- "From correspondence it would appear that the parties are agreed that a financial and non-financial contribution of equal value, but this does not mean that the contributions are equal nor that the distribution of assets upon divorce is equal." 65. Advocate Godden says that the wife is wrong to assert that one reason for departure from equality is by way of unmatched contributions as C is not a property that has been kept separate and apart as it is the family home. In *White-v-White*

[2001] 1 AER 1/ Miller & McFarlane

[2006] 3 AER 1 it was held that the parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage so it should normally be treated as matrimonial property for this purpose. In the *Charman* case matrimonial property is defined as:- "the property of the parties generated during the marriage otherwise than by eternal donation". 66. It is correct that the wife got an early inheritance which is tied up in the family home, but the parties purchased the property from K, albeit at an undervalue, using all the proceeds of sale from their former matrimonial home. They then spent money knocking down the property and rebuilding it, transforming its value and there has been a "mingling." The English courts have taken different approaches in dealing with non-matrimonial assets. One method of deciding this is to apply the principle of sharing to all the assets but to the extent the property is not matrimonial then there is likely to be a better reason to depart from equality. The focus is on needs and the non-matrimonial assets are to be 'invaded' last or to the least extent to meet these. Alternatively one can identify the non-matrimonial property, leaving the matrimonial property to be divided equally. Advocate Godden referred to *Robson-v-Robson*

[2011] 3 FCR 625. Ward LJ offered guidance in big money cases where there was inherited wealth. Whilst this is not a big money case, Ward LJ held that one should concentrate on section 25 of the Matrimonial Causes Act 1973 which has been referred to above. He added that the weight to be given to each factor depends on the particular circumstances with the objective of reaching a result that is fair between the parties. Since inherited wealth forms part of the property and financial resources, it must be taken into account pursuant to sub-

section 2(a). The nature of an asset may be a good reason for departing from equality and the duration of time it has been enjoyed by the parties. The longer it has been enjoyed the less fair it should be ring-fenced. Thus in terms of C, all the matters referred to above should be taken into account in order to achieve a fair outcome for both the parties. 67. Advocate Whittaker submitted that an heir who has received an "avancement de succession" could be called on by co-heirs to bring back the advancement before an estate was divided. I was referred to the case of *Morgan-v-Amy*

[1968] JJ 981 and the Institute of Law notes on "Rapport à la Masse" . Advocate Whittaker submitted that the wife's brother had not been aware until now of the extent of the advances of money made by K and there is danger now for the wife when her mother dies in this regard. 68. The wife used about £50,000 inherited from her uncle which had been kept separate from the matrimonial assets to meet living expenses and to meet mortgage payments when the husband stopped paying them. This money was not the financial product of the parties' common endeavour.

(9) 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. 69. The wife submits that the husband's litigation conduct should be taken into account and he has dissipated assets. 70. With regard to dissipation of assets, I was referred to *Vaughan-v-Vaughan*

[2007] EWCA Civ 1085 . Where reference was made to a spouse not being allowed to fritter away money and then asking for a greater share of what was left. Reference was made to an earlier case of *Martin-v-Martin*

[1976] Fam 335 where it was said that notional reattributions have to be conducted cautiously by evidence of wanton dissipation and not to the case where a sum was used to meet needs. Both the husband and wife agreed he was a "spender" and he has borrowed money from his parents so there is no pot of gold. 71. The lack of timely disclosure led to increased legal fees and the husband conceded there was some delay. Although he was suffering from depression he was not working so had the opportunity to provide documentation. Furthermore his response about his failure to provide tax return and his annoyance at being asked what he felt were intrusive questions was such that I consider he deliberately delayed filing information. He says it was not material disclosure but unfortunately the fact that he did not comply with the disclosure request, for example, by not providing some bank statements such as for account 0608, meant that the wife's lawyers were not clear if it was or was not material disclosure, and he failed to give information as to his address from time to time. The husband filed some documents on the day of a hearing and Advocate Whittaker could not take initially take instructions as the wife was giving evidence. The husband did not reply regarding the updated joint valuation from Gaudins of the 24th July until very shortly before the hearing. His lack of response on a timely basis meant that skeleton arguments were filed just before the hearing. I have been referred to the case of *R-v-G*

- [2006] JLR Note 20 where it was held that it was appropriate to summarily fix the quantum of cost for the husband's misconduct in litigation. In the case of S-v-F
- [2008] JLR Note 19 it was held that a failure to provide requested financial information is generally dealt with by costs orders at the end of the trial or by the court drawing adverse inference against the non-disclosing party:
- (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring. 72. The wife will lose the spousal element of the PECS pension valued in January 2013 at £8,000. Decision 73. Both parties agree that there should be a clean break. The wife's proposal in respect of capital is that in return for the transfer of C into her sole name, she pays him £30,000 but this will not be paid until the second child finishes further education or her choosing an earlier sale, her earlier remarriage or earlier election. However the court has to look at the financial resources not only now but in the future. K's lifetime interest will come to an end in due course and may well have ended prior to the proposal put forward by the wife. This would mean that the wife will be in a large property in excess of her needs, and assuming no increase or decrease in value, worth £750,000 less any mortgage she pays, which currently stands at £127,406 and notional cost of sale of £9,500 but plus her pension of £15,000. This means she will have £613,094 plus her £15,000 pensions less the £30,000, a total of £598,094 and the husband, his pension of £142,511, plus his other pension of £16,000 and the £30,000, a total of £188,511. This proposal is not fair to the husband bearing in mind all the factors referred to above to include that this is a 20 year marriage. On her position, £25,000 is to be deducted for litigation conduct and then each party will have to pay legal fees and there may be monies owed to K. A fair outcome is for the house to be transferred to the wife. She will have to bear the costs in relation to the transfer; and taking sole responsibility for the repayment of the mortgage with Skipton International use her best endeavours to ensure that the respondent's name is removed from the mortgage and borrow sufficient monies so that she can redeem the Skipton mortgage. Fortunately her mother is prepared to lend her £100,000 secured against C without requiring monthly repayments. She has been offered a mortgage/private loan facility of a further £60,000 also to be secured against the house with monthly repayments but she is not clear as to the level of repayment. She has also been offered a loan of £30,000 towards her debts. She should on the transfer pay the husband £10,000 now to utilise towards some of his debts. The wife will then be responsible for paying the mortgage (and so far as the husband is concerned for a sum equivalent to the Skipton mortgage) carrying out repairs and to pay the sums she is contractually bound to pay in respect of the contract regarding her mother's lifetime interest. Once the second child completes his education inclusive of further education, whether it be the older or younger child to do so or K's lifetime enjoyment of C comes to an end by whatever means whichever is the later or if the wife decides to sell C before this, she remarries before this or her earlier election, then she is to pay the husband a further £135,000. The husband is prepared to wait for money even though the wife has the benefit of the house now because if the property was to be sold

now, monies would be needed to provide a home for the boys and the equity in the house is only £463,093. His pension of £142,511 would be offset against this. On the basis of the later date, with C valued at £750,000 less any mortgage the wife pays, which currently stands at £127,406 and notional cost of sale of £9,500 but plus her pension of £15,000 less £145,000 leaves her on current figures with £483,094, so she will be able to purchase a smaller house for herself. The husband will have £303,511 to include his pensions. 74. I accept the litigation conduct of the husband has been such that costs have been increased and I consider that a fair sum should be £12,000 paid by him towards the wife's costs. The funds held in escrow of about £5,000 regarding G will be divided equally save that from his share the husband will pay the wife's divorce costs and should there be a shortfall this will be waived by her. Each party will then have to meet their own costs subject to the above, and there may be monies owed to K. 75. Each party will keep their own assets. The parties at the Court hearing on the 9th September, 2013 sorted out the remaining issues about furniture and effects so I have referred to this in the court order. 76. The parties are looking for a clean break and dismissal of spousal maintenance claims against each other, so this is being ordered. 77. With regard to child maintenance, the wife indicated that when these proceedings she will be looking to return to work but also care more for her mother. The husband should be paying something towards the upkeep of the children and has offered in effect the sum of £130 per month. The husband is in receipt of LTIA, assessed until March, but he can work whilst in receipt of it, so it is in his interest to get a job as soon as he can. I order that he pays £55 per week while he receives LTIA and income support and thereafter if his income is greater than £16,000 per annum, 20% of his net income. The will be the usual provision as to maintenance review on any material change, the Jersey Retail Price index or one or both of the children attend further education or training. I will order that any child maintenance not paid will be deducted against the lump sum the husband is due to receive. Authorities Matrimonial Causes Law (Jersey) 1949 as amended. Matrimonial Causes Act 1973. White-v-White [2001] 1 AER 1985. Miller-v-McFarlane

[2006] UKHL 24 ,

[2006] 2 AC 618 . Charman-v-Charman

[2007] 1 FLR 1246 . J-v-M

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[2007] JLR Note 21 . S-v-G

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[1999] JLR Notes 9a. Maskell-v-Maskell

[2001] EWCA Civ 858 . Downes-v-Marshall

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[2010] JRC 202 . White-v-White [2001] 1 AER 1. Miller & McFarlane [2006] 3 AER 1. Robson-v-Robson [2011] 3 FCR 625. Morgan-v-Amy

[1968] JJ 981 . Vaughan-v-Vaughan

[2007] EWCA Civ 1085 . Martin-v-Martin [1976] Fam 335. R-v-G

[2006] JLR Note 20 . S-v-F

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