This Judgment was delivered in private, but the Judge hereby gives leave for it to be published.

Neutral Citation Number: [2025] CIGC (Fam) 10

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION **CAUSE NO: FAM 67 OF 2024**

BETWEEN: **RUGGERRI RAY WALTON** **PETITIONER**

AND: **JINKY ANN WALTON (NEE GAZZINGAN)** **RESPONDENT**

Appearances: **Ms. Sheridan Brooks-Hurst KC from Brooks & Brooks Attorney-at-Law for the Petitioner**

Ms. Hayley Allister of Cayman Family Law for the Respondent

Before: **Hon. Mr. Justice Richard Williams**

Heard: **11, 12 and 19 June 2025**

Parties' Written Submissions filed: **14 July 2025**

Petitioner's Supplemental Written Submissions: **23 July 2025**

Respondent's Amended Written Submissions: **24 July 2025**

Date of Circulation of Draft Judgment: **5 September 2025**

Judgment Delivered: **1 October 2025**

Financial provision - ancillary relief - division of assets – matrimonialisation of assets – equal or unequal sharing of assets - ***Standish v Standish*** *[2025] UKSC 26.*

JUDGMENT

The Application

1. This is the hearing to determine ancillary relief proceedings between Ruggerri Ray Walton, the 37-year-old Petitioner husband ("the husband"), and Jinky Ann Walton, the 38-year-old Respondent wife ("the wife"). The husband is a Caymanian national and the wife is a Filipino national who now has permanent residence in Cayman. They both reside in the Cayman Islands.

2. The parties have no children together, but the Petitioner now has three children with three different mothers, and he presently lives with the mother of his youngest child who was born in October 2024. One of his children ("V"), who was born in August 2008, resided in the matrimonial home between March 2021 and February 2023. The parties agree that V was treated as a child of the family for that two-year period, with the wife caring for him when the husband was at work. V does not reside with either party as he lives with his biological mother and no child maintenance orders are being sought by the husband.

3. I hope that the parties will not be offended if I hereafter refer to them, for convenience, as the husband and the wife.

The historical and procedural background

4. The parties commenced their relationship around October 2010. They began cohabiting in the husband's parents' home in December 2010. They were married on 25 July 2015. The parties separated on 25 February 2023 when the husband left the former matrimonial home ("the FMH")[1] to live at a family member's home due to his belief that the wife was in an inappropriate relationship with another person. It was a marriage of just under 8 years. The parties had cohabited for 13 years, 11 of those years being in the FMH[2]. Only a month later, the wife left the FMH to live in *"separate rental accommodation"* after the husband refused to assist her with instructing the water company, he being the account holder, to deliver water to the property[3]. It appears that, for a significant period of time between April 2023 and October 2023, the husband's sister was living in the FMH. The husband returned to the FMH in October 2023, and he has since remained living there. The wife

[1] The property located at Registration Section: Cayman Brac Central Block 101A, Parcel 56.
[2] There were two brief periods of separation during the 11 years when the wife moved out of the FMH.
[3] The wife messaged the husband on 11 March 2023 asking him to order some water to be delivered and indicating that she would be willing to pay – Page 252 in the Bundle. In a voice note dated 13 March 2023, the husband stated *"I see your message asking for water and stuff but no, I am not going to order water for that house, a house that I am not staying at."*

remains in rental accommodation. She told the Court that she was *"not sure"* whether *"moving forward"* she wanted to rent or buy a property and that she had not thought about things like buying a house after separation as she was struggling emotionally.

5. In August 2011, approximately 4 years before the marriage, but around 10 months after the parties started co-habiting, the husband's parents transferred to him, for *"natural love and affection"* and as an unencumbered gift, the land upon which the FMH was built. On 27 July 2025, following her filing of Supplemental Written Closing Submissions on 24 July 2025, Counsel for the husband sent an email to the Court for my attention seeking to adduce further submissions which she said she had *"inadvertently omitted"* from her initial Closing Written Submissions. In the email she sought to rely upon an Addendum to the wife's Acknowledgment of Service which Counsel said made it clear that the husband acquired the land from his parents prior to him meeting the wife.[4] I also note that at *paragraph 7* in her Affidavit sworn on 17 January 2025 the wife said that:

> *"In around 2010, before we started dating, (the husband) was gifted a parcel of land by his mother, which I was not aware of at the time. When we start dating in October 2010, (the husband) had not developed the land at all."*

The inappropriateness of filing additional submissions past the due time for submissions without leave of the Court aside, it is patently clear that what the wife had expressed in these two pleadings was inaccurate. From her oral evidence it is clear why she had made those statements she said:

> *"I realised he gifted the property by his parents only when I got the affidavit in these proceedings, He said he had the land when we were dating. I felt at that time I shy and I not want to ask details about it. I not recall us talk specifically about how he got the property but I did not know it had been gifted."*

The husband was the party who was clearly in a position to be better informed about the dates. The wife said at the start of her evidence in chief:

> *"We were living together when he was gifted the land. There were no discussions about the land but I do remember visiting the site and he sharing the plans he going to build and ask me if I want to change anything in the house plan. I not change anything."*

[4] The Note is headed Page 1, Item 2 and stated that: *"The Respondent (should be Petitioner) acquired the land for our home… prior to meeting me but the house started to be built on shortly after we became a couple, while we were living at his parents' house….."*

Therefore, it is rather surprising that the husband's Counsel is now seeking to rely upon the referred to incorrect content of the above-mentioned pleadings submitted by the wife rather than the below-mentioned conflicting oral and written evidence and the Land Registry documentation provided by her client. In his oral evidence, the husband agreed that he met the wife, they started dating and that an October 2010 date *"sounds in the right ball park"*. He added that:

> *"We started dating in 2010. We not move in together right away. I see her at her parent's home. We agree to her moving in, comfortable for both of us. I not sure when we move in each other. In December 2010."*

The husband in his Affidavit sworn on 16 January 2025 stated that his parents gifted him the land on or around 12 August 2011. The Land Transfer Form is dated 12 August 2011 and is signed by the Respondent and his parents. He said at *paragraph 10* in his January 2025 Affidavit that:

> *"At the time that the property was gifted to me although the Respondent was living with me at my parents' home, we were unmarried and they chose to gift the property to me. They did not suggest or discuss the Respondent having any interest in the property."*

In his oral evidence the husband reiterated that:

> *"When the property was gifted in August 2011 we were living together in my parents' home."*

There is no dispute that the parties met in October 2010. The husband's evidence is that the land was transferred to him after they met. The documentary evidence produced by the husband shows that the land was transferred in August 2011. Therefore, the husband's evidence alone makes it clear that he acquired the land from his parents after the parties met and started cohabiting. The submissions made in this regard by his Counsel in her email dated 27 July 2025 are inconsistent with his evidence and supporting documentation and are rejected. However, as stated above, I find that the relevant piece of unencumbered land was gifted only to the husband by his parents.

6. On 14 March 2012, the husband took out a CI$170,000 mortgage in his name with Cayman National Bank to enable the FMH to be built and furnished on the land. The wife was on a low

income[5], and it must have been clear to the husband at the time that he was going to be the main financial contributor to the FMH expenses and construction costs. The wife says that she indirectly helped when the husband was taking care of construction as she continued to provide meals and groceries when they were at the husband's parents' home. The construction of the FMH was completed in October 2012 and the parties then moved into that property at the same time. The husband says that the construction work was carried out by his uncle and that he only had to pay for materials and the specialist subcontractors. The husband contends that he paid for all the furniture in the home and he exhibits a receipt from Kirkconnell Ltd. from October 2012 in the sum of CI$7,989. The wife accepts that the husband made the mortgage payments and paid most of the bills throughout the marriage. However, she states that she contributed by paying for food, groceries, eating out, travel, home supplies, household items and furniture, expenses for V's upkeep, water and internet bills from time to time. She said that, as a consequence of her financial input into the household, the husband's *"monthly expenses were less and he was able to purchase sports bikes, wave runners, sports cars and partake in expensive hobbies"* during the marriage. She said the husband *"had lots of vehicles, motorcycle and jet ski, sports car valued $100,000 R34 Skyline GTR from 'Fast and Furious'. He not buy the car, he spent money on it to build it"*. The wife said during cross examination that:

> *"When I got an increase in salary I not offer to pay the mortgage, because from when we start dating to engagement and marriage it been an understanding that I provide for the food and groceries and household items, gifts, eating out, everyday expenses."*

The husband did not challenge these statements. The FMH remains registered in only the husband's name. In the Skeleton Argument filed on behalf of the husband it was contended that the land had been gifted to him with the intention of his passing it on to his children. During his evidence in chief and again during re-examination he was asked questions about why the land had been transferred to him. It was evident from the line of questioning that the answer being sought from him by his Counsel was one consistent with the Skeleton Argument, namely that it was for his children. That did not happen. Eventually during re-examination after being asked about the land transfer and about his children in the same line of questioning the husband said:

> *"(My parents) buy three pieces of land: one they keep (for themselves), one they give to me and one they give to my sister. My parents said it would be a family joint land, all next to*

[5] See paragraph 8 below.

each other. My intention was at some point to deliver a home. I did not have any children at the time[6] *I was given the land. When I built the home my intention was to live in the home."*

7. At the time that the parties met, the husband was working with the Port Authority, who remain his employer to date. The husband's present net income is now around $5,000/month[7]. He appears to have some additional income from a window tinting business owned by his mother. His girlfriend, who cohabits with him and their young child, has a monthly income of $1,300. This means that there is approximately $6,300/month potential income coming into that three-person household. The husband says that his partner contributes only $800/month to the household expenses to purchase groceries.

8. At the time that they met the wife was working as a nanny for her sister's baby[8]. Between February 2011 to March 2013 the wife worked as a server in a café business earning CI$1,200 per month. She says that, from April 2013 to May 2020, she worked at a hotel resort as a server and front desk supervisor earning $1,800 per month depending on the gratuity payments. She says that, from 2017 to date, she has been employed part time (twice a week) by a youth charitable organisation as a site coordinator with a present average net monthly salary[9] of CI$2,105 and that from August 2021 she has also worked at a high school as an assistant teacher with a present average net monthly salary of CI$4,168[10]. The wife is to be commended for taking on two jobs. Therefore, the wife's total average monthly income is $6,273. There is not a marked disparity between the income coming into each household. The wife states that the level of her income prior to the separation enabled her to make the financial contributions to the household and for the benefit of the husband mentioned in paragraph 6 above. I do not accept the contention made in the husband's Skeleton Argument that the wife has failed to provide evidence of any consistent employment prior to her 2021 high school

[6] This is inaccurate because by August 2011 the husband had two children.
[7] Employment letter dated 31 January 2025 informs that the husband's gross monthly salary is $5,937.98. In his oral evidence he stated that his net monthly salary is around $5,000. His net income is after around $682 is deducted for dependent medical insurance and $224 for dependent medical adjustment.
[8] The wife says that she was earning CI$1,000/month.
[9] Averaged out over a 12-month period as the employment is only for 10 months each year as the after-school programme does not run in July and August.
[10] This figure includes the one uplift payment for the one period when the wife stood in for a teacher who was absent but does not include the Government honorarium of $2,000 paid to civil servants and teachers in December 2024.

teaching job.[11] The husband accepted during the hearing that he had been wrong to say in his Skeleton Argument that there was no evidence that the wife had a Right to Work Certificate as he acknowledged that the RERC application that was shown to him during the hearing had his signature on it. The husband contends that, despite him having the lower income towards the last few years of the marriage, after August 2021 up to the separation in circumstances in which he says that he did not know about the wife's income levels until disclosure was given post the commencement of the divorce proceedings, he was paying the mortgage as well as other household expenses. However, I note that the wife felt compelled to leave the FMH only one month after the parties' separation and that the husband chose to put his sister in the property and not to return and have exclusive use of the FMH until October 2023. I do not accept that that the husband should be given a larger share of the equity in the FMH just because he has been the one making the mortgage payments post separation. I also note that for a significant period of time he has lived in the FMH with his *"girlfriend"* and now also their child and that, understandably because he is the one who continues to pay the mortgage, no occupation rent has ever been sought from him by the wife.

9. On 14 March 2024 the husband filed his Petition. On 10 April 2024 the unopposed Petition was proved. The parties attended mediation, but the Mediators report dated 1 October 2024 indicated that the case had not settled. At the mention hearing held on 28 November 2024 directions were given to a final hearing on the first open date after 10 March 2025. Not all of the directions were complied with, and at a mention hearing held on 21 February 2025, directions were given to a later hearing on the first open date after 11 June 2025. The matter was listed for 11-12 June 2025. The hearing took place on 11, 12 and 19 June 2025.

10. At the conclusion of the hearing on 19 June 2025, the parties indicated that they wished to file written submissions. Both parties submitted their written submissions on 14 July 2025. Having reviewed the important Supreme Court Judgment in ***Standish v Standish*** [2025] UKSC 26 (*"**Standish**"*) which was delivered on 2 July 2025, I felt that it was appropriate to afford the parties an opportunity to further comment on that case before my Judgment was drafted. I noted that the wife's counsel had already mentioned the ***Standish*** Supreme Court Judgment at paragraphs 18 and 27-30 in her written submissions, but that the husband's counsel had only mentioned the ***Standish***

[11] The wife produced additional material in relation to her employment after she received the Skeleton Argument. On the first day of the hearing, the husband's attorney was asked whether the husband wished an adjournment of the hearing to consider the newly provided material. The husband's attorney indicated that he did not seek an adjournment.

Court of Appeal decision in in one paragraph in her submissions, presumably because her submissions dated 14 June 2025 predated the Supreme Court's decision in ***Standish***. Therefore, on 21 July 2025, I instructed my Personal Assistant to write to the parties to ask them whether they wished to submit any further submissions limited to the recent ***Standish*** Judgment. The husband took up that opportunity and filed submissions on 23 July 2025. The wife did not wish to file any additional submissions relating to the ***Standish*** Judgment. However, due to an inaccurate figure relating to the husband's pension set out in the wife's closing written submissions, on 23 July 2025 I invited her counsel to submit amended/corrected calculations concerning the assets and their division, which she did in amended submissions submitted on 24 July 2025.

11. This is my reserved Written Judgment given after consideration of the parties' oral and filed written evidence. I have also reviewed the oral submissions as well as the Opening and various Closing Written Submissions provided by Counsel. I have reviewed the produced cases and the contents in the core bundle.

Issues and the parties' positions

12. This is a clean break case with no spousal maintenance being sought by the parties. No child maintenance application is being pursued. Neither party seeks to argue that there should be a departure from equal division in lieu of an order for spousal maintenance. At no stage of the proceedings has a party sought spousal maintenance or argued that such an order would be appropriate. The parties propose that, depending on a balancing buy-out payment from the husband to the wife, they each retain the assets held in their sole names. The parties have agreed that they will retain their own motor vehicles as well as the responsibility for any loans for the vehicles and that these should not form a part of the division calculations.[12]

13. The husband now agrees with the wife that the FMH is a matrimonial asset. This position is consistent with the thinking outlined in ***Miller v Miller; McFarlane v McFarlane*** [2006] 1 FLR 1186. In that case Lord Nicholls raised the possibility of the matrimonial home having a special status as an asset and of it being regarded as a matrimonial property amenable to sharing no matter how long the length of the marriage. He went on to say at *paragraph 22*:

[12] The husband has a 2008 Honda Aspire valued at around $3,000. The wife has a vehicle she purchased around March 2023 for CI$15,000, but it was purchased using a car loan so the equity figure will be lower than the purchase price.

> *"One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not. The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been."*

14. The husband submits that there should be an unequal sharing in relation to the equity figure in the FMH based on a contribution argument as a consequence of payments he made towards the mortgage and constructions costs. The wife argues that, due to the equal sharing principle, the equity in the FMH and the value of the pensions accrued in the period from the date of the marriage to the parties' separation should be shared equally. She submits that this case does not fall within the exceptions which may permit a departure from the equal sharing principle. She argues that the facts of this case do not fall into the *"fringe of cases"* envisaged by McFarlane J[13] which justify a departure from equal sharing. The parties disagree about what the equity figure is in the FMH.

15. A large section of the husband's Written Closing Submissions (5-6 pages) concentrates on what the husband contends to have been a lack of timely full and frank disclosure issues which he claims have substantially increased his legal fees and costs. Although it is not clear, as he has not formally pleaded this as being a litigation conduct case, it seems from the first sentence in the paragraph following the detailed disclosure review in the submissions where he writes *"In view of the above…"*, that he may be saying that this is one of the factors that would not entitle the wife to a 50% share in the full equity of the home. If that is what is being argued, although I agree that some of the disclosure should have been given in a timelier manner, I do not accept such a contention in this matter when considering how to divide the assets.

16. The parties agree that the FMH is valued at $375,000. The parties now agree a mortgage redemption figure of $125,931. On the above figures, the current initial rounded up equity figure is $249,069**.**

[13] See paragraph 40 below.

The parties have indicated that the Court could either deduct the $475 cost of the agreed property valuation report dated 6 May 2025 paid for by the husband from the equity figure or it could credit him $237 after the asset division and buy-out figure had been calculated. I have decided that I will take the latter approach, and I will credit $237 to the husband**.** The said valuation report included a valuation of the land only as undeveloped/unimproved of CI$79,000. This is primarily what has caused the different views about what should be the equity figure. The husband says that the equity figure should be reduced due to the current $79,000 valuation[14] of the land because the land had been gifted to him. The husband has failed to provide a figure for what the value of the land was at the time that it was gifted to him. The wife disagrees with the husband and says that there should not be a $79,000 deduction. In fact, she says that there should be no deduction at all in relation to the land and that the history in relation to the land and its use should not impact an equal sharing in the equity in the FMH. If the Court was to agree with the husband that the final equity figure should also include a deduction of $79,000[15] to reflect the valuation of the land, then the equity figure would be reduced to $170,069.

17. The wife, in her Amended Closing Submissions, states that the following are the matrimonial assets subject to division and the figures to be attached to them:

	Item	Value	Comment
1	FMH – In husband's sole name	$249,069	$375,000 valuation - Mortgage $125,931 - Equity $249,069
2	Wife's PSBP Pension	$8,442	Exhibit RW9
3	Wife's Chambers Pension	$3,041	Exhibit RW7
4	Wife's Cayman National Pension	$9,192	Exhibit JW-6
5	Husband's Silver Thatch Pension	$59,264	US$70,551.99 converted at .84
	TOTAL:	$329,008[16]	

18. The wife is content for the husband to retain the FMH and buy out her interest in it. The wife contends that the total buy-out figure will be arrived at after (i) a figure has been calculated which reflects an equal split of the relevant valuation figures to be affixed to the parties' pensions, and (ii) a figure is arrived at after the Court makes findings about the disputed equity figure in relation to the FMH and about the disputed percentage interest of each party in the equity in the FMH. She

[14] The Valuation Report dated 6 May 2025 prepared by Mark Knowlton gave the *"resolved value"* of the land only, as *"undeveloped/unimproved"* at $79,000.
[15] See paragraph 22 below.
[16] The wife agreed in correspondence sent after the hearing following my request for clarification that the $70,552 figure for the husband's pension should have been in US$ rather than the CI$ set out in her written closing submissions and she submitted amended written submissions with a corrected total value of the assets.

argues that, based on a 50% split in the FMH and other assets with each party retaining the assets held in their sole name, the division calculations would mean that the husband would have to pay her a balancing payment of $143,829. This figure does not include the wife's 50% responsibility for the cost of the FMH valuation, so that buy-out figure would have to be reduced by $237 to $143,592. This figure is also reached on the basis that it includes the husband paying the wife a balancing sum equal to a 50% division of the parties' total pension assets rather than there being a balancing transfer order from his pension fund to one of her pension funds. If the pension division was dealt with by a pension transfer, the buy-out figure would then be further reduced to $124,297[17]. Both of these buy-out figures are based on the wife's contention that the equity figure for the FMH should not include a $79,000 deduction.

19. In her Closing Written Submissions, the wife seeks an order that if the capital buy-out sum is not paid within 60 days of the order then the FMH should be sold and that she then be paid from the proceeds of sale.

20. The husband says that the following are the matrimonial assets subject to division and the figures to be attached to them:

	Item	Value	Comment
1	FMH – In husband's sole name	$170,069	$375,000 valuation - Mortgage $125,931[18] - minus land value $79,000
2	Wife's PSBP Pension	$8,442	Exhibit RW9
3	Wife's Chambers Pension	$3,041	Exhibit RW7
4	Wife's Cayman National Pension	$9,192	Exhibit JW-6
5	Husband's Silver Thatch Pension	$59,264	US$70,551.99 converted at .84
	TOTAL:	$250,008	

21 As mentioned in paragraph 16 above, the husband takes a different view to the wife's one about what the equity figure in the FMH should be and about what orders should be made in relation to the parties' percentage interests in the FMH. The husband's primary position in his closing submissions is that this is a *"contribution case"* and, it appears, also a needs case only in relation to him. He argues that this justifies an unequal sharing of the equity in the FMH. Rather confusingly in his Skeleton Argument it was submitted that:

[17] 50% of the equity in the FMH minus the $237 costs of the valuation report credit.
[18] The husband's figure in his submissions is a rounded down figure of $125,930, but the figure should have been rounded up to $125,931.

> *"It is H's position that this is not a needs case, nor is it a case where the concepts of compensation and sharing are applicable as it is clear that W is self sufficient financially, with a healthy surplus income over expenses after all of her needs are met."*

Then, however, the husband goes on to contend in his Closing Submissions that he has more responsibilities and needs than the wife because he has had three children (one of which was born after the parties separated). He says that two eldest children are in full time education. He argues that he has been employed by the same employer for 15 years and that in more recent times the wife has shown that she has a greater income capacity than him. The wife has, to her credit, increased her income by securing two jobs, albeit one of them being on a part time basis.

22. The husband argues that the current case fits into the *"fringe"* of cases envisaged by McFarlane J[19] because he submits that an unequal distribution would ensure fairness between the parties. In relation to the equity, he argues that the wife should not be entitled to 50% of the equity figure of the FMH and that that the equity figure itself should be calculated by deducting both the mortgage redemption figure from the figure set out in the valuation report as well as $79,000 because the land was an unencumbered parental gift to him. The wife contends that the approach suggested by the husband concerning a $79,000 deduction to reach the equity figure is *"wholly unsound in law"*. The wife submits that, no matter what the intention of the husband's parents might have been when they gifted their son the land, the FMH was used as a family home for the 11 years that the parties lived there, almost 8 of which were during the marriage. She adds that the alleged value of the land is *"wrapped into the value of the FMH"* and that the comments of the valuer about the $79,000 valuation set out in the valuation report do not amount to a standalone valuation that can be relied upon. What is clear is that it cannot be argued that the land (whether it is correct to value it at $79,000 or not) was not ringfenced and, in fact, it was used to become the FMH property which had a central place and was a central item in the marriage. The wife correctly says that the land became matrimonialised[20] because it was not ringfenced or kept separate but was used to build their marital home on. Although it is matrimonialised**,** I accept that there may be circumstances where

[19] See paragraph 41 below.
[20] Matrimonialisation is the process by which non-matrimonial property acquires a matrimonial quality because of the way property has been used or treated, and it then may be subject to sharing. Roberts J used the word matrimonialisation in ***WX v HX*** [2021] EWHC 241 (Fam) and Moylan J used it in the Court of Appeal decision in ***Standish v Standish*** [2024] EWCA Civ 567.

there can be a departure from equal sharing with such assets and I will return to that point later herein when I review of the relevant case law.

23. Despite the comment made in the husband's Skeleton Argument that this was not a contribution case[21], he relies upon what he says have been his financial contributions to the household to argue for a larger share of the equity in the FMH.[22] The husband highlights he has continued to make all the mortgage payments and maintained the FMH. Therefore, not only does the husband disagree with the FMH equity figure suggested by the wife, but he also disagrees with her submission that the final equity figure should be split equally to reach a final total division figure. The husband submits that the equity figure, once calculated by the Court, should instead be divided on a 45/55% basis in his favour.[23] This is different to what the husband was seeking at the outset of the hearing- at that stage he sought a 70/30% split in his favour[24] of the equity figure (an equity figure also reached after a CI$79,000 land valuation deduction). The wife disagrees and contends that the case authorities are clear that there should be no discrimination between the role of a husband and wife or between a money-earner in the household and a homemaker and child-carer in the household. Although there are no children born of the marriage, the wife relied upon the fact that she acted as a hands-on stepmother to V when V lived with them between March 2021 and February 2023 and when he visited them during holidays. The fact that she no longer cares for V, who now does not live with the father, at any time after the parties' separation does not reduce the significance of the role she earlier played. The husband conceded that the wife took on the role of a home maker and that she made contributions to the household, his car and other family expenses although he does not agree that it is to the extent that she says.

24. The wife states that the husband used income that he received during the marriage, which should be viewed as being matrimonial funds coming into the matrimonial 'melting pot', to make the mortgage payments. The husband rightly concedes that:

> *"There is an argument that the funds paid after and during the marriage on the mortgage could be regarded as matrimonial funds."*

[21] See paragraph 21 above.
[22] See paragraph 14 above.
[23] In the husband's Written Submissions, the proposed split provision is clearly wrongly quoted as being 45%/50% basis in his favour.
[24] Paragraph (v) on page 5 the husband's Skeleton Argument.

I recognise that both parties during the marriage used some of their income, which could be regarded as being matrimonial funds, to meet wider family responsibilities/commitments: the husband to maintain his various children[25] and the wife to support her mother. I do not accept the husband's characterisation of the wife's reasonable level of financial support to her 65-year-old single mother who lives alone (usually $275-$400/month) as being a *"dissipation of matrimonial funds".* Providing financial support to parents is culturally something that is widely done in the Filipino community. Both parties used matrimonial funds to meet the needs of their wider family members and the wife accurately reflected this during cross examination when she answered:

> *"…he has three other children outside the marriage and I not once question him about his contributions going to his family. That is his family. I have my family I care for also. It is family."*

When I consider the parties' use of the income/matrimonial funds during the marriage, I do not see anything out of the norm for a family. They both contributed to the family household expenses, and I do not agree with the husband that the contributions that he says he made when compared to the ones that the wife made justify a departure from equal sharing.

25. At the outset of the hearing, it appeared from the content of his Skeleton Argument, that the husband was contending that each party should retain their pension(s) and that there should be no balancing payment made despite there being a disparity in the respective value of the funds. However, it is evident that the husband based that argument on the fact that, pre-drafting that Skeleton Argument, there were gaps in the wife's disclosure about her pensions. By the end of the hearing, the husband agrees that the value of the pensions accrued from the date of the marriage to the date of the separation should be divided equally in the parties' calculations. However, in his Closing Written Submissions, the husband said that he should not have to provide a capital sum to reflect a balancing of the pension assets, but instead he should transfer a sum of $19,300[26] from his pension plan to the wife's preferred pension plan pursuant to s.43 of the National Pensions Act (2024 Revision). In his Skeleton Argument the husband had not mentioned a pension plan transfer, he simply said that each party should retain their pensions and that pension sums totalling US$70,551.99 were available for distribution between the parties**.** As the parties' Written Closing Submissions were

[25] At least one of the children, pursuant to a $400/month Court maintenance order.
[26] The husband states that the total pension provision of $79,939 could be rounded up to CI$80,000. He says that the wife has pensions she will retain totalling $20,700 which is $19,300 less than $40,000 (50% of the $80,000 figure).

filed simultaneously, the wife has not commented on the pension transfer proposal now being made by the husband, namely that the pension division should not form a part of the buy-out figure but should be dealt with by the means of a pension sharing order. However, I can see that the parties agree what the pension figures should be and that those figures show a rounded up $19,300 imbalance.

26. Therefore the husband, different to the wife, contends that the final capital buy-out figure for him to pay relates only to the equity in the FMH and will be arrived at after the Court makes findings about the disputed equity figure in relation to the FMH and about the disputed percentage interest of each party in the FMH. The husband has failed to set out in his submissions what the buy-out figure should be if his contentions about what figures are to be used in the calculations are accepted. The husband has not set out in his Written Submissions a figure that would be arrived at if there was a 55% / 45% percentage interest split in the equity in the FMH based on his $79,000 deduction approach to calculating the equity. Therefore, I calculate as follows:

(i) If the equity figure is reached with a $79,000 valuation deduction, the FMH equity figure based on the wife's desired 50% split would be $85,034.50 each.

(ii) If the Court was to find that there should be a $79,000 deduction in calculating the equity in the FMH and that the equity be divided equally after the Court credited $237 to the husband for the valuation costs, the division split figure from the FMH to be used when deciding the husband's buy-out figure would then be $84.797.50 to the wife on a 50% split and $85,271.50 for the husband.

(iii) If the equity figure is reached with a $79,000 valuation deduction, the equity figures based on the husband's desired 55/45% split would be $76,531.05 for the wife and $93,537.95 to the husband. However, as I have already ruled at paragraph 23 above that the income/matrimonial funds contributions in this case do not justify a standalone 55/45% split so I will not be having regard to this figure.

(iv) If the Court was to find that there should be a $79,000 deduction in calculating the equity in the FMH and that the equity be divided 55/45%, after the Court credited $237 to the husband for the valuation costs, the division split figure from the FMH to be used when deciding the buy-out figure would then be $76,294.05 to the wife and $93,774.95 for the husband. However, as I have already ruled at paragraph 23 above that the

income/matrimonial funds contributions in this case do not justify a standalone 55/45% split I will not be having regard to this figure.

27. On a 50% split and on 45/55% split on the equity for the FMH, the above $84,797.50 and $76,294.05 figures would also be the respective buy-out figures for the husband to pay if the parties were to retain the assets currently in their own name and if the Court accepted: (i) the husband's $79,000 deduction contention; and (ii) his contention that there should be a pension fund transfer order. However, in the same circumstance, save that the Court agreed with the wife that there should be a balancing pension sum added to the buy-out figure rather than waiting for a later pension fund transfer pursuant to a pension transfer order, the respective buy-out figures would be $104,092 and $95,588.55.

28. With the above in mind, the hearing is primarily required to deal with the division of two types of assets: namely the FMH and the parties' respective pensions. The parties agree that the husband should be given the opportunity to retain the FMH and that he should buy out the wife's interest in that property. There is no issue that the husband should be credited $237 in the final buy out figure due to the costs of the valuation. The parties agree that they should retain their own pensions. Therefore, in light of the above, the main issues for the Court to determine are:

(i) When calculating the equity figure for the FMH, because the land upon which it was built was transferred unencumbered to the husband by his parents prior to the marriage, should the $79,000 recently assessed value of that land be deducted?- Even if the land has become matrimonialised and/or if the Court found that the $79,000 figure was not the correct figure to use, would fairness require there to still be an unequal percentage division of the determined equity figure which did not include a $79,000 deduction?

(ii) Does the husband's alleged greater contribution to the FMH and household justify a departure from equality in his favour? - If so, is a 45% / 55% division of the equity in the FMH in the husband's favour a fair outcome?- I have already determined that issue and I decided that it should not if an unequal division argument is one based purely on the level of the parties' contributions from their income/ matrimonial funds to the household expenses including mortgage, family expenses and their use of funds to support wider family members.

(iii) Should, as proposed by the wife, the equity of the home be calculated without the $79,000 deduction proposed by the husband, and then each party be entitled to an equal share of that equity in the division calculations?

(iv) Should, as proposed by the wife, the buy-out figure for the husband to pay include a pension assets balancing figure as well as the FMH equity figure or, as proposed by the husband, should the buy-out figure only be calculated to reflect the wife's interest in the equity in the FMH and the pension balancing figure then be dealt with by means of a separate pension sharing order?

The law and the relevant general principles applied in ancillary relief cases

29. In my recent judgment in the matter of ***Adrienne Elizabeth Politowicz v Richard Charles Kuriger IV*** [2025] GIGC (Fam) 3 ***("Politowicz")***, a case with some similarities to the one now before me, I set out the general principles to be applied in ancillary relief matters and I conducted a review of cases dealing with issues concerning equal sharing and matrimonialisation. ***Politowicz*** was a 'contribution' case in which the FMH was the primary asset. I noted therein that the law pertaining to the division of assets is governed by s.19 of the Matrimonial Causes Act (2005 Revision) ("the Act"). I highlighted that s.19 must be read in conjunction with s.21 of the Act. The relevant orders that the Court is being asked to consider in this case at the time of pronouncing a decree in this Judgment relate to:

(i) the disposition of matrimonial property, including the matrimonial home; and

(ii) making financial provision from the property of either spouse for the other spouse.[27]

30. Sections 19 and 21 of the Act give the Court a wide discretion when it comes to financial provision and any awards made to the parties. The Courts in the Cayman Islands, in deciding whether to exercise their powers under s.21 and, if so, in what manner have, when considering what is fair in all the circumstances of the case, traditionally have had regard not only to the matters set out in s.19, but may also be guided by the relevant factors raised in s.25(2) of the Matrimonial Causes Act (1973) in England and Wales.[28] Although I have regard to them, I do not see a need to list all of those well-known factors herein. In the matter before me, I recognise that one of the factors is:

"The contributions made, or is likely in the future to be made, by each of the parties to the welfare of the family (to include contributions made by each of the parties to the

[27] Section 21(e).
[28] ***Doak v Doak and Riley*** [2002] CILR 224, [17], [21], [22], ***Wood v Wood*** [2009] CILR 255, [12] as commented upon by Sir John Chadwick P. in ***McTaggart v McTaggart*** (2011) 2 CILR 366, [39].

accumulation of matrimonial assets as well as non-matrimonial property) and any contribution made by looking after the home caring for the family.[29]*"*

31. Contemporary case law has been helpfully summarised by Peel J in ***WC v HC (Financial Remedies Agreements) (Rev 1)*** [2022] 2 FLR 1100 at [21]:

i. As a matter of practice, the court will usually embark on a two-stage exercise, (i) computation and (ii) distribution, Charman v Charman.

ii. The objective of the court is to achieve an outcome which ought to be 'as fair as is possible in all the circumstances', per Lord Nicholls of Birkenhead in White v White.

iii. There is no place for discrimination between husband and wife and their respective roles, White v White.

iv. In an evaluation of fairness, the court is required to have regard to the s 25 criteria, first consideration being given to any child of the family.

v. Section 25A of the Matrimonial Causes Act 1973 (MCA 1973) is a powerful encouragement towards a clean break, as explained by Baroness Hale of Richmond in Miller v Miller, McFarlane v McFarlane.

vi. The three essential principles at play are needs, compensation and sharing: Miller; McFarlane.

vii. In practice, compensation is a very rare creature indeed.

viii. Where the result suggested by the needs principle is an award greater than the result suggested by the sharing principle, the former shall in principle prevail Charman v Charman (No 4).

ix. In the vast majority of cases the inquiry will begin and end with the parties' needs. It is only in those cases where there is a surplus of assets over needs that the sharing principle is engaged.

x. Pursuant to the sharing principle, (i) the parties ordinarily are entitled to an equal division of the marital assets and (ii) non-marital assets are ordinarily to be retained by the party to whom they belong absent good reason to the contrary: Scatliffe v Scatliffe. In practice, needs will generally be the only justification for a spouse pursuing a claim against non-marital assets.

xi. The evaluation by the court of the demarcation between marital and non-marital assets is not always easy. It must be carried out with the degree of particularity or generality appropriate in each case: Hart v Hart. Usually, non-marital wealth has one or more of three origins, namely (i) property brought into the marriage by one or other party, (ii) property generated by one or other party after separation (for example by significant earnings) and/or (iii) inheritances or gifts received by one or other party. Difficult questions can arise as to whether and to what extent property which starts out as non-marital acquires a marital character requiring it to be divided under the sharing principle.

xii. It will all depend on the circumstances, and the court will look at when the property was acquired, how it has been used, whether it has been mingled with the family finances and what the parties intended.

xiii. Needs are an elastic concept. They cannot be looked at in isolation.

[29] ***Wight v Wight*** [2006] CILR 1, Zacca P. at paragraph 33.

32. Further, Mostyn J in ***Clarke v Clarke*** [2023] 2 FLR 1, endorsed Peel J's above summary as an *"impeccable synopsis"* and added one additional element: that section 25A, the clean break provision, must be diligently applied.

33. Mr. Justice Peel's above guidance is consistent with the approach that had already been adopted in our Courts, as seen by the principles outlined by the Court of Appeal in ***McTaggart v McTaggart*** [2011 2 CILR 366] ***("McTaggart")*** and in ***Valerie Ayala Gordon v Jefferson Raymond Watler*** CICA (Civil) 13/2014 ***("Gordon")***. I need not set out that detail again herein as the parties should be aware of the same from paragraph 61 in my Judgment in ***Politowicz***, a judgment which both parties now before me have referred to in some detail. That said, I herein reiterate Sir John Chadwick, the President's, observation that:

> *"The ultimate objective is to give each party an equal start on the road to independent living."*

34. I have regard to all the general principles outlined above, recognising that they highlight that the Court is charged with dividing the assets in a fair and equitable manner, whilst trying to see if there can be a clean break.

The approach to be taken in relation to determining the equity in the FMH and its division

The status of the FMH and the principle of equality

35. As in ***Politowicz***, the present matter involves a 'contribution' argument raised in relation to the FMH with one party arguing that it should result in an unequal division. Accordingly, I again remind myself of the oft quoted House of Lords decision in ***White v White*** [2000] UKHL 54 ***("White")***. In ***White***, Lord Nicholls stated that a matrimonial home had a *"central place"* in the marriage and should *"normally"* be treated as being matrimonial property, even if brought into the marriage by only one of the parties. He said that each party was *"in principle"* entitled to a share in the property, no matter the length of the marriage. When commenting upon ***White*** in ***Politowicz***, I stated at paragraphs 63-64 therein:

> *"63. The case confirmed that the overriding goal of the Court was to achieve fairness, and the Court articulated a view of fairness which took equality and non-discrimination as starting points. This case was when the concept of equal sharing became the accepted starting point irrespective of one party's role as the bread winner and the other party's role as the homemaker. The Court retains a wide discretion as to what order it*

should make whilst still having regard to the principles and statutory requirements outlined by me in paragraphs 57-62 above[30]***.*** *Lord Nicholls in his leading judgment in* ***White,*** *said that although the legislation did not explicitly state it, the objective of the Court when exercising its powers is to achieve a fair outcome. With that in mind Lord Nicholls stated at paragraph 24:*

> *"…there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f)*[31] *, relating to the parties' contributions … If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer."*

"64. Lord Nicholls then added at paragraph 25:

> *"A practical consideration follows from this. Sometimes, having carried out the statutory exercise, the judge's conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge's decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge would always be well advised to check his tentative views against the yardstick of equality of division. <u>As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so</u>**."**[32]

36. In ***Miller v Miller; McFarlane v McFarlane*** ("***Miller***"), a case decided after the principle of the sharing of matrimonial assets had been established in ***White***, Lord Nicholls stated at *paragraph 16* that:

> *"….This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 Lord Keith of Kinkel approved Lord Emslie's observation that 'husband and wife are now for all practical purposes equal partners in marriage': R v R [1992] 1 AC 599, 617.*

[30] The same is set out at paragraphs 16 to 19 above herein.
[31] Of s.25(2) Matrimonial Causes Act 1973.
[32] My emphasis by underlining.

This is now recognised widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule."

37. In ***S v S (Non-Matrimonial Property: Conduct)*** [2006] EWHC 2793 (Fam), [2007] 1 FLR 1496, ***("S v S")*** Burton J said, at paragraph 31, that the former matrimonial home should be treated as a matrimonial property whatever the source and duration of the marriage. He also reiterated at *paragraph 24* that there was no presumption of equality and, with reference to ***White***, he stated:

*"It is firmly said by Lord Nicholls in **White** that there is no presumption of equal division which indeed would "be an impermissible judicial gloss on the statutory provision" (at 990), even if such presumption were rebuttable, and "a presumption of equal division would go beyond the permissible bounds of interpretation of s25". Nevertheless - and although more often than not there would not be a more or less equal division of the available assets, and the judge's decision would mean "one party will receive a bigger share than the other" (989) – "a judge would always be well advised to check his tentative views against the yardstick of equality of division" and "as a general guide equality should be departed from only if, and to the extent that, there is good reason for doing so" [all at 989]. Lord Cooke at 999 also stated, in agreement with Lord Nicholls, that "as a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so."*

38. Mostyn J stated in ***JL v SL*** [2015] EWHC 360:

"Matrimonial property is the property which the parties have built up by their joint (but inevitably different)[33] efforts during the span of their partnership. It should be divided equally. This principle is reflected in statutory systems in other jurisdictions. It resonates with moral and philosophical values. It promotes equality and banishes discrimination."

39. The Court of Appeal in the Cayman Islands has adopted a similar approach on the issue of equality of division. In ***W v W*** [2009 CILR 225], Sir John Chadwick P. reiterated the importance of the

[33] My emphasis by underlining.

principles set out in (i) ***Wight v Wight*** 2006 CILR 1 ***("Wight")***, (ii) in ***White*** and in (iii) ***Miller***. Referring to Forte J.A.'s ruling in ***Wight***, the President stated that the Court should construe s.19 of the Act:

> *"On the basis of the new approach to the institution of marriage and the fact that it is a union of partners.…Each therefore would be entitled to equal share of the assets acquired in the marriage, unless there is a good reason to depart from that principle."*

40. Chadwick P in ***McTaggart*** acknowledged that there is no requirement under the Act for there to be an equal division of the assets and that the Court, when exercising its duty imposed under s.19, may make an order for an unequal division of the property. However, with reference to ***White***, the President also noted at *paragraph 37* that:

> *"As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so."*

I also note that more recently, in ***VP v WP*** CICA (Civil) Appeal No. 18 of 2022[34], the Court of Appeal's approval of Richard J's reliance upon the ***White*** case and its application to cases involving the principle of equality in ancillary relief proceedings in the Cayman Islands.

Matrimonialisation of an asset

41. In ***K v L (Non-Matrimonial Property: Special Contribution)*** [2011] EWCA Civ 550, [2011] 2 FLR 980, Wilson LJ, although not using the word 'matrimonialisation', commented upon the degree of importance to be placed on the source of assets as time passes, stating:

> *"Thus, with respect to Baroness Hale of Richmond, I believe that the true proposition is that the importance of the source of the assets may diminish over time. Three situations come to mind:*
>
> *(a) Over time matrimonial property of such value has been acquired as to diminish the significance of the initial contribution by one spouse of non-matrimonial property.*

[34] A matter in which Ms. Brooks KC appeared for the Petitioner husband at the Grand Court hearing. Judgment of Richards J dated 14 February 2020 in ***WP v VP*** Fam 32 of 2019 in which she decided that there should not be a departure *"from the yardstick of equality"* in the FMH, where there was a 42 year marriage and the husband made other contributions to the wife, although the wife had made the initial down payment to purchase the home and all the mortgage payments.

(b) Over time the non-matrimonial property initially contributed has been mixed with matrimonial property in circumstances in which the contributor may be said to have accepted that it should be treated as matrimonial property or in which, at any rate, the task of identifying its current value is too difficult.

(c) The contributor of non-matrimonial property has chosen to invest it in the purchase of a matrimonial home which, although vested in his or her sole name, has – as in most cases one would expect – come over time to be treated by the parties as a central item of matrimonial property."

As I mentioned at paragraph 22 above, this is what has happened to the gifted land in the present matter, causing it to become matrimonialised. The land was clearly used to create the FMH for the parties and despite the husband's threats/comments to the wife, the FMH became a central item of matrimonial property.[35]

Law and discussion in relation to departure from the principle of equality and in particular in relation to the FMH

42. Some of the detail in paragraphs 35-40 above was also set out in the ***Politowicz*** Judgment. In that Judgment, having set out the principles contained in ***White***, I went on to conduct a review of the decisions made in a number of cases which dealt with issues surrounding a possible departure from equality and in what type of circumstances that may occur. After the Court of Appeal's decisions in ***McTaggart*** and in ***White***, the Courts in England and Wales have been willing, in appropriate cases, to make orders departing from equal sharing. The Court's objective in such cases seems to be to achieve fairness between the parties, whilst accepting that those cases require there to be *"very good and clear reasons"* to *"deviate from an equal division of assets"*. Of course, each case turns on its own facts. After conducting the review, I found, on the facts in ***Politowicz***, that a departure from equality was not appropriate in the circumstances of that case and the net proceeds of sale from the matrimonial home should be divided equally. When reaching that conclusion I stated at *paragraph 87*:

"When I make that order I am conscious that all the cases referred to and relied upon by the husband illustrate that the Court can, in appropriate circumstances, depart from an equal division of matrimonial property, including of a former matrimonial home, where

[35] See paragraphs 45-48 below.

> *fairness requires it. I acknowledge that I have that discretion, and I have carefully considered whether this is an appropriate case for me to exercise that discretion. The circumstances when fairness requires that approach have been referred to by McFarlane LJ in* ***Sharp v Sharp*** *[2017] EWCA Civ 408 as the "fringe of cases may lie outside the equal sharing principle", a case in which he recognised that the sharing principle is still good law for the majority of cases, but that the principle of a 50/50 split will not automatically be applied in every case. The judgments relied upon by the husband are based on different circumstance to those present in the matter before me, especially relating to the source, and they fall within the 'fringe of cases' envisaged by McFarlane LJ. Whilst the Courts in those cases determined that a departure from the principle of equal sharing was justified so as to achieve fairness, it is important to note that this will only apply in a relatively small number of cases and in circumstances where, both parties' needs are fairly met."*

I again remind myself that, in appropriate circumstances, I have discretion to depart from equal division of the property.

43. In the family law field, a great deal of analysis and legal comment has followed the delivery of the Supreme Court's decision in ***Standish,*** which was delivered after the ***Politowicz*** Judgment. ***Standish*** is an important decision, especially for high-net-worth individuals and couples where personal, inherited, or family wealth is involved. However, its principles have wider influence, in particular when it comes to considering what constitutes a fair division of assets. It is the first case since ***White*** and ***Miller*** in which the Supreme Court considered in depth the sharing principle. Therefore, as this Judgment is the first post-***Standish*** Judgment delivered in a Family Division ancillary relief case, I see merit in again considering the facts and the application of the principles and the decisions outlined in the cases discussed in ***Politowicz*** and then applying the same in light of the ruling on ***Standish***. Therefore, I will also be analysing the background facts and the approach of the Supreme Court concerning 'the sharing principle' and matrimonialisation in some detail in this Judgment.

44. The parties have made a number of submissions about the content in the ***Politowicz*** Judgment as well as commenting upon most of the cases that were analysed in that Judgment. The first of those cases is ***S v S*** and the husband referred to the extract set out at paragraph 37 above. The husband

rightly concedes that the Court stated in ***S v S*** that the FMH should be treated as a matrimonial property whatever the source and duration of the marriage. The husband relies upon the indication given in ***S v S*** that there is no presumption of equal division. That is correct, but the Court in ***S v S*** also stated that equal division should only be departed from if there is a good reason to do so.

45. The husband referred to ***K v L*** and the extract already set out at paragraph 40 above where Wilson LJ used non-matrimonial contributions towards a former matrimonial home as an example to demonstrate when the importance of the source of the assets may diminish over time. The parties in that case had been together for 21 years and had 3 children. When the wife was aged 15, she inherited shares in a family business which increased in value dramatically over time. The wife's primary assets were these shares. When the parties married in 1986 the shares were worth only £300,000; at the time of separation they were worth £28m; and by the time of the hearing were worth £57.4m. The shares represented virtually the entire wealth of the parties. Despite the value of the shares the parties lived a very modest lifestyle. They had a property valued at £225,000 and the family's annual expenditure was £79,000. Throughout the marriage neither party generated any earned income, and they lived off the proceeds of the sale of a small number of the wife's shares. They had both contributed equally to family life during the marriage. The husband argued that he had a budget for himself of £105,000 per annum and that he needed a £2m property. The judge at first instance, having regard to their modest standard of living awarded £5m (9.3% of the parties' assets) and he remarked that the award was generous on assessment of the husband's needs. The husband appealed asking for a figure of £18m. The Court of Appeal, in upholding the Judge's decision concluded that there should be a departure within the sharing principle from the ordinary consequence which would be an equal division. The Court of Appeal decided that the judge had been correct when recognising the great importance of the wife's financial contribution to the marriage as it correctly recognised a substantive difference. The Court also found that there was nothing to suggest that the importance of the parties' source of entire wealth had diminished over time. Importantly, the shares had been kept ringfenced at all times by share certificates in the wife's sole name. This is not what happened to the gifted land in the matter before me, as it was used for the FMH which the parties moved into together and in which they resided for almost 11 years. Wilson LJ in ***K v L*** found that the wife's considerable unmatched financial contribution to the marriage was not discriminatory, rather it identified a substantive difference in contribution. He stated that, "special contribution" and non-matrimonial property were quite different things and therefore the Court's guidance in the case of ***Charman*** as to the limit of the departure from equality

did not apply. Wilson LJ noted that although the importance of the contribution may diminish over time, that will depend on the facts of the case, such as for example how the non-matrimonial property has been invested or mixed and whether the value of the matrimonial property is such as to diminish the significance of the initial contribution. Wilson LJ was stating that the importance of the source of the assets considered, 'may' and not 'will' diminish over time.

46. The husband sought to address the remarks made by Wilson LJ in ***KL*** set out at paragraph 40 above concerning the possible diminishing importance of the source of the assets with the facts in this case. The husband was aware that, in the above extract, Wilson LJ gave an example of when this might happen as being when a spouse contributed non matrimonial property choosing to invest it in the purchase of a matrimonial home and which in time would be treated by the parties as a central item of matrimonial property. The husband relied on the following extract from the wife's Affidavit sworn on 17 January 2025 to counter Wilson LJ's example and to illustrate his view that the parties did not over time treat the home as *"a central item of matrimonial property".* The wife stated the following at paragraph 11 in her Affidavit:

> *"Mr. Walton is very protective of the former matrimonial home and he is unwilling to accept that I have any right to it notwithstanding the fact that we lived there together for 11 years and that during that time I made ongoing contributions towards the household, our personal expenses and to (V's) needs*[36]*. Mr. Walton has always treated the former matrimonial home as though it was his only home, and when we got into arguments, he would tell me to "get out of [my] house". He even stated during an incident that I must pay rent while I was his wife. There were times when Mr. Walton would take the house keys/change the key combination and keep me outside of the home during arguments. Mr. Walton still maintains that attitude to this day, which is the reason we cannot settle matters and bring these proceedings to an end despite the fact I am told by my attorney that the law in respect of the former matrimonial home is clear."*

The husband did not challenge the wife's above comments in cross-examination. In fact, during re-examination he remarked:

> *"I have said to her that she would not get anything in the property when we had arguments."*

[36] My emphasis by underlining.

47. The wife's comments are specifically referred to and relied upon by the husband to support his contention that:

(i) the value of the land should be excluded from the financial division calculation as he regards it as being a non-matrimonial asset; and

(ii) that there should be unequal sharing in the calculated equity in the FMH.

However, what the wife is highlighting in her above comments is not whether she believed that the matrimonial home had become an important item of matrimonial property, but she was making it clear that the husband did not regard it to be, as he believed it was his property. The wife's comments were not made by her to indicate a belief that both parties treated the FMH and the land as not being a matrimonial asset. She shared these comments in her evidence to illustrate how the husband, in a rather domineering manner, used the FMH as a threat against her during the marriage seemingly in disregard of them being and living together as a family unit. The underlined parts of extract from her Affidavit in the paragraph 45 above clearly show that the wife believed that she had a *"right"* in relation to the FMH and she briefly highlighted therein some of the facts that led to her holding that belief. For a husband in a marriage of between 7 to 8 years of length (with a prior cohabitation period of around 4.5 years) to speak to the wife in the above manner and to now argue that his intention throughout that time was that the family home was to be regarded as being only his home and that his wife was only, in effect, a guest there at his whim and to tell her when they are having disagreements that she should get out of his home is rather unattractive and could potentially be regarded as being financially abusive conduct. This was not a business relationship between two individuals, they were a cohabiting and then married couple who had been functioning as a family unit 'under the same roofs' for around 12 years. Marriages, like the parties' one, are a partnership of equals with parties committing themselves to share their lives when they live together. The conduct and attitude of the husband towards the FMH outlined by the wife in her Affidavit is consistent with the husband's view expressed at the outset of these proceedings when he was wrongly advocating that the wife had no interest in the FMH and that it was subject to no sharing at all. When I make the above comments, I accept that the husband, after he said he had taken on board his discussions with his lawyers, had by the end of the case changed from his initial position.

48. In her oral evidence, the wife reiterated that the husband treated the FMH *"as his house"*. She also accepted that she did not make any of the mortgage payments but added that the husband never

asked her to. However, it is clear from the parties' wider conduct and arrangements of their global financial affairs that the FMH was used and was treated by them as being a central matrimonial asset. I accept the wife's evidence that the husband showed her the vacant land when they were cohabiting, and he asked her view about the building plans on it. There is no dispute that they were cohabiting elsewhere and that they then moved into the FMH together when it was ready to be occupied. They resided together in the FMH for almost 11 years. The wife outlined the arrangement whereby they agreed that she would pay for other household expenses and some bills like the water and the internet. She said there was an understanding that she would *"provide for the food and groceries and household items, gifts, eating out, everyday expenses"*. I find that her evidence is correct in this regard. In May 2020, when she had no employment due to the impact of the Covid-19 pandemic on the tourism sector, the wife took out a 'Covid withdrawal' from her Cayman National Pension. The wife then used those funds for groceries and for *"generous"* gifts for the husband, including parts for his expensive vehicle. This is backed up by some of the documentary evidence before the Court. She used the withdrawal to also pay for their staycations at the Ritz and at the Kimpton hotels. The wife also acted as the stepmother for V, who moved into the FMH for around two years at the husband's request. This type of financial interaction relating to the day-to-day family expenses (even if contributed to in unequal amounts) and the familial roles they played within a household, is evidence of the spouses arranging their global marital life as a family unit. I prefer the wife's evidence in this regard. There is no requirement for there to be direct payments made by the wife towards the mortgage for the relevant property to become over time a matrimonial asset, no matter what the husband's protective attitude to the property was.

49. In the matter before me the gifted land was not an asset that was ringfenced like the shares in ***K v L***, it was the land upon which the FMH, the home for this family, was built. The land was used for a joint purpose and, despite the comment the husband made, the use of the land illustrates an intention to use that asset for the benefit and/or enjoyment of the family. I am satisfied that, unlike the ringfenced shares in ***K v L***, the land which was gifted to the husband when the parties were already cohabiting and upon which the parties built the FMH, has been matrimonialised.

50. ***Vaughan v Vaughan*** [2007] EWCA Civ 1085 ***("Vaughan")*** is another case referred to by the parties. This case is an example of where the fair distribution of an asset may be unequal, if acquired by unequal contributions. In ***Vaughan***, Wilson LJ was dealing with a former matrimonial home which the husband had owned mortgage free prior to the marriage and which had been purchased

with an inheritance from his father. The home was placed in the parties' joint names near to the end of the marriage. The Court of Appeal was considering an order made by a Circuit Judge who had made the order on an appeal from a decision of a District Judge. The District Judge's order, which provided for a clean break between the parties, required the former matrimonial home to be sold and that, out of the net proceeds, required sums first of £425,000 to be paid to the wife and then £160,000 to be paid to the husband and that any excess above £585,000 to be divided equally between them. The Circuit Judge's order was that the first £50,000 of any such excess should be paid to the wife. Under the District Judge's order, the wife would have received half of any such £50,000, and the effect of the Circuit Judge's order was to increase the award to the wife by £25,000. The husband contended that the Circuit Judge was wrong to increase the award to the wife and that he should have reduced it. The wife submitted that the Circuit Judge was entitled to interfere with the District Judge's order and that the exercise of his resultant discretion so as to increase the award by £25,000 was legitimate. The Court of Appeal allowed the husband's appeal and set aside the Circuit Judge's order and substituted it with an order that both parties' appeals against the order of the District Judge be dismissed. *At paragraph 49* Wilson LJ stated that:

> *"The husband's prior ownership of the home carried somewhat greater significance than either the district or circuit judge appears to have ascribed to it."*

In his ruling Wilson LJ, whilst accepting Lord Nicholls' views expressed in ***McFarlane/Miller*** that the family home is a special form of asset even if introduced by just one spouse, was saying that the Court should take into account the circumstances of prior ownership when considering the fairness of a division and that its fair distribution may be unequal, if acquired by unequal contributions. A departure from equality was ultimately justified to achieve a clean break. However, what Wilson LJ did not do is simply remove the value of that asset from the division calculations.

51. The husband states that ***Vaughan*** supports his contention that, as he says he was gifted the relevant unencumbered land 4 years before the marriage and that he then built the home 3 years before the marriage, there should be an unequal split. The husband correctly states the FMH has never been registered in the parties' joint names and that it was not a purchased home. Of course, the title of a FMH does not have a bearing on the sharing principle. Although the husband seeks to argue that there were minimal costs associated with building the home as one of his family members ran the project, it is simply not conceivable that significant funds, which were still matrimonial sums that

can be regarded as going into the family melting pot even if from his income, were not used to build the FMH. The husband fails to acknowledge that the parties were already cohabiting at his parents' home when the land was gifted to him. He also fails to recognise that the evidence tends to show that he intended the property that was built on the land to become the parties' family home.[37]

52. ***Vaughan*** can be distinguished from the present case matter, because the matrimonial home in that case had been owned mortgage free prior to the marriage. In the present matter only the land, the value of which at the time of the transfer is unknown, had been owned unencumbered by the husband before the marriage although I note that it had been acquired when the parties were cohabiting. In the present matter the home itself came into existence/was built, it appears, with the intention that it would be the parties' marital home because they moved from where they had been cohabiting for just under 3 years into the home as soon as it was completed and because they married only 9-10 months after it was completed. Unlike in ***Vaughan*** where the FMH was already an unencumbered asset well before the marriage, the majority of the mortgage payments (which started around March 2012) until separation, were met from matrimonial funds.

53. The next case commented upon is ***S v AG*** [2011] EWHC 2637 (Fam). In that case the parties were Columbian nationals who resided in the UK and worked in modestly paid employment. They had been married for roughly 20 years before they separated. Four years prior to their separation the wife and her friend entered into a written syndicate agreement for the National Lottery and won £1m. Shortly after, £500,000 was paid into the wife's bank account. About five months after the win a property was purchased in the wife's name for £275,000 and $25,000 purchase costs and then improved (using £90,000), all from the £500,000 which the wife had won in the lottery. The parties moved into the property and lived there until their separation. Mostyn J found that the husband's needs were very modest as a hotel porter, who lived in Housing Association property and had expenses of just £11,250/annum and that his real need was for provision for his old age. Mostyn J stated that where one spouse played the lottery out of their individual earnings without the other spouse's knowledge, the winnings would be likely to be 'non-matrimonial' and this position would be strengthened further if the relationship itself was drifting apart and/or the purchase was part of a third-party syndicate arrangement. Therefore, Mostyn J found that the source of the lottery prize

[37] See paragraph 45 above.

was 'non-matrimonial', as the wife had acquired the ticket without the husband's knowledge from her own earnings. However, he said that the part which had been used to acquire property in which the parties lived as their marital home for 3 years was converted into 'matrimonial property' by such action. This is consistent with my finding in the present matter about the land becoming matrimonialised and not a ringfenced asset. Mostyn J stated the following helpful synopsis of the law:

> *"7. Therefore the law is now reasonably clear. In the application of the sharing principle (as opposed to the needs principle) matrimonial property will normally be divided equally (see para 14(iii) of my judgment in* N v F*). By contrast, it will be a rare case where the sharing participle will lead to any distribution to the claimant of non-matrimonial property. Of course an award from non-matrimonial property to meet needs is a common place, but as Wilson LJ has pointed out we await the first decision where the sharing principle has led to an award from non-matrimonial property in excess of needs.*
>
> *8. While matrimonial property will normally be divided equally, this is not an invariable rule. The reason for this is that sometimes the matrimonial property in question will not be the product of the endeavours of the parties within the social-economic partnership that is marriage (as Guest J described it in the Australian case of* Farmer and Bramley *[2000] 1615 at para 188). Sometimes one party brings assets which become "part of the economic life of [the] marriage…utilised, converted, sustained and enjoyed during the contribution period" (ibid at para 190). This is the concept of mingling referred to by me in* N v F *at para 9 (where I cited the remarks of Lord Nicholls in* Miller & McFarlane *at paras 24 – 25 and of Baroness Hale at para 148), and by Wilson LJ in* K v L *at para 18(b). But even if there has been much mingling the original non-matrimonial source of the money often demands reflection in the award. Thus in S v S* [2007] *1 FLR 1496 Burton J divided the matrimonial property 60/40 to reflect this factor.*
>
> *9. In Miller & McFarlane Lord Nicholls specified that the matrimonial home should always be designated matrimonial property, whatever its source. He stated at para 22 that "the parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose." This is reflected in the remarks of Wilson LJ in K v L at para 18(c)."*

But even the matrimonial home is not necessarily divided equally under the sharing principle; an unequal division may be justified if unequal contributions to its acquisition can be demonstrated. In ***Vaughan v Vaughan*** [2008] 1 FLR 1108 Wilson LJ stated *at paragraph 49*:

> *"Such would be the award notwithstanding that the home had been owned by the husband, free of mortgage, since well before the marriage and that, putting to one side his misconduct in dissipating assets following the breakdown of the marriage (the effect of which is intended to be rectified by the calculation), the contributions of each party to the welfare of the family during the marriage were in effect agreed to have been equal in value albeit not in kind. Although, in the words of Baroness Hale in Miller v Miller, McFarlane v McFarlane [2006] UKHL 24, [2006] 2 AC 618 at 663E, "the importance of the source of the assets will diminish over time", I consider that the husband's prior ownership of the home carried somewhat greater significance than either the district or circuit judge appears to have ascribed to it."*

54. Mostyn J found that the parties had been in the property for only a short time, and because the source of the property acquisition was not by joint endeavour, the husband's fair share should be reduced to 15- 20% overall as that would meet his needs and would be the appropriate payment by the wife. He concluded that of the net £432,000 asset pot left, the wife should pay a £85,000 lump sum to the husband, leaving the wife with around £350,000, which was more than adequate for her and her new husband.

55. I accept that the case illustrates that where when one party makes an unmatched contribution towards the purchase of the home, whilst its importance may diminish with time, fairness may still dictate that the final financial award reflects this contribution in some way. I also note that when Mostyn J decided to divide the matrimonial home unequally to reflect the non-matrimonial and unmatched contribution by the wife he relied on the decision of Burton J in ***S v S*** and his following remark at *paragraph 36*:

> *"There is room for recognition of a substantial financial contribution, derived from pre-marriage sources, by a man who had previously worked successfully for 30 years, and not just in relation to a very short marriage such as in Miller, as can also be seen from the approval by Lord Mance, in para 171 of Miller, of the words of Mr Mostyn QC as a deputy High Court Judge in GW v RW [2003] 2 FLR 108 at para 51 – subject of course to being overridden by the other party's financial needs (White at 994)."*

56. The husband argues that the dicta in ***S v AG*** is applicable to the matter before me because the gift was made to him *"a significant time prior to the marriage"*. However, when considering ***S v AG***, he fails to again acknowledge that the parties had already been cohabiting for 8 months with the husband's parents when they transferred the land to him. He fails to acknowledge that the parties remained cohabiting whilst the property was being built and that they then moved into property at the same time. As I mentioned at paragraph 52 above the intention was to use the land to build a marital home and the constructed home was actually used as the marital home for more years than the home in ***S v AG*** was. In ***S v AG***, unlike in the matter before me, the Court emphasised that the *"contribution"* came at the latter stages of the marriage when the relationship was deteriorating. It is clear that this case is not one which could be regarded as supporting a contention that the correct approach should be that at the outset the total argued contribution (in the matter before me $79,000 for the value of the land) should be deducted from the asset calculations and that thereafter there should be an unequal sharing of what is left. The facts in ***S v G*** and the approach in relation to lottery winnings created different considerations for Mostyn J, who had to review the Australian Courts' approach to such winnings. Therefore, it is important to reiterate that each case may turn on its own facts and the unusual facts in ***S v AG*** are very different to those in the present matter.

57. The next case referred to is ***FB v PS*** [2015] EWHC 2797 (Fam). The property had been the former matrimonial home of the parties for 15 years. The wife moved into the property after they were married. The property had been the matrimonial home of the husband's father and his wife. The husband and his siblings had been brought up in the property. The husband had the property transferred into his own name from a trust set up by his father 5 years after the marriage. The transfer of the property was not registered in the husband's name until just under 8 years after the marriage. Also of significance is the fact that the husband's father funded substantial refurbishment work to the property for the husband and wife after their marriage. Moor J recognised that the home was a matrimonial property, but he also took into account that it had been in the husband's family's home for 16 years prior to it becoming the parties' matrimonial home for fifteen years. On those facts, it is understandable and fair that Moor J found that the husband was entitled to a *"significant departure from equality"* when he deducted the bulk of the value of the family home from the total assets before dividing them equally to reflect those *"unmatched contributions"*. When reaching his decision Moor J stated:

> *"120. (The property - "AR") was therefore the matrimonial home for some fifteen years. Given the dicta of Lord Nicholls, I can only find that it is matrimonial property but I do not*

accept that this means that it is to be shared between the parties. AR was not acquired by the parties themselves during the marriage. It had been a matrimonial home of TS and his wife, since 1982. The Husband and his siblings were brought up there. The transfer itself is a very significant unmatched contribution, now worth some £3.5 million gross….

…..

125. There are, of course, two ways in which a court can approach the matter. The first is to allow a discount to equal sharing to reflect this unmatched contribution. The second is to remove an appropriate share of the value of AR from the matrimonial assets to reflect the unmatched contribution and then divide the figure that is left equally. I propose to approach the matter on the second basis and then check it by undertaking the first exercise."

58. I recognise that the decision in ***FB v PS*** highlights that where Court finds that where there has been a significant unmatched contribution to a matrimonial property the Court may depart from equal sharing and it suggests ways for how to calculate the assets in such a situation. However, the circumstances in that case are different to those in the matter before me and the case can be distinguished. In that case the home, not bare land, was unencumbered and had been in the husband's family and lived in by the husband and his family for many years prior to the marriage and prior to the parties later moving into it and treating it as their matrimonial home. When the land was initially transferred it was ringfenced in a trust by the husband's father who himself had been the one who spent large sums refurbishing it. Unlike the present case, it was not a home that had a mortgage that was being paid from matrimonial funds during the marriage.

59. The next case relied upon is ***AD v BD*** [2020] EWHC 85. The husband contends that the case is an example of great emphasis being placed on the source of the funds used to purchase a home and submits that the same approach should be taken in the present matter. The parties had been married for 8 years before separating in Summer 2018. In the Summer of 2017, the husband was given £8million by his father. There was a dispute between the parties as to whether or not this was an advance of profits in respect of a company, whether it was a gift, or whether it was remuneration. Cohen J found at paragraph 81 of the judgment that the £8m was part of the matrimonial acquest being a reward from the husband's father to him for the work done by him within the family businesses. By the time of the final hearing the husband had invested £5,725,000 from the $8million into other endeavours. Cohen J considered how he should treat the family home, which had been

purchased only three years before the end of the marriage with the whole of the purchase price coming from a source external to the marriage. Cohen J stated that a *"range of cases"* (which he did not mention) now supported the idea of a marital home's unequal sharing, or exclusion in its entirety from the sharing exercise. Cohen J adopted the first approach discussed by Moor J[38] and determined that only 40% of the value of the family home should be included as marital acquest available to share to reflect the husband's unmatched contribution. Cohen J placed emphasis on the fact that:

(i) the home was the first property owned by the parties and was bought only three years before separation;

(ii) the purchase price came wholly from husband's father rather than the husband himself; and

(iii) the property was registered in the sole name of husband, likely as requested by his father.

60. Cohen J held that attributing £500,000 as a sharable value to the property was the appropriate way to reflect the husband's contribution. Therefore, he removed £2,912,500 from the overall schedule of assets, as this was the value of the family home minus the £500,000 award and its expected cost of sale. Although ***AD v BD*** is an authority that makes it clear that the Court has a discretion in appropriate circumstances to depart form equal sharing in relation to the FMH, the facts in ***AD v BD*** are very different to those before me. Although the land was gifted unencumbered when the parties were cohabiting, it clearly became matrimonialised by how it was used and treated and the resultant FMH built on it was not funded from an external source in the marriage.

61. The next case referred to by the parties is ***E v L*** [2021] EWFC 6. Importantly Mostyn J found that the fact the marriage was short and childless did not affect division when he ordered that the wife was entitled to an equal share of the acquest. Consistent with the above cases, Mostyn J reiterated that, in appropriate cases, the law recognises the possibility of unequal sharing of assets, including of the matrimonial home. I recognise that Mostyn J reaffirmed that assets brought into a marriage but "matrimonialised" over time could justify a departure from equality. Specifically highlighting *"a dwelling used as a matrimonial home"* as an example when this would be the case, he held that:

[38] See paragraph 56 above.

> *"The law recognises the possibility of unequal sharing of such an asset: see Vaughan v Vaughan [2010] EWCA Civ 349 at [49] per Wilson LJ."*

The case does not mean that the sharing principle is still not good law for the majority of cases, but it highlights that the principle of a 50/50 split will not automatically be applied in every case. I have this general principle in mind when applying it to the facts in this case.

62. Reference is made by the parties to the case of ***RM v WP*** [2024] EWFC 191 (B). In that case the wife was aged 52 and the husband was aged 75. The primary assets were four properties[39], all of which were owned by the husband prior to the parties' first meeting. The combined value of all four properties was £1,959,272. The properties remained in the husband's sole name. There was no mingling. Both parties accepted (i) that the properties were pre-acquired by the husband; (ii) that there had been no mingling during the marriage; and (iii) that the wife had contributed nothing to the properties' value. The wife argued that she should receive an equal share of all four of the properties, or alternatively of at least the three properties which they had lived in and which she argued had been 'matrimonialised' due to their occupying them. The wife argued that the net equity of just under £2 million should be shared equally between the parties. The husband argued that all the properties were non-matrimonial, and the wife's claim should be limited to her needs. HHJ Hess calculated that her needs would be met by £657,000. He concluded that three of the four properties could be properly characterised as *"family homes"*. The combined equity of those properties was £1.46 million, and a 50% share would produce a lump sum of just over £730,000, a figure higher than the assessed needs of the wife.

63. As a starting point, HHJ Hess observed at *paragraph 27* that:

> *"In the division of capital after a long marriage it is useful to observe that fairness and equality usually ride hand in hand and that matrimonial property will usually be divided equally."*

64. However, HHJ Hess decided that, notwithstanding that three of the properties were family homes, there was justification for departing from an equal division of the net equity in those homes *"in circumstances such as these"*. He commented at *paragraph 36(ii)*:

[39] Two London apartments, a country cottage and a property in a European country.

> *"…. If the mathematical consequences of treating the sequential occupations of different properties as family homes, where they have all been contributed by one party, produces an unfair result then the court should steer away from it and not feel bound by the application of an unbending formulaic approach."*

The Judge added:

> *"The court…should not disregard the unmatched contributions of one party and also the length of the occupation of a particular property as a family home"*[40]; and concluded[41] that *"…. there is justification here for departing in the husband's direction from an equal division of the net equity in the three homes which have been family homes. My view is that the fair answer here is for the wife to be awarded the amount that meets her needs."*

65. Therefore, HHJ Hess agreed with the husband that the wife's award should be limited to meeting her needs, which was less than 50% of the equity in the three properties which the parties have occupied during the marriage. Therefore, the wife's award was limited to her needs-assessed sum of £657,000, plus a lump sum of £17,500 to fund rental accommodation for six months.

66. HHJ Hess found that the wife had contributed nothing to the value of the properties, which had accrued as passive growth. This is not the position in the matter before me. As was the position in ***Politowicz*** when I distinguished that case from ***RM v WP***, although I have found in the present matter that the husband made the mortgage payments, I have also found that the wife made some financial contributions to the household and to the husband. Other distinguishing features are that HHJ Hess found that there was no mingling in relation to the pre-owned properties that were used as matrimonial homes. Although I accept that the land was acquired by the husband when the parties were cohabiting prior to the marriage, when the parties were cohabiting that land was in effect mingled as the FMH was built on it and paid for by a mortgage which was paid throughout the marriage. HHJ Hess found that, as the husband was 75 years of age, he was entitled not to have to engage in remunerative work. The Judge proceeded, when considering division and needs, on the basis that it was likely that the husband's income earning years were over. The husband and wife in the matter before me are much younger than that and have many years of employment left in them. I accept that the decision is another example of when the Court exercises it jurisdiction to

[40] At paragraph 36(ii).
[41] At paragraph 37.

make an order departing from equal sharing in an appropriate case, but the circumstances in the matter before me are different and do not make this matter an appropriate case requiring departure.

67. Having analysed the other cases in a bit more detail than occurred in the ***Politowicz*** Judgment, as mentioned at paragraph 43 above, I now consider the Supreme Court ruling in ***Standish*** and its impact on the above cases. ***Standish*** is a case which required the Court to grapple with the complexities of determining the appropriate award in a high-net-worth divorce and with the importance of properly accounting for pre-marital wealth. When the parties started their 15-year marriage in 2005 the husband had accumulated significant pre-marital wealth through financial rewards from his employment in the form of investments and properties before retiring in 2007. The wife's resources at the start of the marriage, when compared to the husband's pre-marital wealth, were modest. The parties had two children. The wife was a homemaker, and the husband retired two years after the marriage. ***Standish*** dealt with two financial events in 2017 that arose as part of inheritance tax reduction schemes utilising the wife's non-domicile status. The plan was that the wife would settle the assets into discretionary trusts in Jersey for the benefit of their children. The first was a transfer from the husband's sole name into the wife's sole name of investment funds worth approximately £77-78 million and the second was the wife being issued shares in a farming business. The bulk of these assets had been built up from the husband's employment prior to the commencement of the parties' relationship. The trust deeds were drafted but were never established so the assets were still held in the wife's name at the time when the parties separated. By the time the matter came before the Court at first instance in 2022, the transferred assets had grown to $80M. The wife argued that the transferred funds had been gifted to her and should be regarded as being matrimonialised and taken into consideration when determining the settlement. The husband argued that the funds were not matrimonial as he did not intend the transfer to be subject to joint ownership. He added that if the Court found them to be matrimonialised then they should not be equally split. In the High Court, Moor J had to determine whether the $80M had become matrimonial property.

68. Moor J found that the total wealth of the couple was £132 million, of which he determined that £112 million was matrimonial property, including the 2017 assets and the farming business. He found that those assets had been matrimonialised and were, accordingly, subject to the sharing principle. He found that there should be an unequal division of the matrimonial property because

the 2017 assets had only been matrimonialised towards the end of the marriage and he awarded the husband £87.6 million (66%) and the wife £45 million (34%) of the parties' total wealth.

69. Both parties appealed Moor J's decision. The wife on appeal sought an increased award from £45M to £66M, as she should receive half of the parties' total wealth of £132M. The Court of Appeal dismissed the wife's appeal and allowed the husband's appeal. The Court found that Moor J's application of the sharing principle was flawed and had resulted in an *"unjustified division of the family's wealth in the Wife's favour"*. The Court of Appeal found that Moor J had placed undue weight on the transfer of legal ownership from the husband to the wife, and insufficient weight on the origin of the assets. The Court of Appeal held that 75% of the $80M that had been transferred to the wife remained non-matrimonial and should return to the husband. After analysing the various assets, the Court of Appeal concluded that (i) the marital property was £50.48 million, and (ii) a fair application of the sharing principle would have therefore resulted in the wife receiving an award of approximately £25M instead of the Judge's award of £45 million. The decision left the husband with £107M to reflect the significant unmatched non-matrimonial contributions made by the husband to the family resources.

70. The Court of Appeal decision reaffirmed the broad discretion that Judges have when trying to ensure fairness in ancillary relief cases. In the application of the sharing principle, the source of an asset was the critical factor and not title. It was felt that to give determinative weight to title would be both discriminatory and unfair and would not reflect whether the wealth has been generated during a marriage. In other words, the source reflects when and how an asset was generated and not the title. So, in the matter before me the fact that the FMH is only registered in the husband's name is not determinative.

71. The wife successfully appealed to the Supreme Court with Court unanimously deciding not to interfere with the decision of the Court of Appeal. As the parties' intention was to save tax by the transfer aimed at benefiting their children, the court said:

> *"Transfers of capital assets with the intention of saving tax, do not, without some further compelling evidence, establish that the parties are treating the capital asset as shared between them."*

The court found that a proper application of the sharing principle resulted in the wife receiving £25M. The Supreme Court felt that the provision made for the wife was sufficient to meet her needs and maintain a standard of living that was reasonably comparable to what she had enjoyed during the marriage. The court found that 75% of the investment funds that were found to be non-matrimonial had not been matrimonialised, as nothing showed that over time the parties had treated the funds as being shared. The Supreme Court took the opportunity to provide guidance about when a non-matrimonial property becomes matrimonial property in ancillary relief proceedings, and how the sharing principle should be applied to that property.

72. The Supreme Court reemphasised that when considering what orders to make the court must strive to reach a fair outcome and it set out principles that are relevant to the sharing principle. The summary of the principles highlighted by the Supreme Court is:

(i) There is a conceptual distinction between matrimonial (pre-marital property brought into the marriage by one of the parties, or property acquired by one party by external gift or inheritance) and non-matrimonial property (the "fruits of the marriage" or the product of the parties' joint endeavour). The legal title to the property does not determine whether a property is matrimonial or not.

(ii) Non-matrimonial property should not be subject to the sharing principle. Therefore, wealth accumulated outside the marriage (either before the marriage or received as inheritance) if kept separate and unmingled should not automatically be considered part of the divisible marital assets and these types of assets can be "ringfenced" and protected from division, provided certain conditions are met.

(iii) Non-matrimonial property may still be utilised in cases of need. Needs-based considerations remain paramount, especially if the parties have children or where a party is financially dependent. Therefore, fairness remains a guiding principle, even if there is no longer automatic equal division.

(iv) The sharing principle applies only to matrimonial property.

(v) Although there may be departures from it, the starting point is that sharing of matrimonial property should normally be on an equal basis.

(vi) The Supreme Court agreed with the comments of Wilson J in ***K v L***[42]. What starts as non-matrimonial property may become matrimonial through matrimonialisation. There is no good reason to treat matrimonialisation as a narrow concept. It is neither narrow nor wide. This was a departure from the Moylan LJ's view in the Court of Appeal that it should be applied as a narrow exception. What is important is to consider when deciding if there has been a transformation is how the parties have been dealing with the asset and whether this shows that, over time, they have been treating the asset as shared between them.

73. When preparing this Judgment and considering in particular the principle at (vi) above I noted that in his Supplemental Written Submissions, the husband appeared to rely upon the ***Standish*** case to argue that both the FMH as well as the land have not been matrimonialised. If that was right, he would be saying that not only should the $79,000 figure mentioned in the valuation report be deducted from the equity figure that is subject to division but that the home itself should not be subject to division. It was confusing and conflicting because at paragraph (m) in the submissions it was:

"conceded that in having W move into the home with him H may have unintentionally matrimonialised the home…."

In paragraph (n) he says:

"However, it is clear that it was not H's intention and that he has already regarded the property (land and home)[43]*as his own even though W was "allowed" to reside there."*

Apart from the unusual view that a wife is in the marital home only because the husband *"allowed"* her, the husband's submission concluded:

"It is respectfully submitted that in the case currently before the Court (i)t is clear, on both H's and W's evidence , that the parties did not treat the property over time as shared between them and as such ***the property*** *cannot be regarded as being matrimonialised."*[44]

[42] See paragraph 33 above.
[43] My emphasis by underlining as the husband appears to define 'the property' as being both the land and the home.
[44] My emphasis by underlining and bolding.

I sought clarification about these seemingly conflicting submissions in an email sent to the parties on 23 July 2025 and Mrs. Brooks KC confirmed in email sent on the same day:

> *"…the husband is saying that the land has not been matrimonialized and that Standish reinforces this so the $79000 should be deducted. The value of the equity in the home should then be divided in an unequal manner with an uplift for for (sic.) the reasons outlined in my initial submissions."*

In the present matter, for the reasons given earlier herein, I have found that the FMH and the land has become matrimonialised.

74. The above principles set out in ***Standish*** are not breaking new ground, but they draw together the thinking seen in a number of the above cases and clarify where there may be seen to be a difference to the application of some principles. I remind myself that ***Standish***, unlike the matter before me, is a case of considerable wealth. The facts can be distinguished because it is very clear that the intention of the parties concerning the assets was clearly shown by how they dealt with them and it was not to benefit the wife, or even the husband, but to reduce inheritance tax liability which was for the benefit of their children. To ensure that any property or assets are considered separate, and therefore 'non-matrimonial', it needs to be clear that there has been no intention to use the asset for the benefit and/or enjoyment of the family. If an inheritance has been received by one party or if a gift has been received by one party and used to reduce or clear the mortgage on the family home this shows a clear intention to use that asset for the benefit and/or enjoyment of the family. Upon divorce, it will be difficult for the party who received the inheritance to argue that they deserve that inheritance back as they used it for a joint purpose, and so it should be subject to the sharing principle. This example would also apply to the situation in the current case where the land was gifted to the husband when the parties were cohabiting but then used to build the marital family home which the parties lived in throughout their marriage.

Conclusion

75. I find that that the FMH is a matrimonial asset and that the land has been matrimonialised as it has become the FMH. The FMH took a central place in the marriage, despite the husband's unattractive observations made to his wife concerning her status in the home. Ordinarily such an asset would be subject to equal division. I have carefully considered whether this case falls into the fringe of cases whereby need and fairness would require a departure from equal sharing. I accept that the

husband has since the separation found a new partner and has had a new child with her. He has chosen to make those commitments post-separation and after the Petition was issued. Despite that, I find that the parties' respective needs can be met by an equal sharing and do not justify a departure from equal sharing. Both of the parties are entitled to move forward on the road to independent living. A lump sum of $124,297 and a later pension transfer of $19,300 will enable the wife to do that. With such a sum available for a deposit, and having regard to her age, she should be able to raise a sufficient mortgage payable over a reasonable period of years to buy a small property. However, failing that, she would be able to live in suitable rental accommodation and make suitable investments to secure her longer term**.**

76. Although not at the outset of the hearing presenting this case as a needs case, as the hearing progressed it became evident that the husband was arguing that his needs were greater than the wife's. At no stage did he formally argue that this was a case where he should receive spousal maintenance or that in lieu of maintenance, to obtain a clean break, he should receive a larger share of the assets. Although the parties did not give updated oral evidence about their outgoings, it is evident that the wife presently has disposable income at a time when she lives in rented accommodation and has two employment sources. The husband's Closing Submissions state that he has outgoings of $6,821.88 and his Affidavit sworn on 16 January 2025 lists what his outgoings were at that time ($5,146.88 for his expenses and $1,675 for child expenses). Although this is not a maintenance case in which the parties have conducted a detailed review of income outgoings during the oral evidence, I have reviewed them. When looking at his outgoings there are clearly areas where savings can be made (Miscellaneous expenses totalling $650, possible double accounting on health insurance of $500, electricity $532, yard maintenance $200, entertainment $200, school trips, school parties/teacher gifts, birthday gifts and parties to other children and child vacations). I am satisfied that he could considerably cut down his outgoings, but I accept that as it currently stands the wife would be the one with a disposable income. I am satisfied that the husband's needs would still be met even if the immediate buy-out figure is greater because there is no $79,000 deduction in the equity and because the Court is making an equal division rather than the 55/45% suggested by the husband.[45]

[45] When the draft Judgment was circulated to the attorneys pursuant to Practice Direction No. 1/2004 Corrections to Judgments, neither attorney had any suggestions for corrections save that Counsel for the husband drew to the Court's attention the following wording that was set out in paragraph 76 in the draft: *"When reviewing the evidence, I could not find any reference to the husband indicating what his bank might be willing to additionally lend him/add to the mortgage if he were to restructure it to enable him to buy out the wife. There is nothing in the closing submissions*

77. The husband received an email dated 30 May 2025 from the Branch Manager at his bank. The Manager therein wrote that:

> *"Based on a review of your income, the below is approximately what you can qualify for without a full loan application: Mortgage amount - $228,000, Payment - $1,800, Term – 27 years or* ***Maximum*** *Mortgage amount - $253,000, Payment - $2,000, Term -27 years Kindly deduct your current mortgage balance, to calculate what additional amount you could obtain."*

I note the current mortgage balance figure is $125,931. This means that the maximum additional amount over the present mortgage that the husband could raise with his present bank is in the region of $127,069. That figure is less than a buyout figure of $124,297.[46] I accept that this would result in an increase in his monthly mortgage payments if the husband wished to retain the FMH, but it would still be less than the cost would be to rent a suitable property for him and his new family.

78. Therefore, my conclusions in relation to the issues set out at paragraph 28 herein are:

(i) When calculating the equity figure for the FMH, the $79,000 recently assessed value of that land should not be deducted. Therefore, the equity figure is $249,069.

(ii) Having found that the land is matrimonialised, fairness does not require there to still be an unequal percentage division of the above equity figure which does not include a $79,000 deduction.

(iii) The level of the husband's contribution to the FMH and household do not justify a departure from equality in his favour.

(iv) Each party is entitled to an equal share of that equity. That share would be $124,534.50.

(v) The buy-out figure for the husband to pay should not include a pension assets balancing figure as well as the FMH equity figure and the buy-out figure should only be calculated to reflect the wife's interest in the equity in the FMH.

---

informing the Court about that. I note that he is 37 Years old and if his retirement is taken as being 55 he may be able to restructure a mortgage over 17-18 years to keep the monthly payments at a more reasonable level." That extract has been removed from the Judgment because, although not highlighted in the Closing Submissions filed by the husband, upon further review of the papers, the Court located the email dated 30 May 2025 sent to the husband by the Branch Manager at the husband's bank.

[46] See paragraph 79 below.

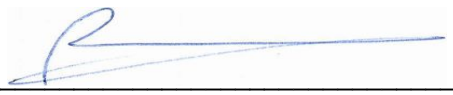
(vi) The pension balancing figure is to be dealt with by means of a separate Pension Sharing Order. This means that the husband will not need to raise such a large amount for the mortgage and his restructured mortgage payments should then be lower. The transfer figure to balance the pension is rounded up as suggested by the husband, to $19,300. The husband should provide the wife with details from his pension company about the earliest date when this transfer to her pension fund could occur.

79. With the above in mind, the buyout figure which the husband must pay to the wife is $124,297. That figure includes a deduction for the $237 credit to the husband for the costs of the property valuation. If the husband has not made the buyout payment to the wife within 120 days of this order, the FMH is to be placed on the market for sale. There will then be no buy-out figure, as the parties will then receive 50% of the net figure arrived at after the costs of sale have been deducted. The wife will be required to pay the $237 credit to the husband from her share of the net proceeds of sale.

80. Subject to the pension transfer from the husband to the wife, it is agreed that the parties will retain their assets held in their own name or in their possession.

81. The parties should submit an order reflecting my above decision for me to sign within 7 days of the perfected version of this Judgment being handed down. As I am told that the parties agree about what should happen to the other assets and that there should be a clean break, they should include those provisions as consent provisions in the Order.

82. If either party seeks a departure from the standard no order for costs order, then that party must file a Costs Summons no later than 10 working days after the delivery of this perfected judgment.



THE HON. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT