

All England Reporter/2005/February/\*Minwalla v Minwalla and others - [2005] All ER (D) 18 (Feb)

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**\*Minwalla v Minwalla and others**

[2004] EWHC 2823 (Fam)

**Family Division**

**Singer J**

**3 December 2004**

*Matrimonial law - Ancillary relief - Financial provision - Property division - Trust property - Sham.*

The parties had a relationship for a number of years prior to the husband obtaining a divorce from his third wife. The parties were then married. The properties in which the parties lived were acquired in the name of a Panamanian company (the company) which was controlled by the husband. A number of years into the marriage a trust was created, based in Jersey, and the company became a wholly-owned asset of that trust. Five years later the parties' marriage broke down. The wife continued to live in the parties' London property. Thereafter, the husband, inter alia, told the wife that the company would cease to pay the household bills and that he had divested himself of all of his assets. Consequently, on a without notice application, the wife obtained a world-wide freezing order in the amount of £4 million. The court also ordered that the husband disclose his assets by affidavit. However, neither affidavit then filed by the husband provided a net summation of his assets. Subsequently, the freezing order was continued. The husband, who had begun reorganising his financial affairs a few months prior to the breakdown of the marriage, breached the freezing orders. The wife applied for ancillary relief.

The issue which arose for determination related to the court's approach in circumstances where a party had set out to conceal resources and obstruct proper investigation of their financial affairs.

The wife contended that the Jersey trust was a sham.

The court ruled:

A trust could be found to be a sham where the parties to the establishment of the trust did not intend to act on the terms of the trust deed; or, alternatively, where one party intended not to act on the terms of the deed, the other party was prepared to go along with the intentions of the shammer, neither knowing or caring about what they were signing or the transactions they were carrying out.

On the evidence in the instant case the husband had never had an intention of respecting the formalities of the trust and the corporate structures that had been set up at his direction. His purpose was to set up a screen to shield his resources from other claims or unwelcome scrutiny and investigation. His intention was that the resources were his and would continue to be his. Further, the trustees were privy to that sham, at least in the sense that they went along with the

husband's intentions.

Accordingly, the assets of the trust vested in the husband as the sole and true owner and an order for ancillary relief was made.

Martin Pointer QC and Geoffrey Kingscote for the wife.

The husband did not appear and was not represented.

Pamela Hardisty Barrister (NZ).

## **Judgment**

**[2004] EWHC 2823 (Fam)**

### **FAMILY DIVISION**

**3 DECEMBER 2004**

MR JUSTICE SINGER

### **APPROVED JUDGMENT**

**I DIRECT THAT PURSUANT TO CPR PD 39A PARA 6.1 NO OFFICIAL SHORTHAND NOTE SHALL BE TAKEN OF THIS JUDGMENT AND THAT COPIES OF THIS VERSION AS HANDED DOWN MAY BE TREATED AS AUTHENTIC.**

MR JUSTICE SINGER:

1. This judgment on a wife's ancillary relief claim touches upon a number of matters which are of importance in cases where the question is not merely the quantum of the award, but where there are issues as to the scale of resources. The first is the approach that the court should adopt where it finds (as I do here in relation to Darayus Cyrus Minwalla, familiarly known as Happy Minwalla, the husband) that a party has set out to conceal resources and obstruct proper investigation of their financial affairs, a subject only recently considered by Coleridge J in *J v V* [2003] EWHC 3110 (Fam), [2004] 1 FLR 1042 at [127] and [130]. Second, the virtue of international cooperation in the investigative process where the finances under review are conducted behind a web of off-shore structures. Third, the approach which those involved should expect of the court where it appears that an off-shore trust with its professional trustees and associated companies with their sometimes cipher directors have been woven together to create a shroud that is designed to bury the husband's resources from view. Should the court respect the legal structure of that screen? Or, if it becomes apparent that the husband himself pierces the veil as and when it suits him, should the trustees and directors be surprised that a court exercising the ancillary relief jurisdiction will strain to see through the smoke and will set the structure aside so as to treat the resources as wholly his? For that is what he and they should expect where fairness to both spouses depends so crucially on an accurate understanding (following what should be clear and accurate disclosure) of the realities of each party's economy.

2. The wife (W as I will call her) is 55. In 1985, when she was but 35, she was widowed. With her late husband she had 2 children, X and L, who are now aged 29 and 24 respectively, but were then only 10 and 5. In 1986 she met and began a relationship with the husband (H). He is now aged 61, and was then 42. At that juncture he was still married to his third wife, D. By his first marriage the husband has one surviving son, F who is 39. By his second marriage he has a son T, who is 24. It would appear that at the time of the commencement of the relationship between the husband and the wife, his marriage to his third wife was continuing (although manifestly it was in difficulties). When the parties met, the husband had one son with her, J who is now 19. In 1990 they had a second son together, HO, who is now 13.

3. Nevertheless there was sufficient solidity in the relationship between H and W for him, soon after they met, to buy a house in Friern Barnet for occupation by W and her two children. That property, it is agreed, was acquired in the name of a Panamanian company called DM Investments SA (hereafter DM) that had been set up by the husband in February 1985. There is a suggestion by H that at the same time as DM was formed a trust was set up in Jersey to hold the shares of the company. No documentation at all in relation to that suggested structure has been produced and it may well be that none survives, if indeed there is any truth in the suggestion. It is not disputed that in 1986 at the time that DM acquired the house in Friern Barnet, the company was acting under H's direction and control, and that that continued to be the position at the time when the trust that came to hold the shares was established (in July 1998: see below). From 1986 W and her two children have been dependants of H. The house in Friern Barnet was their family home in the UK. (It was not their only home for, as I will explain, H is an international businessman and the life that the parties led was cosmopolitan.) In 1991 the parties moved their London residence from Friern Barnet to a house in The Bishops Avenue in north west London. By this time, it would appear, the failing marriage between H and his third wife had come to an end. In September 1992 they went through a divorce process in the Dominican Republic.

4. On 4th May 1994 these parties were married in Manhattan. That civil ceremony was followed by a Zoroastrian ceremony in June 1994 in London. At some point after that ceremony it came to H's attention that the divorce proceedings that he and D had undergone in the Dominican Republic may not have been valid; and so she and he went through a further set of divorce proceedings in New York, culminating in a decree on 10th March 1995. To tie their knot securely, H and W were re-married at a civil ceremony in London on 18th November 1995.

5. I am satisfied (indeed it is scarcely disputed) that during the period from the commencement of the parties' relationship until at least 2000 H had diverse business interests that enabled the family to enjoy a comfortable, if not opulent, lifestyle. From 1967 he had been responsible for the management of the Hotel Metropole in Karachi, erected by his late father in about 1950. From 1971 H has been employed as the local manager for Cathay Pacific in Pakistan and in Afghanistan. From 1988 to 2001 H was an Ambassador at Large for Pakistan, with a seat in the Cabinet of the Government of that country. H is the proprietor of a travel agency called "Trade Wind Associates", which operates in the United States, Canada and the UK. He has a number of property interests around the world. The parties divided their time between Karachi, London and New York (maintaining separate establishments in each city). They have employed permanent staff in all three properties. W deposes, and I accept, that their houses were furnished to a high standard and housed valuable antiques. As she states, "we have never wanted for anything." [B138]. And I do not doubt that while the marriage subsisted, H was a generous provider. They travelled widely (always first class or business class) and stayed in the best hotels.

6. Payment for their personal expenses was met through DM. The allowance that H made to W was paid by a monthly cheque drawn on an account in the name of DM.

7. In 1998 the structure under which DM was held was revised. On 1st July 1998 the Fountain Trust (FT) was formally created. At inception the original settled property was £500 and the only named beneficiary is a charity. The trust was set up in Jersey. Once that was done, DM became a wholly-owned asset of the trust.

8. In 2000 the London base was changed. The house at The Bishops Avenue was sold and (soon after) the parties moved into an apartment in Portland Place, W1. Just as with The Bishops Avenue, extensive refurbishment was carried out, at a cost of £200,000 or thereabouts. The conveyancing file has been the subject of production procedures. The original negotiations for the purchase of the apartment were carried out in H's name. However, it transpired that the flat was already owned by a Panamanian special purpose company called Midfield Management SA (MM). This afforded the opportunity for acquisition without payment of stamp duty. The purchase was completed, therefore, by transfer of the shares in MM. These shares were acquired by FT. The funding for the purchase came as to £300,000 from monies within DM that H diverted to FT and a mortgage of £500,000 from Standard Chartered Bank; though that mortgage was soon afterwards reduced by £200,000 which was also derived from DM.

9. In September 2003, for reasons that are not relevant to this judgment, the marriage between the parties broke down. I record that there had been an earlier period of strain when in (it seems likely) the spring of 1998 H discovered that W had (as in her evidence to me she accepted) for some months (and mainly in absentia and by correspondence) conducted an affair. W suffered an acute sense of guilt and shame and offered to leave their marriage and abandon his support if that was what he required. She says that he accepted her promise to cut off all contact with the man concerned and wished to mend their relationship. She says she believed that they weathered this squall and that she was committed to the continuance of their marriage, until the events (about the detail of which I have heard no evidence) which led to her decision in September 2003 to bring the marriage to an end. I note that H was opposed to the divorce until the day before I pronounced decree nisi, and did not raise the allegation of adultery until his most recent affidavit which arrived with W's advisers on the eve of this hearing. I have heard evidence from W about this issue to satisfy myself (as she has) that there is in current circumstances no prospect of any relationship rekindling between W and this other man such as might impact upon the outcome of W's financial claims.

10. W has remained from the time of that separation living in the apartment at Portland Place. H has not returned there and latterly has made his own base at the apartment in Karachi.

11. The parties remained in dialogue both by e-mail and by telephone. W tells me (and I accept) that orally H told her that he had "divested himself of all his assets"; that he had resigned from his position "as a consultant" with DM and that payment of the household bills by that company would cease; and that he had resigned from his position at Cathay Pacific. On 11th December 2003 H sent an e-mail to W in which he stated that he had given up his main income stream from Cathay Pacific and would wind up the few things they had asked him to do in the next month or so. He wrote that he was handing over his American business, Trade Winds and the Hotel Metropole to his sister, Mitzie. On 27th December 2003 H wrote again to W. He asserted that his arrangement with DM had been that his position was merely that of a consultant, and that he had now resigned. He claimed that he owed DM several hundred thousand dollars. The bills for utilities at Portland Place, he said, would no longer be discharged by the company. He said that two bank guarantees that had been issued by Standard Chartered were secured against the Portland Place apartment; that he did not have funds to meet the liabilities secured by those guarantees, and implied that the Bank would impose a sale of the flat. (I interpolate here that it was untrue that the guarantees were secured against the flat.) Both letters also conveyed the message that H was contemplating suicide. By mid January 2004 letters arriving at the London flat illustrated that the arrangements H had made for payment of the household bills had indeed been terminated: the correspondence showed that all the direct debits against the DM bank account had been cancelled.

12. All these gloomy hints, threats and prognostications jarred, from W's perception, with the financial history of their married life; and she reckoned that they were the initiation of a programme of suppression of H's true fortune, designed to minimise her financial claim against him. On 16th January 2004, therefore, W made application, without notice, to Munby J for a world-wide freezing injunction. The injunction that was granted froze H's resources up to £4 million, including in particular the Hotel Metropole in Karachi, and the three apartments in New York, London and Karachi, as

well as what were said to be H's interests in DM and in MM. The order contained a conventional requirement for H to disclose all his assets by affidavit within 7 days. H thereafter made two affidavits: on 23rd January 2004 he purported to set out his means and on 30th January 2004 he made an affidavit answering the allegations that had been made against him by W in support of her injunction application. Neither affidavit condescended to a net summation of his assets, though the list of liabilities set out in his statement of means on 23rd January 2004 was extensive. It is plain that H was describing his financial situation as parlous. (Later, in his Form E he maintained that his liabilities exceeded his assets by some £400,000, a figure revised in his final affidavit to a deficit approaching £4,000,000). Furthermore, he denied any beneficial interest in DM or in MM or in FT. H claimed that he no longer had a mandate over the DM bank account, and so could not obtain bank statements. As is now known (and as I am very satisfied and will so find), that was all untrue. He asserted that he was neither a shareholder, nor director, nor in possession of any beneficial interest in either company; that he was not a trustee, nor a beneficiary of FT; that he had been the protector of that Trust, but "only for a short time". (That too was untrue).

13. H also asserted that his marriage to W had not been valid, on account of the allegedly ineffectual divorce proceedings that had taken place between him and D in the Dominican Republic. He revealed that he had on 25th November 2003 instituted proceedings in New York to annul the party's marriage.

14. Those were the rival contentions of the parties when the case came before me on 2nd February 2004. At that hearing I continued the freezing injunction. I made directions for a hearing to take place on 14th June 2004 that should address the questions of the validity of the marriage and of forum conveniens; and of disclosure, including any application that might be made for inspection appointments or for letters of request and for the hearing of W's application for maintenance pending suit. So there was set in train the investigative process that it has been necessary for W to undertake at length and at great cost (her costs estimate to date is of the order of £400,000 of which she has so far been able to pay only £28,000 on account) in order to garner sufficient information to enable her and the court to perceive but a shadowy though not (I am sure) the full picture, of the resources that should realistically and properly be regarded as available to H.

15. Thus it has been necessary for W to address two Questionnaires to H. Neither has he answered satisfactorily. She has had to seek the issue of three sets of letters of request addressed to CI Law Trustees Ltd (CI), the professional trustee company in Jersey which supplies the trustees of FT and the directors of DM and of MM; and further letters of request directed to Standard Chartered Bank in Jersey. In order to obtain intelligible information about what was had been happening in Jersey, it was necessary for there to be a two-day hearing in Jersey, at which W was represented by Mr Kingscote, her junior counsel in this case. She has had to apply for inspection appointments against Standard Chartered Bank and EFG Bank in London; and against the conveyancing solicitors who acted for H on the purchase of The White House. A great deal of the historical information that features in this judgment is the product of that endeavour. It is conclusive of the reality to which I aspire in my appreciation of H's dealings with the assets of this so-called Trust and its supposedly creature companies that in the course of the evidence that was given in Jersey they were vividly described by the Jersey-based trust operative and director of both DM and MM as H's 'personal fiefdom'. That same evidence is utterly damning of H's integrity in these proceedings, and convincingly destructive of the deceptive presentation he has attempted to foist on W and on the court.

16. As the process has developed, the volume of information concerning H's affairs has increased, and with it more details of the steps that he was taking ahead of, at the time of, and from the breakdown of the marriage all of which were designed, as I find, to reduce or to eliminate successful enforcement of any award in favour of W on her ancillary relief claim. It is no exaggeration to describe H's stance in relation to the court and to W's claim as wilfully contemptuous of his obligation to make full frank and clear disclosure in these proceedings so that the overall objective of fairness to both parties can be facilitated.

17. It is now apparent, therefore, that, as early as March 2003 H had begun the process of re-arrangement of his banking facilities. The main bankers to DM were Standard Chartered Bank. The customer relationship manager there (as he is termed) was Mr Robert Mitchell. He left Standard Chartered Bank and went to join EFG Bank: which is a Swiss bank with offices in London and in Guernsey. Records produced by the EFG Bank pursuant to letters of request directed to them in Guernsey show that as early as 11th April 2003 [CC380] H was making arrangements to open a new account with that Bank in Guernsey. No doubt Mr Mitchell was keen on behalf of his new employers to attract business; but, equally, I have no doubt, H perceived that DM was an entity too closely for comfort associated with him and that its resources might be vulnerable to attack either in these proceedings (which, by then, he may well have contemplated) or in other ways. A little later, in January 2004, H is recorded as saying to Mr Rayment at Standard Chartered Bank that "too many people know about DM Investments". [S265]

18. Certainly it is the case that, as soon as the marriage broke down in September 2003, H swung into action. On 22nd September 2003 he instructed Standard Chartered Bank, the main bankers of DM, not to send any further mail to Portland Place (the address that had until then been their mailing reference) [O289]. The same day he instructed Standard Chartered to send \$500,000 from the DM account in Jersey to EFG Private Bank [S237]. He also instructed Standard Chartered to close one of the dollar accounts that it maintained in the name of DM and send the whole of the money to the EFG Bank. On 25th November 2003 H began proceedings in New York, by which he sought a decree of nullity in respect of the parties' marriage. He relied upon the probable invalidity of the divorce proceedings that had taken place in the Dominican Republic between himself and D as rendering null the initial 2 ceremonies between himself and W; and thereby characterised his relationship with W as bigamous. He cynically chose to ignore the fact that there had been subsequent divorce proceedings between himself and D and a further ceremony of marriage between himself and W which was on any view valid if their earlier marriage ceremonies were ineffective.

19. At the same time H developed further his relationship with EFG and the new financial structure he was forging with them. Thus, on 3rd October 2003 a new service company called Jealott Investments Limited was incorporated at the direction of H in Panama. Mr Pointer QC submits, and I accept, that the purpose of this company was to replace the historic investment function for which, in part, DM had been used. On 18th December 2003 H caused to be incorporated a further service company called Aviation International Consulting Limited, another Panamanian company. Mr Pointer again submits, and I accept, that the purpose of this company was to perform the second of the two functions that had until then been carried out by DM, namely to receive the commission payments earned by H through his contracts with Cathay Pacific and Rolls-Royce, to which I refer below. At H's direction both companies opened bank accounts with EFG Bank. By 24th December 2003 H was giving instructions to EFG that he wished to wind up its banking arrangements with DM (now that he had the two new companies and their accounts with EFG in place). An internal memo from Mr Mitchell of that date records that "... the client does want this account to be closed a.s.a.p. I know it could be a nuisance ... I understand the client's desire to wind the companies affairs up very urgently." [CC171]. That cryptic note by Mr Mitchell reflects the burgeoning desire of H to distance himself from that company and its resources. On 12th January 2004 H purported to resign from the board of Karachi Properties Investment Co. Limited: the company that owns the valuable Metropole Hotel in Karachi. By mid January 2004 H had applied to Standard Chartered to borrow a further sum of £300,000 against the security of the apartment in Portland Place. He had, as I find, no need for those funds. His object was to reduce the equity in the London property, where W was living and against which her claim for a property transfer order was directed. That request was not processed, because W had registered her rights of occupation. Between June 2003 and January 2004 H also cashed in a series of four Norwich Union policies for, in aggregate, about £216,000. The money from those policies has been expended by H and is no longer available to this Court.

20. I have recorded how on 16th January 2004 Munby J granted a freezing injunction, which was continued by me with slight adjustments on 2nd February 2004. H paid scant regard to those injunctions.

21. It is plain from the EFG Bank documentation [CC133] that by early March 2004 H was talking in terms of selling the New York flat. Indeed, by the time of the hearing before me in June 2004 W had been able to obtain particulars from the agents instructed by H in New York, demonstrating that he had been actively marketing that flat.

22. It also has only recently become apparent from the EFG Bank documentation that in January 2004 H had given instructions for the encashment of two investment bonds, one with Norwich Union and one with Prudential that were worth together about \$750,000. The EFG and the Standard Chartered documents show that H was adamant that the bonds should be cashed, even though there was a not insignificant financial penalty for early surrender. H's directions were that the money should be placed into an account in his sole name. This was in direct breach of the orders that had been made on 16th January and 2nd February 2004. Standard Chartered Bank, who had been given notice of the order of 16th January 2004, regarded that order as inhibiting the transaction that H was proposing. It appears that on 16th January 2004 H gave instructions to Standard Chartered to send all the investments held in 2 accounts in the name of DM to the EFG Private Bank in Guernsey. Mr Pointer submits, and I accept that it is probable, that those instructions were issued by H in reaction to the injunction that had been granted by Munby J on the same day. Because the Bank was given notice of the order that had been made, they did not implement the instructions. This led, ultimately, to a tart e-mail from Robert Mitchell to a representative of Standard Chartered Bank on 30th January. It recorded that the bank's principal (obviously a reference to H) had been expecting the transfer and was most concerned that it had not taken place. It asserted that at the time that instructions that had been given to Standard Chartered, that bank had not had notice of the injunction; and that Standard Chartered had failed to act upon the instructions promptly; it sought confirmation that at the time the instructions were given the assets were "free to transfer"; and demanded to know when Standard Chartered had received notice of the injunction.

23. On 22nd January 2004 W received a letter that purported to come from the directors of MM in Jersey. The letter stated that the directors of DM had given notice to MM terminating the licence in favour of DM to occupy the apartment at Portland Place with effect from 31st March 2004; that, accordingly, W was obliged to vacate the apartment and were she not to do so by that date she would be in illegal occupation, and steps would be taken to evict her. When W, through her solicitors, protested about this letter, H claimed, through his solicitors [E32] that he had had nothing to do with it. When, in August 2004 Nicholas Morgan the nominee director of DM came to give evidence in response to the letters of request issued in this Court, he was asked about that correspondence by Mr Kingscote. It is plain from that evidence that H was "pushing" for possession proceedings to be instituted against W. The letter of 22nd January was undoubtedly the product of a dialogue between H, the nominee directors of DM and their London solicitors. Not only was the denial in the letter of 26th January untrue, on 11th March 2004 the identical threat was repeated in another letter from the nominee director of MM.

24. The next manoeuvre by H was to attempt to argue that the funds still held at Standard Chartered Bank in Jersey were not caught by the injunctions of 16th January and 2nd February 2004, on the ground that he had no beneficial interest in FT or the two companies DM and MM. His vehicle for this argument was, again, Nicholas Morgan of CI, the corporate trustee of FT. What happened was that on 5th February 2004 Standard Chartered Bank in Jersey wrote to Mr Morgan at CI, drawing attention to the fact that they had received notice of the freezing injunction. By return of fax on the same day the compliance officer at CI replied that Mr Minwalla was not a beneficiary of FT. That letter was reinforced by a letter from Mr Morgan on the 17th February 2004. By that letter he asserted that the original injunction of 16th January 2004 had been discharged on 2nd February 2004. He neglected to explain that the order of 2nd February 2004 made a fresh freezing injunction in like terms. The letter went on to say:

"... DM Investments SA and Midfield Management SA are both companies that are owned by the Trustees of the Fountain Trust and not by Mr Minwalla personally. We further reiterate that Mr Minwalla has not been appointed as a beneficiary of the Trust. In such circumstances if you continue to

treat the accounts of the above companies as frozen until further notice, the Trustees of the Fountain Trust and the above companies themselves must reserve their position and shall look to your bank to recover any loss or damage suffered by the same as a result of your actions. In the circumstances we should be grateful to receive your urgent confirmation that you will reconsider your position and cease to freeze the relevant accounts relating to the above companies."

25. The letter also pressed the bank to effect the transfer of securities to the EFG Bank, i.e. to carry through the transaction to which I have referred above. A further letter in the same vein was written on 2nd March 2004 reiterating the same threat. Fortunately, Standard Chartered reacted in a commendably responsible way to that letter from Mr Morgan. They stated:

"If, as you are suggesting, Mr Minwalla has no interest in these companies or in Fountain Trust, it seems bizarre that they are expressly mentioned in the 2nd February order ..."

26. It is apparent that the bank had taken the trouble to read in full the order of 2nd February, and it had observed that, notwithstanding the blandishments and the blusters of Mr Morgan, the freezing injunction had been continued.

27. It is unsurprising that Standard Chartered were bemused by the proposition that H had and has no interest in FT or in DM or in MM. On 16th December 2002 CI had written a letter to Standard Chartered in Jersey that was headed the Fountain Trust, and continued [T131]:

"We have introduced the above Trust to you for the purpose of opening a bank account and can confirm the following:

o We are satisfied as to the integrity and standing of Darayus Happy Minwalla, who is the Settlor and Principal Beneficiary of the above-named Discretionary Trust.

o We shall notify the Bank immediately of any changes to the Principal Beneficiary or Authorised Signatory.

o The structure of the above-named Discretionary Trust follows our standard form of Trust Deed."

28. CI's reference on that letter commences NSTCM, the distinctive initials borne by Mr Morgan.

29. I struggle to see how Mr Morgan could have written such contradictory letters. I remind myself that I have not heard Mr Morgan give evidence in this case; though I do have the advantage that I have been able to read (and have indeed with mounting disquiet and astonishment read) the 126 page transcript of the evidence that he gave to the Royal Court in Jersey on 25th and 26th August 2004, and more recently on 19th November. I am satisfied that the letters from Mr Morgan in February and in March 2004 were utterly inappropriate given what emerges from his evidence as to his own state of mind concerning H's dealings by that time. I have no doubt that the letters were written by him under pressure from H, who was determined to shift his assets, so far as possible, out of DM to the new vehicles that he had constituted across the water in Guernsey. But (unless there is some very cogent explanation for his conduct) that does not warrant

Mr Morgan writing letters that were quite at variance with the December 2002 letter that he had written and with the reality in respect of the trust and the two companies, as he himself knew it to be and as his evidence in August 2004 exemplified.

30. On 27th May 2004, shortly before the hearing that had by then before been fixed for 14th June 2004, a deed of appointment was executed relating to FT. [BB112] This deed purported to add H's 4 sons as beneficiaries of the trust. There is no doubt that this step was taken at the instigation of H. In his evidence in Jersey, Mr Morgan accepted that this action was taken "in the context of the matrimonial proceedings". [AA107] I find that this was another attempt by H to impede the ancillary relief claim by W. In a letter to W's solicitors dated and received by fax today H asserts: "I am passing on [an injunction I made on 1 December to preserve funds in accounts in Jersey] to the beneficiaries of FT, who will no doubt be appealing and filing for amendment of the same." Similar injunctions have been in place since before the date of that deed and no application to set aside or vary has been made on their behalf, or seeking to be heard in relation to what has from the outset been W's case: that the paraphernalia of the trust and of the company structures are a sham, and that their assets have never in any real sense belonged to anyone other than H.

31. In June 2004 the case came before me to deal with the various matters stood over from February. In order to dispose of H's unattractive plea of bigamy in response to her petition, W proposed to amend her petition to plead in the alternative the third (civil) ceremony that she had undergone with H at the Westminster Register Office, which post-dated the second divorce between H and his third wife. It was impossible for Mr Moor QC, then representing H, to resist that method of clearing the log-jam that H had created, and so I gave directions that led to pronouncement by me of decree nisi the following day, 15th June 2004. I amended the order for maintenance pending suit from the £24,000 per annum that had been fixed on 2nd February 2004 to the more realistic level of £40,000 per annum (given that W was now having to meet all the running costs of the apartment in Portland Place). I also made an order for maintenance pending suit for costs, in accordance with the now established practice in cases such as this: see *A v. A* (maintenance pending suit: payment of legal fees) [2001] 1 WLR 605 and *G v. G.* (maintenance pending suit: legal costs) [2002] EWHC 306 (Fam), [2003] 2 FLR 71. I made orders joining as parties to these proceedings CI as Trustees of FT, DM and MM. I made directions for the issue of letters of request directed to Nicholas Morgan and Conrad Whitehead, the nominee directors of the two companies and the managers of FT; and for an inspection appointment directed to Standard Chartered Bank.

32. I am satisfied that H realised that the inevitable consequence of the issue of the letters of request would be the revelation of documentation demonstrating, as W was asserting, that H was indeed the true beneficial owner of FT and of the two companies. It is apparent to me that following that hearing on 15th June 2004 H embarked upon a programme of withdrawal from the proceedings in the UK and from the UK itself. Following that hearing (apart from one matter to which I refer below) he ceased to instruct counsel who had been acting for him in the case, Philip Moor QC and Justin Warshaw. He did not attend the FDR on the 22nd July 2004, where he was represented by his solicitor alone. He dispensed with the services of those solicitors in September 2004. He paid not a penny in respect of the order of maintenance pending suit for costs. In respect of the general maintenance, he paid £3,250 in June 2004: he has paid nothing since. It would also appear that at about the same time he decided that he would no longer actively participate in an arbitration with Rotary Watches Limited in which (via one of his commercial enterprises) he was involved.

33. Before he in effect distanced himself from this investigation in the way that has since become apparent H gave instructions to Mr Warshaw to settle a notice of appeal against the order for maintenance pending suit that had been made on 15th June. That was lodged on 29th June 2004 and led, in due course, to an oral hearing for permission to appeal (with appeal to follow if granted) on 3rd November 2004. Mr Pointer submits, and I accept, that H had no real intention of participating in that appeal (or even of paying under the order were the appeal to be dismissed): but that instead his sole purpose was to cause W to incur considerable extra legal costs in dealing with that appeal.

34. It is plain, however, that H has kept abreast and to some extent ahead of the steps that W has been taking to try and discover the truth about his financial affairs. I have little doubt but that he has learned of her attempted pursuit of the funds held by DM at Standard Chartered Bank and, latterly, at EFG Private Bank in Guernsey. The order for letters of request made on 15th June led to the production by Mr Morgan of a bundle of documents pertaining to DM and MM; and the inspection appointment against Standard Chartered Bank revealed (a fact until then unknown to W) the transmission of funds to EFG Bank. That new information led, after the FDR on 22nd July 2004, to a broadening of the freezing injunction and to other investigatory directions. Documents very recently produced by EFG Bank show that in September 2004 H was taking steps to shift funds originating from DM, but by then transferred to Jealott Investments Limited, from EFG Bank in Guernsey to a new company and a new bank, namely BMM Holdings (which is probably a Dubai limited liability company) at ABN Amro in Dubai.

35. As has been described, W has been compelled to undertake a tortuous and costly process to try to ascertain as much as she has of the truth of H's financial affairs. By far and away the major and certainly the primary responsibility for this rests with H, whose duty it was to set out his financial circumstances in a full, frank and clear manner; and I conclude from what I have seen that his stance stems from his sense of affront at what he perceives to be the temerity of W in bringing these divorce proceedings and financial claims against him. I find that he continues to be driven by ill will towards W, and is determined to cause her to incur significant legal costs not only in pursuing her claim against him, but in dealing with proceedings that he has set in train against her and (as seems likely) with others which he threatens to foment in a number of jurisdictions and at the suit (in name) of a variety of entities he controls or influences.

36. First, at the hearing on 14th and 15th June 2004 my attention was drawn to a proposed redevelopment of the Hotel Metropole in Karachi which, it was being suggested by Mr Pointer for W, was being undertaken at H's direction. I was shown a substantial glossy brochure that had been prepared by a firm of developers, incorporating a series of financial projections. The response from Mr Moor (then appearing for H, and no doubt relaying his instructions) was a simulacrum of what appeared soon after in H's textual answers to an outstanding Questionnaire, namely:

"Karachi Properties [the owner of the hotel] commissioned the report based on a potential investor from Singapore in 1997 or 1998. The plan was scrapped as it was impracticable. There are no other proposals for the development of this site, save as is already stated, demolition and commissioning into a parking lot/marriage hall."

37. Nevertheless, on 4th August 2004 a firm of Advocates in Karachi were writing to W, through her solicitors, suggesting that the injunctions that had been granted on 16th January 2004 and which have continued throughout this case had precluded the redevelopment of the Metropole Hotel which, the letter stated, was "in the process of transformation from an hotel to a shopping mall and commercial centre." It was alleged that the freezing injunction had inhibited the progress of that development, and that the company had suffered a loss of £19 million. That letter has been followed with the issue of proceedings by Karachi Properties on 11th October 2004 in the High Court of Sindh. I have been shown the copy of the claim in those proceedings. The claim, astonishingly, relies upon the contents of the self-same brochure which was produced to me on 14th/15th June 2004, and which H alleged related to a dead-letter project long since abandoned. The company alleges that that very project (in the statement of claim it is termed the company's "mega project") had been embarked upon, but had now become frustrated because of the freezing injunction made in these divorce proceedings. The analysis is that because of the freezing injunction Standard Chartered Bank have called in a guarantee of \$223,000, secured (it is said) on certain saving certificates that belong to H. Even assuming (though there is no concrete evidence to demonstrate it) that the guarantee issued by Standard Chartered Bank to support a borrowing of Karachi Properties may have been called in, I reject the assertion that the freezing injunction granted by this court has in some way impeded the development. The scale of the resources truly available to H personally or through his various service companies is such that he could readily have replaced the guarantee or the

security in the sum of \$223,000 (or even the larger figure of \$300,000 that is referred to in the Bank's own documentation). Secondly, were it demonstrably the case that the freezing injunction made in this court were in some way inhibiting the progress of the redevelopment of the hotel, application could (and no doubt would) have been made to this court to vary the injunction. But what is significant for present purposes is that the newly launched litigation in Karachi against W is, first, entirely at variance with the presentation that was being made by H in these proceedings in June and July 2004 as to the use to which the Hotel Metropole was going to be put; and, secondly, is, as I find, undoubtedly instigated by H in order to subject W to yet further pressure and expense. She has had to fund representation in Karachi at the so far modest cost of £500 and has been given the (I venture to think optimistic) augury that the case may be ground to a satisfactory conclusion for the expenditure of only a further like sum. The litigation in Sindh is brought in the name of the company. I am satisfied, however, that the proceedings would not have started without not merely the imprimatur of H, but also his impetus and his animus.

38. Secondly, as I have already recorded, H ignored that part of the freezing injunction that prohibited him from disposing of his New York apartment. He seeks to place responsibility for the marketing and attempted sale of this property on the Habib Bank in New York which, he says, has security over it for money that it has lent to one of H's businesses, Trade Wind Associates Inc. As recently as 7th September 2004 H has been writing threatening yet further litigation against W. He wrote as follows:

"I do intend to make your client fully responsible for my having lost this property to the Bank and will be claiming separately from her the market value of the property and all losses that I have incurred in the USA as a result of the freezing injunction."

39. I recall that on 15th June 2004 there was before the Court an application by H to vary the freezing injunction of 2nd February 2004 so as to permit the sale by H of the New York flat. I was not satisfied from the exiguous evidence that H had chosen to place before me that the sale of that flat was necessary, nor that the Bank was genuinely pressing for its realisation. I did not dismiss the application, but instead adjourned it, giving H the facility to restore the matter before the Court, should there indeed be evidence of the nature that his counsel on his behalf was suggesting H would be able to produce. He has chosen not to restore it. I conclude that this threatened further litigation against W is another illustration of his determination to pressurise W, both financially and psychologically.

40. It does not stop there. In his latest affidavit H at paragraphs 3 (headed 'Harassment' - i.e. of him by her) and 8 threatens to unleash a barrage of litigation against W once these proceedings have been concluded. The tone of his threats can be read if there is any need to remove doubt about the extent of his animosity towards W and the lengths to which it may indeed carry him. The institution already of the Karachi litigation supports the conclusion that from H such threats are real. This aspect of the case will find reflection in my award.

41. H has not participated in this trial. I am fully satisfied that that results from tactical decision on his part rather than any inhibiting incapacity. On 8th November 2004 I considered an application that H had made in writing for this trial to be adjourned. He protested that his health was not good and that the trial should be adjourned until he might be better. There was no medical evidence in support of that ground for his application. He said, secondly, that he had insufficient funds to pay his lawyers, and that he had a pending application for Legal Aid which he hoped would be successful: and that the trial should be adjourned until the application had been determined. I refused to accede to the application to adjourn.

42. On the day of the trial H sent by fax to the court a letter dated 22nd November 2004. The letter stated that on Saturday 20th November 2004 "a cyst in [his] skull was ruptured" and that he was undergoing essential surgery on 23rd

November 2004. W cast doubt on the truth of this assertion. She produced a copy of an invitation to a reception, a significant social event that H was hosting at his apartment in Karachi on the evening of Sunday 21st November 2004, the eve of the first day fixed for this hearing. She reported to me that that reception had taken place, and had been attended by H who was in apparent good health. Although W's account had come from someone else, who was present at the party, and is thus only indirect evidence of what occurred, I regard it as more likely accurate than the assertion of ill health coming from H, which, I was satisfied, was merely his latest attempt to derail these proceedings.

43. On day 2 of the trial, a medical report was faxed to W's solicitors' offices and brought to court. This stated that a sebaceous cyst had been operated upon. It was not materially more informative as to H's health and his ability (even if he had been willing) to attend this trial.

44. On resuming this hearing on 29th November I was handed faxes sent by H complaining he had had inadequate notice, by post alone, of the relevant hearing dates. I reject his assertions and accept the assurance of W's solicitors that before each relevant letter was posted it was faxed to H's fax machine at the Karachi flat to and from which communication has been satisfactorily conducted hitherto. H's blusters that the progress of these proceedings before me these last two weeks violates his rights to a fair trial are just empty wind.

45. As is already apparent from this judgment thus far, I am far from persuaded that H has made proper disclosure of his financial resources in this case. He has set out at every juncture to obstruct W's investigation of his financial affairs. He has, I find, concealed resources, and has been taking steps throughout the pendency of these proceedings to put them beyond the reach of this court and of any enforcement process that W may be minded to pursue against him, whether in this country or elsewhere. In *J v. V*, to which I referred at the start of this judgment, Coleridge J condemned the all-too-frequent practise of attempting to conceal resources behind the screen of offshore structures and identified the costs consequences that would flow from such litigation conduct. I agree entirely with each of those observations. The suppression of assets is not of course behaviour that of itself enhances an award. But the non-disclosing spouse does make himself vulnerable to adverse inferences being drawn against him, in accordance with the well-established line of authorities recording that principle, of which *Baker v. Baker* [1995] 2 FLR 829, CA was a useful example. In this case, given the relative modesty of the claim that is advanced by W in the context of the standard of living enjoyed by the parties during the marriage, I readily conclude that H has available to him ample resources with which to satisfy an award at or about that level.

46. Nevertheless, it is of course appropriate that I should examine (so far as I can despite his lies and obfuscations) what are the actual resources of H in order that the probable scale of his fortune may be understood, against which I can then measure the claim by W and the award that I have in mind to make.

### **The Fountain Trust.**

47. I reject completely the multiple assertions by H that he has no beneficial interest in this trust. There are in the complex and voluminous documentation amassed in the preparation of this case a number of examples of documents (letters, but notably also periodic wealth statements prepared by H) which proclaim that FT is his, and incorporate values for it and the companies in the presentation of his wealth and income. Such assertions are supported rather than belied by the way in which he has operated the assets (including the companies) of this supposed trust with utter disregard for any but his own wishes, decision-making and - in short - total control.

48. But there is more to it than that, were that not enough. Among the documents produced by Nicholas Morgan pursuant to the letters of request that were issued in June 2004 are two letters of wishes, both signed by H. These bear

identical dates of 22nd September 1998. However, they incorporate different directions. One provides that during H's lifetime he is to be considered the principal beneficiary of the trust. It provides that in the event of H's death W is to be consulted as to investment matters and as to the distribution of the trust fund; and that in the event of his death one-third of the fund was to belong to W absolutely; that W should be permitted to occupy any property in which she may be resident at the date of H's death; and that the other two thirds of the fund were to pass to H's four sons. The other letter omits any reference to H as the principal beneficiary. It provides that in the event of H's death the whole of the funds within the Trust are to go to H's sons. There is no third document indicating that one or other of the two contemporaneous letters of wishes should take priority, or the circumstances in which one rather than the other should (subject always to their discretion, theoretically at least) guide or influence the trustees.

49. The circumstances in which there came to be two divergent contemporaneous letters of wishes were the subject of enquiry in the second round of letters of request that were issued in July 2004. A set of answers in writing was supplied shortly ahead of the hearing that took place in Jersey on 25th August 2004. The answers comprised (just as if in answer to a Questionnaire) a text and accompanying documentation. Behind the documentation was enclosed what was plainly an earlier draft of the textual answers. The draft document [V119] itself showed that it had been transmitted by fax from H's fax number in Karachi. Unsurprisingly W's solicitors asked the solicitors for the trustees to confirm that H was the author of the draft document. The trustees' solicitors refused to answer and demanded the return of the draft, suggesting it was privileged. W's solicitors did not concede the claim of privilege. As is now plain the document was indeed a communication between H and Mr Morgan, and Mr Pointer contends that no question of litigation privilege can properly be maintained. The point was never pursued. However, the explanation given in the draft text and reproduced in the final text was that the letter of wishes under which W was a beneficiary was merely an initial draft that had been prepared by the trustees and despatched to H for his consideration. The other letter of wishes was said to have been prepared by H in response to the trustees' draft and was sent by him to the trustees: he having decided, it was said, to exclude W on account of her affair. I reject that explanation. There is no material to support the proposition that any draft letter of wishes was ever sent by Mr Morgan to H. There is no evidence of any dialogue between H and Mr Morgan concerning the change in H's plan or his reasons for the exclusion of himself (as principal beneficiary) and W from the "second" letter. There is no document produced from Mr Morgan's file to demonstrate how or why it was that one letter or the other was to be regarded as having priority. Furthermore, in correspondence passing between W's solicitors in London and the trustees' solicitors in London, it was suggested on behalf of the trustees that while it was true that the draft set of answers had come from H in Karachi, that had been in response to an earlier draft set of answers that had been despatched from Jersey to Karachi for consideration by H. The problem with that explanation is that while this correspondence was being exchanged, Mr Morgan was being examined by Mr Kingscote before the Royal Court in Jersey. The transcript of that examination records Mr Morgan as acknowledging that the set of draft answers had originated from H and not from his firm.

50. Mr Pointer submits that the only sensible reason to have two inconsistent signed contemporaneous letters of wishes is to enable the dishonest selection of one or other letter to meet the circumstances in which the letter may have to be produced or otherwise relied upon. Thus, in the context of divorce proceedings, H, if obliged to produce a letter, would produce the one that excluded W. For other purposes, he would produce the alternative. In the absence of any overarching letter of stage 1 wishes containing further instructions as to which of the stage 2 letters is effective in what circumstances it is difficult to conceive what other explanation there can be. Mr Morgan accepted that for a trustee to hold on file or in its safe two such letters is, in what seems to be his very extensive experience, unique. I would hope so.

51. The nature and structure of sophisticated off-shore arrangements such as have been deployed by H is well understood in this Division. No doubt the professional advisers and trustees of wealthy individuals wish honestly to strive to construct a network of interwoven trusts and companies able successfully to withstand the scrutiny of the internal revenue services of the parts of the world relevant to the interested parties. That shelter is dependent upon there being properly constituted corporate and trust structures in place; and there being a level of competence and of formality

in the production of minutes of board meetings, powers of attorney and so on. There must also be supporting evidence (if and when questions arise which must be answered) for the proposition that proper consideration has been given by the trustees to the exercise of their discretionary powers. Two divergent letters of wishes do not fit anywhere into such a structure. I do not see how any professional trustee can properly have in his possession two such contemporaneous documents without there being the clearest instructions in writing as to which prevails.

52. I would have no hesitation in concluding that H should in his lifetime be regarded as the owner of FT. If bounty from the trust reaches other individuals it does so as H's gift or to meet his requirements, rather than as the result of any exercise of trustees' discretion independently exercised. The resources within FT have been and (insofar as they still remain there) remain available to him, at any rate in the sense in which resources are appraised under the Matrimonial Causes Act 1973, section 25(2)(a).

53. However, Mr Pointer invites me to go further than that. He submits that I should find that FT is a sham. It is, in reality, no more than a piece of paper utilized by H as a fiscal and/or financial screen. In this connection I have been referred to a number of authorities on this topic. Some of the earlier cases, including in particular some observations of Diplock LJ in *Snook v London & West Riding Investments Limited* [1967] 2 QB 786 suggest that in order for the court to conclude that a document or transaction is a sham, it is necessary that all the parties to it must have a common intention that the "...documents are not intended to create the legal rights and obligations which they give the appearance of creating." However, in *Midland Bank PLC v Wyatt* [1985] 1 FLR 696 at 699 DEM Young QC held, as to that principle:

"... I do not understand Diplock LJ's observations regarding the requirement that all the parties to a sham must have a common interest to be a necessary requirement in respect of all sham transactions. I consider a sham transaction will still remain a sham transaction even if one of the parties to it merely went along with the shammer not either knowing or caring about what he or she was signing. Such a person would still be a party to the sham and could not rely on any principle of estoppel such as was the case in *Snook*, the defendant there not being a party to the transaction at all."

54. Support for that analysis can be gleaned from the judgment of Arden LJ In *Hitch v Stone* [2001] STC 214 in which she said at 234 "in my judgment, the law does not require that in every situation every party to the actual document should be a party to the sham". I have also read a lucid and scholarly paper on the topic of sham trusts written in 2004 by Stuart Pryke, a member of the specialist bar, in which he refers to and analyses what appear to be the most relevant authorities. In that paper he concludes:

"In order for a trust to be found to be a sham, both of the parties to the establishment of the trust (that is to say the settlor and the trustees in the usual case) must intend not to act on the terms of the trust deed. Alternatively in the case where one party intends not to act on the terms of the trust deed, the other party must at least be prepared to go along with the intentions of the shammer neither knowing or caring about what they are signing or the transactions they are carrying out."

55. That seems to me to be a fair analysis of the current state of the law, and I adopt it.

56. What are the factors here that support the proposition that the trust is a front, and that H, at least, had no intention of treating it as such? First, the assets of the trust comprise only the shares in DM and the shares in MM. As to the former, it is clear that H has treated the bank accounts of DM as if they were his own. He has caused to be paid into them the

funds to which he was entitled under his various consultancy agreements with Cathay Pacific. He has withdrawn money from those accounts as if it were his own. No formal trading accounts for DM have been drawn up, at least since the execution of the trust deed in 1998. Transfers have been made from DM to MM, without any accounting ever being undertaken between the two companies. Transfers have been made from DM to Jealott Investments Limited, as if the money were H's own funds to move around as he chose, which is precisely as he has always regarded them, a practice from which the trustees/directors have been unwilling or unable to restrain him. The documents to which I have referred above show that H was planning to wind up DM (because too many people knew about it). Plainly, there would have been no accounting between him and DM, or Jealott and DM, or Midfield and DM, were DM to have been wound up. MM was a vehicle acquired simply to own his matrimonial home. Expenditure on it was met from the DM account. Again, no trading accounts have ever been drawn up. H's presentation in this case has been that he had a consultancy agreement with DM. No such document has ever been produced. Mr Morgan was never aware that there was one. It is true that at certain stages Mr Morgan took the trouble to draw up powers of attorney in favour of H, in order to permit him to utilise the company's bank accounts. But that was an empty and in any event inconsistent and ineffective formality: window-dressing, it might fairly be called, or going through some of the motions. The last such power of attorney expired in June 2003. That did not prevent H continuing to use the bank accounts as if they were his own: he remained a signatory on those accounts, and the mandate did not change until after the freezing injunction was made in January 2004. In his testimony in Jersey Mr Morgan conceded in answer to questions from Mr Kingscote that DM was in truth H's alter ego; that H had total investment control over that company and, in Mr Morgan's own words, H treated DM as his own "personal fiefdom".[AA51]. Not only had Mr Morgan never seen any consultancy agreement between H and DM, he had not until this summer seen any of DM's bank accounts, and could not be sure at which banks accounts were operative. He was until shortly before he gave evidence in July wholly ignorant about a series of three agreements between Cathay and DM concluded as long ago as May 2001 under which DM would receive up to a total of \$4,750,000 in one-off fees contingent upon securing certain deals, plus an annual fee income until April 2006 of \$850,000.

57. I have, therefore, no hesitation in coming to the conclusion that H never had the slightest intention of respecting even the formalities of the trust and corporate structures that had been set up at his direction. His purpose was only to set up a screen to shield his resources from other claims or unwelcome scrutiny and investigation. In most cases where off-shore structures are put in place the primary objective is fiscal, and for all I know such considerations here played their part. But in this case, where H has already been through three divorces, it may well be that he was keen to shield his resources from matrimonial claims as well. Undoubtedly, H's intention always was that the resources were his and would continue to be his.

58. I conclude also that the trustees were privy to the sham, at least in the sense that they went along with the intentions of H. In this regard I have observed that the trustees were willing to go along with all of H's actions and did not, from what has been shown to me, attempt at any stage to rein him in. There is support for this interpretation from the evidence given by Mr Morgan in Jersey. In the course of that testimony he said that "I believe he [H] is the protector of the trust - and, as such, he is effectively the client." [AA106]. Mr Morgan also observed that he had regarded H as "de facto principal beneficiary" [AA114]. When dealing with the letters of wishes Mr Morgan was at pains to emphasise that letters of wishes are precatory only and he said that "where you have a settlor situation, a letter of wishes is for guidance only and the settlor can verbally or in writing give different wishes at any stage." [AA115]. He went on to say that a letter of wishes "could be changed yesterday; it could be changed tomorrow." [AA113]. That was troubling evidence. It, of course, provokes the question whether or not what H says is the second letter of wishes had in fact been backdated; and I have given due consideration to that possibility. However, I have rejected the evidence that the "second" letter of wishes was a refinement of the first draft. And I adhere to the conclusion voiced above that these letters were both deliberately produced at the same time: a time when, according to W's evidence about his reaction to discovery of her affair and her offer to depart the marriage if that was what he required, he seemed anxious that on the contrary the marriage should be saved, which she thought was what they set about achieving. That analysis serves too to confirm me in the view that this was not and was never intended by H to be a properly managed and independent trust;

but was instead simply an extension of H himself. I conclude, on the material to which I have referred that the CI were certainly prepared to go along almost totally passively with the way in which H made plain he intended to manage and was managing this trust.

59. I should record here that in the latter stages of CI's relationship with H, some suggestion was being made that H and they should part company. The reason for this appears to have been that the regulatory requirements for the management of offshore companies and trusts in Jersey have become more restrictive; and that Mr Morgan was keen, therefore, to see that proper trading accounts for DM at least were drawn up. He was (for the reasons I have indicated) entirely dependent upon H for the information necessary to have such accounts prepared; and H was not prepared to supply that information to him. Thus it was that Mr Morgan was contemplating an exit strategy for his firm; but in the event that never occurred. This late development in the relationship between H and CI cannot, in my judgment, operate to undermine the conclusion that I have reached on the other material, namely that this trust is a sham. Indeed, it serves to reinforce it.

60. The result of my findings as to the status of the trust will be that the assets of the trust, namely the shares in DM and in MM vest in H, as their true and sole owner. It is necessary, therefore, that I should consider what assets remain within those companies and potentially available for the purposes of assessing this ancillary relief claim, and to meet it.

## **DM**

61. Assessing the true value of the assets within this company is a Sisyphean labour. H has never revealed the assets of the company. His presentation has been that he owes the company several hundred thousand pounds, but that it is otherwise nothing to do with him. Nicholas Morgan was required under the letters of request to furnish a schedule of assets, but, notwithstanding that he is on paper a director of the company; he has failed to do so: saying that only H has the necessary information. Whenever W has seemed to be approaching what appear to be funds available to meet her claim, they have in the main been removed elsewhere.

i) The combination of the inspection appointment against Standard Chartered Bank in London and the letters of request to Standard Chartered's Jersey offshoot has revealed a series of accounts at that bank which hold in aggregate about £1.15 million. However, that sum is vulnerable to reduction on account of three guarantees that Standard Chartered had issued at the request of H, two in connection with the Rotary Watches arbitration amounting to £337,500 and a third in support of an account in Karachi for the benefit of the Hotel Metropole in the sum of \$300,000. The aggregate of £500,000 may, therefore, be called in and reduce that cash of £1.15 million to about £650,000.

ii) There are the proceeds of the two investment bonds that in February 2004 H was attempting to surrender and to transmit to the EFG Bank in Guernsey. The bonds were surrendered, but, because of the freezing injunction the current net proceeds of about \$800,000 are (subject to a little doubt in the light of some evidence given by Mr Morgan in Jersey on the 19th November 2004) held by Mr Morgan's firm in Jersey. At the present depressed value of the dollar that approximates to only about £420,000.

iii) There should also be the sum of \$500,000 that at the time of the breakdown of this marriage H sent from Jersey to EFG Bank in Guernsey. However, it is likely that that is part of the money that has now been sent on by H from Guernsey to Dubai. Properly, that money belongs to DM: but it is doubtful whether it will find its way back to that company.

iv) The company technically enjoys the benefit of certain contracts that H has negotiated with Cathay Pacific. Under those contracts DM was due to receive US\$ 4.7 million as commissions under a series of transactions that were due to take place between May 2001 and June 2003. I am satisfied that those commissions have been paid, but to what extent they are now represented in the resources I have been describing above, it is difficult to say. In addition, there is a rolling contract under which Cathay is due to pay to DM US\$ 850,000 per annum. I have little doubt but that in the context of this divorce H has redirected those payments from Cathay, almost certainly to his new service vehicle, Aviation International Consulting Limited.

### **MM and the Portland Place flat**

62. In this case it has been H's presentation that the Portland Place apartment is not his. In correspondence his solicitors wrote on his instructions that he "knows nothing about the actions of MM ... it is an entirely independent legal entity in which he has no interest whatsoever." On 8th September 2004 H wrote to Sheridans (his erstwhile commercial solicitors in London) stating that "the property ... is not my matrimonial home, it is not my property and I am not the beneficiary of the trust that owns the property. You are, therefore, trying to take a charge over a property in which I have no personal interest." In answers to Questionnaire H even went so far [F204] as to state that, as well as not having anything to do with the decision making, he does not know who the directors of MM are. I have already rejected the assertions by H that FT, DM and MM are properly to be regarded as independent legal entities. The conclusion that I have already expressed is supported by H's own presentations both to his bankers and to Mr Morgan. Thus, in a letter dated 27th February 2002 [L96], H wrote to Mr Morgan, saying as follows:

"I am enclosing herewith an updated net worth statement of myself as the sole beneficiary of the Trust and as promised also give you a bird's eye view of the last year's activities and income source.

Midfield Management was purchased with the sole aim of owning flat no. 2, 55 Portland Place and this was completed on 17th October 2001. I have full possession of the property and am in occupation of the same. "

63. The value of this apartment is agreed on the face of the parties' Forms E at £1.1 million. More recently, W has gained sight of a valuation of the property at £1,050,000, obtained for lender security purposes last December, no doubt in connection with H's unsuccessful attempt to raise a further £300,000 to reduce the available equity. I shall take the property to be worth the lower figure as does Mr Pointer's final schedule, because in it he makes no allowance for the notional costs of sale, usually taken as 3% including VAT, which near enough removes the differential. It remains subject to the balance under the original mortgage with Standard Chartered Bank, standing at £300,000. Secondly, it has become subject during the course of these proceedings to a charging order in favour of Sheridans. As is already recorded, they instituted proceedings against H for fees owing to them in the sum of £162,053. H did not defend the claim. Judgment was entered on 2nd July 2004 in the sum of £177,953 (a figure that included interest and fixed costs). On 9th August 2004 Sheridans obtained a charging order nisi alleging (entirely in parallel with what W has been saying in this case) that H is the true beneficial owner of the property. Accordingly, if I make an order for transfer of the shares in MM and/or the property itself to W, she will take the property subject to both those charges. For I have pending delivery of this judgment made the charging order absolute once those acting for FT, DM and MM had (having considered an earlier draft of this judgment upon the status of the trust) abandoned the stance that H was not the true owner of the apartment.

64. After recording the principal identifiable assets of H, the task becomes significantly more demanding. W has pointed to a series of assets that she says are the property of H: but he has not co-operated in the investigative process, and, as I have already found, has obstructed the enquiry at every turn.

### **Hotel Metropole**

65. Historically this was an important building in Karachi. The original hotel was opened by the late Shah of Iran in 1950. It occupies a large site comprising a whole block in the heart of Karachi. The site is owned by Karachi Properties Investment Co. Limited. Until the doubtful letter of resignation at the time these divorce proceedings began, H was the chief executive of this company. Of the 4,900 issued shares at least 2,000 are registered in H's name. W says that she believes that H owns 58% of the company [B5]. I have no particular reason to doubt her evidence. H claims that whatever shares may be registered in his name, they are held in trust for his children. He has produced a form of Pakistani trust deed that he says was drawn up in 1994, and under which he holds the shares in that company on trust for three of his sons, F, J and H. However, the validity of that trust is open to doubt. W has conducted investigations in Pakistan. It transpires that under Pakistani law it probably necessary for a trust such as this to be formally registered. Enquiries have shown that this trust is not registered. In any case all the documentary material that has been unearthed by W relating to this hotel indicates that H does indeed have a beneficial interest in it of at least 50%. In all the bankers' material, including the statements of net worth to which I refer below, the hotel is treated by H as his. In September 2003 H is recorded as having told Standard Chartered Bank that he was going to sell the hotel for \$10,000,000, of which \$5,000,000 would go to him. When H began to divert his banking arrangements to EFG Bank he informed them that he owned the hotel [DD208]. There are 2 documents in the bundle which give an indication of what may be the value of the site. The first is the development report that I have mentioned above, which puts a value on the site of (the Pakistani rupee equivalent of) £7.5 million. The second is a valuation that H produced in the course of his answers to Questionnaire, which gave a value of about £7.3 million. Of course, the claim that has been brought against W in the High Court in Karachi indicates that the value of the property with its redevelopment potential is very significantly greater, for otherwise a claim for as much as £33,000,000 could not have been formulated. I conclude that H is beneficially entitled to not less than 50% of the value of the hotel and that the figure of £7.5 million is the absolute minimum for its worth.

### **EFG Bank**

i) Funds have been diverted from Standard Chartered to EFG Bank. The benefits of the contracts with Cathay Pacific have been diverted from DM to Jealott Investments and have I conclude found their way into the EFG Bank. What remains there has not been ascertained.

ii) Some of the accounts at EFG Bank are in the name of Jealott Investments and Aviation International Consultants. These accounts are run by and for the benefit of H in the same way that the accounts of DM were.

### **Aviation Services Ltd**

66. This company is (it is agreed) the general sales agent for Cathay Pacific. H has claimed in these proceedings that he has no interest in the company. In answer to the direct question what is his association with the company, he answered merely that he is neither a shareholder nor a director. However, W holds 619,150 shares in the company. In her oral evidence to me she explained that she had not realised that shares had been placed in her name; and that it must have been done by H. She tells me that Aviation Services Limited generates substantial income for H. She tells me that the paper shareholdings disguise the true beneficial ownership of the company. (The majority of the other shares are

registered in the name of H's son F.) I am satisfied on the evidence I have seen that on the balance of probabilities H is the true underlying beneficial owner of this company, and that it generates significant income for him from its agency with Cathay Pacific.

### **Trade Wind Associates Inc.**

67. This is the travel agency business that operates in North America, of which H owns 50%. Until recently this generated an income for H of \$250,000 dollars per annum. H has claimed, during the course of these proceedings that the company has fallen on hard times, is losing money and that its bankers are therefore seeking to recover his flat in New York, which is security for the business's borrowings. No up-to-date financial material in respect of Trade Wind Associates has been forthcoming, nor its sister company Trade Wind Associates Canada Inc.

68. There is a series of other companies that have been identified in the course of the case with which H has some connexion and in most cases, I am satisfied either a partial or the whole beneficial interest, but about which the information is sparse.

69. Trade Wind Associates (UK) Limited is said by H to be dormant, but there is no proper material to demonstrate that. Trade Wind Gulf Aviation Limited is said by H to be closed but that too has not been corroborated. There are sister companies in Pakistan and in Dubai, but H has provided no information about them at all. Rotary Watches (USA) Inc. I accept can be regarded as having no value, together with its associated company Import Export Inc., in the light of the unsuccessful arbitration. Alongside Karachi Properties Investment Co. Limited stands Hotel Metropole Limited, which is said to be the company that manages the hotel from that site. H acknowledges that he has a 35% interest (at least) in this company, but there is no material upon which those shares can be valued. There is a series of companies that bear H's familiar name of Happy. These are Happy Associates Limited, Happy Development Corporation Limited and Happy Trading Corporation Limited. Again, there is no information that allows me to ascribe any proper value to these companies. There are two companies that are apparently concerned with freight: Freight Systems Pakistan LLC and Strategic Freight Systems Limited (which is said to be a subsidiary of Freight Systems LLC). Again, the material concerning these companies is completely inadequate. There is a property owning company in Pakistan called Properties Services Limited, in which H has either one-third or a 25% share. Again, it is not possible to assess the value of that interest. There is a relatively new company that has been created by H called Al-Abda Pakistan Limited. I have no more material about that company. I have recorded above that H has caused the formation of Jealott Investments Ltd and Aviation International Consultancy Limited as his personal service companies. Given that he has not even revealed the existence of these companies to the court, he has, unsurprisingly, not provided any information as to what assets they contain. The bank documents show that he is the 100% beneficial owner of those two companies. It is also apparent that H has set up a further company called BMM Investments Limited as an additional service company into which he has transferred money.

70. I need to address two other factors that may bear upon H's financial circumstances.

### **Rotary Watches arbitration**

71. H set up a company called Rotary Watches Inc. He has asserted a 75% interest in the company. This company obtained the franchise for distribution of Rotary watches in the United States. The agreement was terminated by the UK parent, Rotary Watches Ltd in about 1998. The US company made a claim against the UK company for alleged wrongful termination of the distribution agreement. The UK company counterclaimed. A commercial silk was appointed arbitrator. The proceedings took a very long time. Each side incurred substantial legal costs. H's company

was required to provide security for costs in the sum of £609,000. Of that sum either £272,500 or £350,000 (the position is unclear) was evidently covered by an insurance policy. The balance of £337,500 was secured by two guarantees given by Standard Chartered Bank. Those London guarantees were themselves secured on cash held by DM in Jersey. It would appear that H agreed to indemnify Sheridans, the London solicitors acting on behalf of Rotary Watches (United States) Inc. in relation to the costs of the arbitration [E326/J231].

72. In June 2004, after H had decided to withdraw from all litigation in the United Kingdom, he was sued by Sheridans for the balance then owing to them in fees, namely £162,053. The claim was issued on 15th June 2004. Judgment was entered on 2nd July 2004. It is suggested that there is a further balance due of £228,611 [E451] but it has also been confirmed that recovery thereof will not be sought against the Portland Place property.

### **Jersey Police**

73. A letter from Jersey Police dated 19th May 2004 [E272] records that the police are interested in a series of transactions on the bank account of DM, namely the receipt of sums from Cathay Pacific amounting to US\$ 4.85 million in 2002 and 2003, and a number of smaller payments out. H has recently suggested that this interest by the Jersey police was provoked by W securing a freezing injunction [E463]. In fact the Standard Chartered documents show that the initial report was made by CI Law Trustees Ltd. Documentary evidence has been produced to me which demonstrates that the money that was paid to H by Cathay Pacific was being paid pursuant to a legitimate commercial contract. His function under the contract was to negotiate the sale of a number of aircraft to Pakistan International Airways. The material, so far as it goes, that I have read does not suggest that there was anything tainted about those transactions.

74. Arriving at a precise arithmetical conclusion as to what may be the overall fortune of H is, therefore, a task that has been frustrated by H's dishonest presentation of his financial affairs. Should I then derive guidance from the presentations that H has made to his own bankers? The letter of 22nd February 2002 to Mr Morgan to which I have made reference above included with it a statement of net worth. Oddly, when the letter itself was produced by Mr Morgan in July 2004, the net worth statement was not included, and W's solicitors had to press for it. The document purported to summarize H's financial affairs as at 31st December 2001, and gave his total net worth at US\$ 19,580,000. A later net worth statement was elicited from Standard Chartered Bank, dated 31st December 2002. That put H's net fortune at US\$ 24,000,000. The most recent presentations in papers from EFG Bank suggest that he may be worth US\$ 28,000,000. When I consider the financial presentations as at December 2001 and December 2002, I have to bear in mind that since those dates H has suffered the adverse outcome of the arbitration proceedings concerning Rotary Watches, so that the value ascribed to Rotary Watches USA Inc. is to be regarded as lost, along with such legal costs and securities as H has himself been obliged to put up. On the other hand, I remind myself that the litigation was being conducted not in H's personal name, but in the name of the United States Corporation, so that any liability for damages rests with that business and not with H. Moreover, insofar as he has made himself responsible for loans to the company or in respect of arbitration costs, it would be wrong to ignore the fact that he may have recourse as to 25% against the other beneficial shareholder in Rotary.

75. But as against that, the significant contracts with Cathay Pacific and Rolls-Royce have been generating funds for H since the date of the earliest of the statements of net worth referred to above. There are other indications in the documents produced by EFG Bank that H's fortune may be considerably more. There is a manuscript note which suggests that \$25,000,000 is being transmitted from Canada to the Bank of Punjab. There are references in both the EFG papers and in the documents produced by Mr Morgan that indicate that there may be bank accounts in Switzerland either at UBS or at Lloyds TSB or both. In the documents produced by Standard Chartered Bank is evidence that H transferred US\$ 750,000 to a company called Leetonia Properties [O99, O117]. In his evidence in Jersey, Mr Morgan

suggested that a company bearing that name had been set up by him just before the purchase of the apartment in Portland Place with the intention that it would be used to hold that property; but that in the event, the shares in MM were acquired instead, so that the company was no longer used. That appears to be gainsaid by the Standard Chartered documents. It is also suggested in the EFG documents that H is the owner of the site of the Hyatt Regency Hotel in Karachi; and there are queries from W as to whether or not H owns a property in Texas and, maybe, another property in London.

76. In the absence of supporting evidence I apply the same principle of disbelief to other areas of H's assertions during these proceedings, and when it has suited him outside them. I therefore conclude that I should make no allowance for the possibility that H might be garaging funds for others in DM. It is all too easy a suggestion to make. It is true that CI became concerned at the regulatory implications of H's assertions to them on this topic and therefore sought corroboration and greater detail (without great success). H has produced nothing tangible to support the assertion that some of the funds from time to time sheltered in DM were monies he had allowed friends, business associates or relatives to park there to accommodate their own personal needs for fiscal, financial or familial invisibility. Yet today H has sent a fax to W's solicitors, commenting in relation to an injunction I authorised on 1 December (designed to preserve the funds in Jersey intact): "I am passing [the injunction] on to the third parties whose funds have been blocked in the account of DM, so they may send their affidavits directly to the court and to you for the release of their funds, as these assets are neither part of any assets of mine or part of the matrimonial proceedings." The funds in question have been blocked for months, and therefore one wonders why it is at this juncture only, when (as the letter makes clear) H erroneously believes "the hearings ... are over" that such claims are to be pursued.

77. Nor do I without firm evidence credit H's claim that his business associate and relative Mr Bamboat of Dubai has on the strength of a series of IOUs promising repayment by the end of the year lent him £73,500 which he has disbursed direct to firms of lawyers. There is no evidence to demonstrate the source of the money Mr Bamboat laid out in these transactions.

78. In the end, I am driven to conclude that H's fortune must be measured as having a minimum worth of US\$25,000,000; and in all probability considerably more.

79. So far as W is concerned, she has net debts of about £45,000. She has in the course of the hearing ascertained that there are £3,500 of service charge arrears unpaid on Portland Place. (She may have an interest jointly with H in two small funds in the United States which I will transfer to her upon the basis that any value she achieves will be offset against H's total liabilities under my order), but is likely that they will not long be available to her or have any material value when she comes to investigate them.)

## **Income**

80. H's presentation in this case has been that his total income is a consultancy fee of US\$48,000 per annum from Cathay Pacific. He has asserted that he retired from his former position at Cathay Pacific in 2002 and that his contract with Cathay Pacific is limited to that consultancy agreement. The documents obtained by W have demonstrated the falsity of that presentation. H has a continuing right under the contract of 1st May 2001 with Cathay Pacific to US\$850,000 per annum (albeit diverted by him into one of his service companies). The documents from EFG Bank show that he has a rolling contract with Rolls Royce for the maintenance of aero engines under which the fee to which he is entitled is \$500,000 per annum. Through Aviation Services Ltd H has the benefit of the sales agency contracts for Pakistan, Afghanistan and the Central Asian republics. H undoubtedly was able to draw an income from Trade Wind Associates Inc. at the rate of \$250,000 per annum; and I am sure that that income can and will be restored once this case

is over. On that footing, H's income should be taking at a minimum of US\$1,650,000 per annum. My sense is that he should be regarded as having an income of the order of £1,000,000 per annum, on which, because of his diversion of that income to his off-shore entities he pays at most negligible tax. His presentation to his banks of his living expenses puts them no higher than about US\$ 300,000 per annum. So the surplus that he generates each year is substantial. On one view, the figures that I have taken for H's income are modest. The documentation produced by his bankers shows that H has been presenting his income to them as ranging from £1.4 million to US\$ 4.1 million per annum in the last 4 years.

81. For her part, W has an interest in a modest business in Karachi called AM Flowers. This is involved in the importation of flowers from Dubai and from Thailand for sale in Karachi. The business has struggled due to the absence of W in London during the course of these proceedings and also, she says (and I accept), because of pressure that H, in Karachi, has brought to bear upon W's business partner. She tells me that it could generate a small income for her, were she able to go to Karachi and apply herself to it. I am satisfied that having regard to the history of this relationship, W should not, at her age, be subject to any obligation to generate any income of substance. It was H's desire, if not requirement, during the marriage that she should not work, but be dependent wholly upon him. Now his assertions that it is a veritable and inexhaustible goldmine for her lack credibility as much as do many of his other uncorroborated utterances.

82. Inevitably, the focus of this judgment has been upon the financial circumstances of the parties, and H in particular, but it is important that I should not overlook the other criteria that are set out in the Matrimonial Causes Act 1973 section 25.

### **Needs and obligations**

83. W needs accommodation for herself. She resides at present in the Portland Place apartment and, although she can foresee a time when she may wish to move to another property, she would wish to remain there for the foreseeable future. The remaining lease is not long, and she would like to have the funds to buy an extension to take the lease beyond 2035. I have taken the property to be worth £1,050,000 net of notional sale costs, but the charges upon it (the mortgage of £300,000 and the charging order in favour of Sheridans) reduce its net value to about £570,000. To purchase a lease extension would cost, probably, £460,000 when I make an allowance for associated costs. The resultant value of the property would hopefully be no less than £1.55 million to justify the purchase. That will be a matter for her. In order to place W in that position it would be necessary to direct the transfer to her of that apartment, and to require H to pay a lump sum to discharge the indebtedness secured on it as well as to fund the acquisition of the lease extension. In aggregate the sum required amounts to £940,000. Is this an unreasonable aspiration? When I survey the probable true scale of H's resources, and the standard of living that was enjoyed by the parties during the marriage, for W to have about £1.5 million for her housing requirement in London does not seem to me to be excessive, though I shall consider it in conjunction with the balance of her claim below. I appreciate that a time may well arrive when W could decide to move somewhere less extensive than this 2,500 square foot flat, at which point she will release free capital (in all likelihood) and may reduce some elements of her expenditure (for instance in relation to service charges). These considerations do not persuade me that it would be unfair for her to have such a degree of flexibility and self-determination after a relationship and marriage such as these parties' has been.

84. In the course of this case, W has had to sell her Mercedes car and some of her jewellery and borrow money from her children and others (some £45,000) in order to maintain herself. She needs therefore funds for a replacement car. She seeks the price of a Mercedes C320, which is about £30,000. She needs to pay off the service charge arrears.

85. H has stated that his intention is to reside in Karachi. He retains a large apartment there, where he is supported by 7 staff. He has a continuing obligation to maintain his minor son HO who lives in the United States with his mother, D. Having regard to the conclusions to which I have come as to the scale of the husband's resources, I am confident that he is able financially to provide for HO at an appropriate level.

86. I have recorded above that the standard of living enjoyed by the parties during the marriage was extremely high. H is now 61, and W is 55. The marriage lasted for about 9 years. However, I do not overlook the fact that the parties were in a settled relationship from 1986 and that, from inception, W and her children became financially completely dependent upon H. I observe that H's continuing marriage to D was an obstacle in the way of these parties becoming married very much earlier than they were.

87. As to health: H is a diabetic. This is a condition that was diagnosed many years ago and is managed satisfactorily. H has concern about the condition of his heart: but there is no current medical evidence to indicate that this is a matter of any serious concern. I discount the recent presentation by H on the eve of the trial as signifying any genuine or genuinely serious health problem.

88. As to contributions: it is acknowledged that the sole financial contribution has been from H. On the other hand there does not seem to be any dispute but that W played her part as wife and as supporter to H in his business activities throughout their relationship. This is not a case in which there is any basis for differentiation between the spouses in the area of their respective contributions.

89. The aspiration of W in the case is for owned accommodation (to include the capacity to acquire an extended lease if she so chooses) and for an investment fund that will on accepted *Duxbury* principles generate an income for her at the level of the budget she has advanced. Her budgeted figure was £90,000 per annum. That budget was tested in the course of W's oral testimony, and I am satisfied that (as it then stood) it is not excessive. Since she gave her evidence it has emerged that it was understated to the tune of £11,750 p.a. while she remains at Portland Place, the current scale of the ground rent and service charges. For however long that particular element in her budget remains payable however, I doubt whether annual expenditure at the level of £101,750 net would in fact permit her to maintain in London (where she anticipates continuing to make her home whether at Portland Place or elsewhere, and where her two children are established) the same standard of living that she enjoyed during the marriage. The total sought is to be measured against H's own annual budget for himself (not that which he produced for forensic purposes in the sum of £46,000 but rather his living expenses figure given to his bankers) in the sum of \$300,000.

90. W's corrected budget of £101,750 translates (as the *Capitalise* computer programme shows) into a *Duxbury* fund requirement of £2,100,000. I remind myself that H upon the available evidence has a number of high-earning years ahead of him, whereas any income W may generate will (in my judgment) be very modest by comparison. He therefore has the prospect of increasing his capital base: her income-producing fund will if she applies the *Duxbury* rationale and methodology diminish to projected extinction over the 32-year balance of her life-span upon which the computation is based.

91. If I aggregate the *Duxbury* fund requirement with the housing aspiration and the price of a new car and debt repayment for W, the total provision sought by her under those heads comes to £3.685 million.

92. W however in the particular circumstances of this case has another identifiable prospective need which in my judgment is not so remote that I should disregard it. I view it as more likely than not, such is his animosity towards W and his determination that she should not receive more than whatever he would choose for her to receive, that H will

carry out his threat of pattern-bombing W with litigation brought by him and his creatures. The cost of meeting those assaults should not deplete the other aspects of her award or invade what in my view is her fair entitlement. She will moreover most likely sustain some significant irrecoverable costs in seeking to enforce the order so as to obtain its fruits. Her difficulties will flow entirely from the stance and actions adopted by H in response to her legitimate claim. She should be shielded from what I understand Thorpe LJ when rejecting his application for permission to appeal my June maintenance pending suit order described as H's policy of poisoning the water and burning the crops as he retreats to havens fresh. That policy of waste should ricochet to his account, if W is ever so fortunate as to obtain full performance of the obligations which this order will impose on H.

93. I propose, in short and without separate analysis of its legal justification, to follow the course adopted by Munby J in *Al-Khatib v Masry* [2002] EWHC 108 (Fam), [2002] 1 FLR 1053. I allocate £500,000 to those purposes, inevitably an estimate, to be designated in this court's order as a separate and additional instalment of the lump sum, payable only once the whole of the balance of the lump sum (and costs) orders I will make have been met, and at that stage subject to variation if H then wishes to demonstrate that £500,000 has proved to be excessive by way of provision for these purposes until that point, and/or to bind himself that there will be no future occasion for her to meet such expenditure. The jurisdiction for such a variation application is founded in section 31(2)(d) of the Matrimonial Causes Act, and that it may have the effect of reducing or extinguishing (as well as rescheduling) the ordered instalment is at present decided by authority such as *Tilley v Tilley* (1979) 10 Fam Law 89 through to *Westbury v Sampson* [2001] EWCA (Civ) 407, [2002] 1 FLR 166. But any such application might well as a practical prerequisite involve H first meeting the orders (including the costs orders) which I shall make. That will however be a matter for the judge hearing the application.

94. Therefore the total value of the provision which H should make to W is £4,185,000 (subject to costs). The form of the order will be fixed immediately after this judgment has been handed down.

### **Fairness**

95. It is not easy to undertake any evaluation by reference to equality of division, for the totality of the whole is unknown. If I am right that H's resources are a minimum of US\$25 million, or between £13 million and £14 million at least, W's claim is for between about 32.2% and 29.9%. I remind myself that although the committed relationship between the parties was a long one, it was a fourth marriage for H, and he has been developing his expertise and building up his fortune in the aviation, hotel and travel services businesses over many years, including before he met W. I do not see, however, that it would be fair to do other than provide fully but still reasonably for what I have assessed to be the reasonable needs of W for her immediate and longer-term accommodation and for her revenue requirements. As to £500,000, the award contingently meets a need which H is entirely responsible for creating. I am confident that he has ample resources with which to satisfy the overall award.

96. Before turning to the structure of the order that I propose to make and the extant matters upon which it is still necessary to hear argument and to rule, it is appropriate that I should make a number of observations on procedural matters that have arisen in the course of this case.

97. First, the use of letters of request. During this case there has been a series of three letters of request addressed to CI in Jersey. In each case the requests have attracted maximum co-operation from the Jersey courts. They have been dealt with with the utmost courtesy, speed and efficiency. I am given to understand that Deputy Judicial Greffier Matthews, who has had the management in Jersey of this case, has gone out of his way to accommodate the timetable laid down by this court for the progress of the case, and has fitted in hearings so as to enable the information to be produced speedily. I am informed that there is statutory provision in Jersey that, if there be an oral hearing on the letters of request, English

counsel have a right of audience, so that they may investigate the matters arising on the letters of request with the respondent to the hearing; and, secondly, that no order as to costs is made by the court. (Although that is not to say that in an appropriate case the witness should not recover the expense, including professional time, incurred in meeting the request: in this case and understandably CI did not pursue the totality of their potential claim under this head). This is, therefore, an efficacious and comparatively inexpensive method of extracting necessary information concerning off-shore trusts where the settlor or beneficiary is unwilling to provide relevant information.

98. It has however been courteously drawn to my attention in a letter from Mr Jowitt, the Senior Legal Adviser to the Law Officers' Department in Jersey, that it is important for English courts and lawyers to bear well in mind that such assistance as letters of request can provide must be sought in accordance with the formal requirements of the Hague Evidence Convention, which in the case of Jersey requires that they be sent to Her Majesty's Attorney General for Jersey, and not direct to residents of the Island or to public authorities there.

99. I repose confidence in the courts of Jersey and of Guernsey that they will do their best, of course always in accordance with their domestic law and procedures, to ensure the speedy and efficient implementation of the orders that I will make to reflect the findings and the award contained in this judgment, so that W receives what is due to her without significant expense and delay.

100. Next, I have referred above to the existence of the enquiry being undertaken in Jersey by the State's Police. The result of the order that I am proposing to make will be that beneficial ownership of DM will pass to W. She will thereupon become entitled as the owner of the company to take whatever steps may be appropriate and necessary to take control of the monies held within the DM accounts, which are at the moment frozen because of the police investigation there. It would therefore seem appropriate for the terms of my order (insofar as they relate to FT and the two companies) to be brought to the attention of the State Police, in the hope that they will give urgent consideration to the release of the money in Jersey.

101. Third, it is evident that funds have been diverted by H from Jersey to EFG Bank in Guernsey. I am concerned to have read, amongst the documentation produced by that Bank in response to the letters of request, an internal memorandum which records the bank as saying, at the time when they were given notice of the world-wide freezing injunction, that not only that it did not bite upon them because there was no equivalent injunction then made in Guernsey; but also because they held no funds in Guernsey. That latter observation is gainsaid by their own documentary material which shows that there were significant funds on deposit with the bank at that time that were held to the order of H in his own name. I express the hope that EFG Private Bank will henceforth be fully co-operative with W in tracing the funds that were placed with them in the name of DM, but which have since, it would appear, been wrongfully diverted from that company to other companies acting under the direction and control of H.

102. Fourth, I have recited above that H has chosen to institute separate proceedings against W in Pakistan, through the vehicle of Karachi Properties Investment Co. Ltd, a corporation acting under his direction, in order to inhibit W in the prosecution of her ancillary relief claim. As part of his claim in the High Court in Karachi, H seeks an injunction restraining W from "disposing of any asset which [W] owns or may acquire by virtue of the matrimonial proceedings". I express the confident hope that if and when any proceedings involving H or W come before the courts in Karachi, they will recognise that the essential dispute between them arises from this divorce, and that this court has been the one charged with an appraisal of the totality of their financial affairs. I accordingly hope that it would be regarded as unjust to allow this (or other) satellite litigation in Karachi (or elsewhere) to run on or to be used as an oppressive tool against W. These comments apply with equal force to the litigation with which H has threatened he and/or others will unleash. My order will contain provisions which seek to deflect back onto him the ultimate liability for any awards which may be made against W in this way.

103. I have given consideration to the structure of the order that I should make in this case. The total value of the award in favour of W that I will be making is £4,185,000. £570,000 of that is represented by the equity in the Portland Place apartment. Thus cash provision of £3,615,000 is required. Provided that funds are still held by Standard Chartered Bank and that the \$800,000 remains with CI (as I am assured by CI's counsel Miss Shekerdemian is the case), W should be in a position to recover about £1,104,000 in Jersey (at current exchange rates). When, where and at what cost she may recover the balance owing to her is more difficult to predict.

104. I have considered whether or not I should adjourn the lump sum part of the claim (having made provision for transfers of the shares in the two companies and of the Portland Place apartment to W), so that I can ascertain what recovery is made over the course of the next few months, and then formally quantify the lump sum award when that recovery is known. The alternative is for me to fix the lump sum now, but stay execution of that part of it which seems to equate to the probable recovery from the money held in Jersey. The latter course seems to me to be preferable. Accordingly, there will be an order (and consequential directions to CI as trustee and to the relevant individual nominee directors of the companies) for transfer by H to W of the shares in DM and the shares in MM. There will be an order that the property at Portland Place be transferred into W's sole name as and when she may require such transfer to be effected, subject to the mortgage in favour of Standard Chartered Bank and the charging order absolute obtained by Sheridans. There will be a lump sum order for £4,185,000. But I will stay execution of £1.1 million of that lump sum until further order, my intention being that W should give credit against the total lump sum order for such sums as she recovers from any source (including, if Portland Place is transferred to her, £570,000, to be taken for computation purposes as the value to be ascribed to the net equity in that apartment).

105. The contents of Portland Place will be transferred to W in their entirety. Pending payment of the full lump sum the maintenance obligation upon H will be £100,000 per annum. When and if the lump sum payment and costs are paid in full a clean break will operate between the parties.

106. I have already granted some injunctive relief designed to enable W to protect her position in relation to assets I have determined are beneficially H's, and anticipate I may be asked to consider more. I will hear submissions on the form of the order and as to costs between H and W. I will give leave for this judgment to be published, and see no reason why anonymity should be preserved in the circumstances of this case.