



she is now 'on the road to recovery' and is back in full-time employment. All the children, including LE, reside with the wife.

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 family background and the procedural background**

4. The parties met and began cohabiting around 1997/1998. They married on 29 March 2023 and separated in October/November 2022. The length of the marriage to separation stretched over 19 years, so it should be regarded as being a long marriage. The husband began cohabiting, and remains living, with his present partner at her home in November 2022. The wife remained in the former matrimonial home ("the FMH").
5. The wife filed her Petition on 9 February 2023. In his Acknowledgment of Service, filed on 20 February 2023, the husband indicated that he was not defending the Petition. The Petition was proved on 8 June 2023<sup>1</sup>.
6. The First Appointment hearing came before me on 29 June 2023. At the hearing, the Court was informed that the parties may not be seeking any s.10 child arrangement orders. The parties said that they agreed that the FMH would have to be sold. The Court was told that the wife was not seeking an interim child maintenance order because the husband was paying half of the mortgage and utilities (apart from the water bill) for the FMH, 100% of the yard maintenance costs, 50% of the school fees and lunches for both of the minor children and 50% of home insurance. The parties were referred to mediation.
7. Unfortunately, the parties were unable to reach an agreement in mediation and the matter came back before the Court for mention on 16 February 2024. The Court was informed that there was now a dispute about the FMH. The Court gave directions about the filing of evidence. The matter came on for a further mention hearing on 18 April 2024. The Court was informed that there may be a dispute about disclosure. As a consequence, the Court felt unable to give directions to a final ancillary relief hearing. It recommended to the parties that they should try to resolve the disclosure

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<sup>1</sup> The application to prove the Petition was filed on 5 June 2023 which was shortly after Brooks & Brooks filed their Notice of Appointment to represent the husband on 1 June 2023.

issue and, if they were able to do so, suggested that they should submit a consent directions order to a final hearing which the Court could consider on the papers.<sup>2</sup> The Court made a nominal maintenance order in relation to T as his 16<sup>th</sup> birthday was approaching. The parties were directed to attend mediation in relation to the youngest child. On 30 December 2024, a Notice of Hearing was issued with a Final Ancillary Relief hearing date fixed for 4 and 6 March 2025.

8. The wife had filed the bundle and her Skeleton Argument on 28 February 2025. The husband also filed his skeleton argument on 28 February 2025. The hearing proceeded on the fixed dates in March 2025. Both parties attended and gave oral evidence.
9. This is my reserved Written Judgment given after careful consideration of the parties' oral and filed written evidence. I have also carefully reviewed the oral submissions as well as the Written Skeleton Arguments provided by Counsel. Counsel indicated that they did not wish to file Written Closing Submissions. I have reviewed the produced case authorities and the contents in the core bundle.

#### **Issues and the parties' positions**

10. The hearing is required to deal with the orders relating to the FMH and child maintenance for the two youngest children.
11. In her Skeleton Argument the wife sets out the following orders that she was seeking at the outset of the hearing:
  - i. The parties to each retain any assets held in their name;
  - ii. Title to the FMH to be transferred into the wife's sole name;
  - iii. The wife to pay to the husband a capital lump sum payment of \$130,828 in respect of his interest in the FMH;
  - iv. The husband to pay child maintenance for the youngest two children to be assessed by the Court. The wife did not provide a figure in the Skeleton;

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<sup>2</sup> On 27 November 2024, the parties filed a Consent Directions Order seeking a hearing date on the first open date after 1 January 2025 with a time estimate of two days.

- v. The husband to reimburse the wife the sum of \$6,613.13 in respect of the husband's 50% share of the two youngest children's school fees/tuition, health insurance premiums, medical co-pays and dental plan since their separation in October 2022; and
  - vi. The husband to pay the wife's costs of these proceedings.
12. The wife says that she has had to shoulder the bulk of the financial responsibilities for the FMH since separation. Those responsibilities include gardening, gas/propane, water service, air-conditioning service, termite works, household groceries, water and new toilets which she says have amounted to \$23,684.22. Despite that, she indicated that she is not seeking reimbursement for those expenses from the husband. The wife mentions that the husband has an interest, in non-matrimonial properties<sup>3</sup> with his sisters which have a total value of around \$4,580,000 which she feels he could also potentially draw on if he wished to purchase a property. Although the parties agree that these are non-matrimonial assets, the wife initially suggested that if there is a dispute about the net equity in the FMH, the Court may factor in these non-marital sources in its determination. This latter contention was not one that was developed at the hearing by the wife.
13. In his Skeleton Argument the husband set out the following relevant terms from an open offer to settle that he made at paragraph 55 in his affidavit sworn back on 8 March 2024:
- i. Subject to what is stated below, the wife be allowed to retain the FMH upon the payment to him of \$150,000.00<sup>4</sup>;
  - ii. That the husband pay \$250.00 per child as maintenance for each of the youngest children until they reach the age of 16 or if they continue in education until they complete their education or reach the age of 21 whichever is the sooner;
  - iii. Further and in the alternative, if the wife does not agree to the amount of child maintenance being proposed that she pays the husband 50% of the equity in the FMH and the Court makes a determination as to how much child maintenance he should pay for the children;

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<sup>3</sup> The four properties are four separate parcels of bare land.

<sup>4</sup> The husband was willing to accept \$150,000 at that time although he stated that the equity in the FMH was then \$344,770.72 and a 50% split would have resulted in a payment of \$172,385.36. The husband said after the wife changed her mind and said that she no longer wanted the FMH to be sold that, on the condition that there would be an agreement that he pay \$250/child/month child maintenance, he was willing to only receive the \$150,000 (forfeiting a possible \$22,385.36).

- iv. That there be no pension sharing order;
  - v. That the parties retain their respective vehicles and retain all funds in their respective bank accounts; and
  - vi. That the husband retain his inherited properties with his sisters<sup>5</sup>.
14. At the hearing both parties agreed that there should be a “clean-break” in relation to spousal maintenance support. Both parties agreed that child maintenance should be paid by the husband to the wife for the two youngest children, but they did not agree the amount to be paid. Both parties agreed that the FMH could be transferred to the wife. Both parties agreed that the husband should receive 50% of the equity of the property by means of a lump sum payment from the wife. However, they did not agree the equity figure because the wife argued that the stamp duty resulting from the transfer and a requested reimbursement for some of the children’s costs incurred since the date of separation should be deducted to arrive at a final equity and payment figure. The husband states that, if the wife seeks such deductions, then the amounts paid by him from post separation income to the household expenses and to the children should be taken into account.
15. In the concluding paragraph of the husband’s Skeleton Argument, it was stated that he was requesting that all of the matrimonial assets be divided equally. This would have required the parties to provide sufficient information to ascertain the value of each asset. The wife stated that this was the first time that the husband had made that submission. At the hearing, the parties were afforded the opportunity to take further instructions from their clients as there may have been a need for the hearing to be adjourned. Counsel on behalf of the husband indicated to the Court that he was not now seeking a division of all assets or a calculation to be made in relation to all the assets when determining what sum the wife should pay to him upon the transfer of the FMH. Therefore, both parties agreed that they should retain the assets held in their own name and that they did not require the Court to consider these wider assets in any way. Both parties agreed that the only asset issue for the Court to determine was whether, from the 50% split in the equity figure, there should be a stamp duty deduction and a deduction for the reimbursement of child expenses as mentioned in paragraph 11 v. above.

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<sup>5</sup> See paragraph 12 above.

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

16. The issues for determination are very narrow. There is no dispute about whether a property should be regarded as a matrimonial property or not. There is no dispute about whether non matrimonial assets should form part of the division equation. Both parties agree that the fairness and the parties' needs requirements can be met by adopting such an approach and by the transfer of the one asset which they say is relevant, the FMH, with a buy out payment to the husband. The difference between them concerning the quantum of the buyout figure is now not wide, so the issues surrounding the asset part of the proceedings are now not complex. Therefore, an analysis of the law beyond reminding myself of the below general principles is not required, save for the comments that I will make in relation to the child maintenance dispute at a later stage in this Judgment.

17. The law pertaining to the division of assets and to the making of periodical payment orders is governed by s.19 of the Matrimonial Causes Act ("the Act"), which reads as follows:

*"In dealing with all ancillary matters arising under this Law the court should have regard first of all to the best interests of any children of the marriage and thereafter to the responsibilities and financial and other resources, actual and potential earning power and deserts of the parties."*

18. Section 19 of the Act must be read in conjunction with s.21 of the Act, of which the relevant parts for my consideration in this matter provide as follows:

*"At the time of pronouncing a decree under this law, the court shall, as appropriate, make order for:*

- (a) ...;*
- (b) the disposition of matrimonial property, including the matrimonial home<sup>6</sup>;*
- (c) ...;*
- (d) ...;*
- (e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse;*
- (f) providing for periodical payments to be made by either spouse for the benefit of the children of the marriage and the other spouse: and*
- (g) costs."*

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<sup>6</sup> My emphasis by underlining.

19. 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 had regard not only to the matters set out in s.19, but may also have been guided by the relevant factors raised in s.25(2) of the MCA in England and Wales.<sup>7</sup> The factors to be considered include:
- (i) The income earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
  - (ii) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
  - (iii) The standard of living enjoyed by the family before the breakdown of the marriage;
  - (iv) The age of each party to the marriage and the duration of the marriage;
  - (v) Any physical or mental disability of either of the parties to the marriage;
  - (vi) 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 accumulation of matrimonial assets as well as non-matrimonial property) and any contribution made by looking after the home caring for the family;<sup>8</sup>
  - (vii) The conduct of each of the parties. If that conduct is such that it would in the opinion of the Court be inequitable to disregard; and
  - (viii) The value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring.

20. I remind myself of the below parts of Mr. Justice Peel's helpful review conducted in *WC v HC* [2022] EWFC 22 paragraph 21 when he said:

*"21. The general law which I apply is as follows:*

*i) ...*

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<sup>7</sup> *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].

<sup>8</sup> *Wight v Wight* [2006] CILR 1, Zacca P. at paragraph 33.

- ii) *The objective of the court is to achieve an outcome which ought to be "as fair as possible in all the circumstances"; per Lord Nicholls at 983H in **White v White** [2000] 2 FLR 981.*
- iii) *There is no place for discrimination between husband and wife and their respective roles; **White v White** at 989C.*
- iv) *In an evaluation of fairness, the court is required to have regard to the s25 criteria, first consideration being given to any child of the family.*
- v) *S25A is a powerful encouragement towards a clean break, as explained by Baroness Hale at [133] of **Miller v Miller; McFarlane v McFarlane** [2006] 1 FLR 1186.*
- vi) *The three essential principles at play are needs, compensation and sharing; **Miller; McFarlane**.*
- vii) ...
- viii)...
- ix) ...
- x) ...
- xi) ...
- xii) *Needs are an elastic concept. They cannot be looked at in isolation. In **Charman (supra)** at [70] the court said:  

*“The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b); of the standard of living enjoyed by the family before the breakdown of the marriage (s.25(2)(c); of the age of each party (half of s.25(2)(d); and of any physical or mental disability of either of them (s.25(2)(e).”**
- xiii) *The Family Justice Council in its Guidance on Financial Needs has stated that:  

*“In an appropriate case, typically a long marriage, and subject to sufficient financial resources being available, courts have taken the view that the lifestyle (i.e. "standard of living") the couple had together should be reflected, as far as possible, in the sort of level of income and housing each should have as a single person afterwards. So too it is generally accepted that it is not appropriate for the divorce to entail a sudden and dramatic disparity in the parties' lifestyle.”**
- xiv) *In **Miller/McFarlane** Baroness Hale referred to setting needs “at a level as close as possible to the standard of living which they enjoyed during the marriage”. A number of other cases have endorsed the utility of setting the standard of living as a benchmark which is relevant to the assessment of needs: for example, **G v G** [2012] 2 FLR 48 and **BD v FD** [2017] 1 FLR 1420.*
- xv) *That said, standard of living is not an immutable guide. Each case is fact-specific. As Mostyn J said in **FF v KF** [2017] EWHC 1093 at [18]:  

*“The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise.**
- xvi) ....

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21. In *W v W* [2009 CILR 225], Sir John Chadwick P. reiterated the importance of the principles set out in (i) *Wight v Wight* 2006 CILR 1 (“*Wight*”), (ii) in *White v White* [2001] 1 A.C. 596 (“*White*”), and in (iii) *Miller*. The principles highlight that the Court is charged with dividing the assets in a fair and equitable manner. Referring to Forte J.A.’s ruling in *Wight*, the President, reiterate the equality principle, stating 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.”*

### **The FMH**

22. The FMH is held in the parties’ joint names. The wife accepts that after the parties’ separation the husband continued to pay one half of the monthly mortgage (\$1,042, but the figure varied due to interest rates rising) and one half of the monthly house insurance premiums (\$533.86<sup>9</sup>). The husband says that he has also made sporadic payments of \$350 per month towards the electricity bill. The husband highlights that he has repeatedly said that he made half the abovementioned household expenses for the FMH after their separation as he believed that the issues about asset distribution and child maintenance would be dealt with expeditiously and that he would then be able to buy his own home. He says that he could only make those payments because he was able to live with his partner but adds that, moving forward, he wants to have the security of owning his own home due to the uncertainty that comes with unmarried relationships. The husband contended that the wife had deliberately caused a delay in the proceedings by making irrelevant requests for disclosure in order to extend the time for him to continue paying the mortgage and thereby increasing the net equity figure for her benefit. That submission and belief is not well founded. A review of the disclosure history in the proceedings illustrates that some delay actually resulted from the husband’s approach to the provision of certain reasonably requested information. I recognise that a knock-on effect from the delay in concluding the proceedings and in the husband receiving a capital sum is that, unlike the wife who is six years younger than him<sup>10</sup>, due to his age, he no longer qualifies for a long term mortgage and therefore it will be harder for him to obtain a mortgage and any monthly mortgage payments will be higher.

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<sup>9</sup> The house premiums were previously \$487/month.

<sup>10</sup> The wife works for a bank and has a greater income than the husband so she will have a greater ability to obtain a reasonable mortgage.

23. The FMH has an agreed valuation of \$585,000 excluding the furnishing and fixtures<sup>11</sup>. The mortgage remaining on the property is \$236,934. Therefore, the equity in the property is \$348,066.
24. The wife now wishes the property to be transferred into her sole name as that would ensure that the children continue to have stability and security in a home under her primary care. The wife states that she intends to remain residing in the FMH for the foreseeable future. At the hearing the wife clarified her position that she no longer seeks a costs of sale deduction from the gross value of the FMH to reflect any future sale of the property.
25. It is highly likely that stamp duty will be payable if there was a property transfer made pursuant to a court order. Initially the wife stated that 7.5% stamp duty, amounting to \$43,875, would be payable. However, Counsel for the husband, during the hearing, produced a document from the Ministry of Finance & Economic Development headed "*Application for Stamp Duty Concession Caymanian Property Purchasers*". The parties agreed that the concession granted would mean that the stamp duty payable would now only be \$1,312.50. The wife submits that each party should be responsible for 50% of the stamp duty and that the equity figure would therefore then reduce by a \$1,312.50 deduction to \$346,753.50. The husband argues that the wife should be responsible for the stamp duty payment and that he should receive 50% of the pre stamp duty deduction equity.
26. It is patently clear that, if the property was sold rather than transferred, the costs of sale would be in the region of \$39,740. Both parties would have been equally responsible for that expense and the amount would have reduced the equity figure. The transfer route with the lower stamp duty concession obligation greatly financially benefits both parties. In such circumstances, I am satisfied that the stamp duty expense should be equally borne by the parties, thereby reducing the equity figure to \$346,753.50. I agree with the parties that the equity in the FMH should be divided equally and therefore each party's share of the equity would be \$173,376.

#### **Reimbursement to the wife for child related expenses post separation**

27. The wife argues that \$6,613 should be deducted from the husband's share in the equity and therefore from the amount that she needs to pay to him to 'buy out' his interest in the FMH. If the

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<sup>11</sup> The husband highlights that the valuation is two years old and although he feels it should have "*passively increased*" he does not seek an updated valuation which would cause further delay to the proceedings.

wife's submission was accepted, then the figure payable by her to the husband would be reduced to \$166,763. As mentioned above, this figure reflects what the wife says are the husband's 50% share of the two youngest children's school fees/tuition, health insurance premiums, medical co-pays and dental plan which he has not paid since their separation in October 2022. At paragraph 30 in her affidavit sworn on 31 January 2025 the wife provides more detail about the reimbursements she seeks, and she exhibited a spreadsheet setting out how the \$6,613 figure was reached. The breakdown figures for 50% of the costs are:

(i)	T's school fees and tuition from March 2024 to March 2025	\$2,151.12
(ii)	T and L's monthly health insurance premium from April 2023 to March 2025 (2/3 of the total monthly cost as premium total includes the wife's insurance)	\$3,180.00
(iii)	T and L's medical co-pays from 2023 to 2024	\$ 782.01
(iv)	T's dental payment plan (braces)	\$ 500.00

28. Although the husband did not seek to meaningfully challenge whether the above figures disclosed by the wife were accurate, he does not agree that such a deduction should be made from the buy-out sum that he is to receive.
29. At the hearing the wife appeared to accept the \$166,763 buy-out figure and she seemed confident that she could restructure her finances to obtain a sole mortgage in her name to cover the balance of the mortgage and to raise this amount to pay to the husband. It is evident that she has been speaking to a loan officer who has indicated to her that she would be able to restructure to raise \$150,000 (a figure she had told the loan officer that she required), which would make her monthly mortgage repayment figure \$2,496<sup>12</sup>. She mentioned that she was also seeking a loan to buy a new vehicle for \$66,500<sup>13</sup>. Therefore, there seems to be capacity for her to increase borrowing to raise more than the \$150,000 figure, even if that meant, having regard to her financial circumstances, her retaining her current vehicle or buying a vehicle for a smaller and more reasonable amount.
30. When I look at the wife's claim for reimbursement, I am conscious that the majority of financial orders between parents include provision for the sharing of health and education expenses over and

<sup>12</sup> To her Affidavit sworn on 31 January 2025 the wife exhibited an email dated 16 January 2025 from a Loan Officer at RBC who said that, based on the information provided to the Bank by the wife, she could qualify for a 19-year mortgage (to her retirement age) of \$390,000 at the preferential staff interest rate of 4.25%.

<sup>13</sup> In her 17 February 2025 Affidavit the wife state that she qualified for a loan to purchase a \$66,500 vehicle.

above a separate monthly child maintenance payment. I am also conscious that the husband has post separation admirably continued to pay one half of the monthly mortgage and one half of the monthly house insurance premiums which amounted to at least \$1,575 per month.<sup>14</sup> He pays \$300 per month for half of L's daycare fees<sup>15</sup> and has also made some payments for the CUC electricity bill. I also note the wife's evidence about her meeting the bulk of the financial responsibilities for the FMH since separation.<sup>16</sup> These responsibilities include gardening, gas/propane, water service, air conditioning service, termite works, household groceries, water and toilets which she says have amounted to \$23,684.22.

31. In relation to the school fees, the wife is the parent who made the decision, in or around February 2024, to move T from a fee-paying school to home schooling with some extra tuition (primarily for maths). This resulted in a considerable saving in education expenses for both parents as T's school fees had previously been \$1,650 per month. If a parent unilaterally moves a child to a new school which charges higher fees there may well be a good argument about whether that parent could correctly regard the other parent as being automatically liable for 50% of the increased educational expenses incurred as a consequence. However, if the fees have reduced, as in this matter, I am satisfied that it is fair that the husband should contribute 50% (\$2,151.12) to those expenses.
32. In relation to the health expenses, I am satisfied that the husband should contribute 50% towards the child's braces<sup>17</sup> (\$500.00) and towards the health co-pays (\$782.01). In relation to the health insurance premiums, the wife set the children up on her more comprehensive premier health insurance policy in or around April 2023. The wife said that the parties discussed the range of the policy and that the husband agreed to the children being transferred from his policy. The husband contacted the HR Department at his work to remove the children from his work policy. The wife failed to produce evidence of the amount that her individual insurance premium costs and how much that premium was increased by adding the two children. Instead, what she did was simply divide the total premium by three and apportion two thirds to the children. For the purpose of the reimbursement, I am content to accept that as the figure. However, if the wife in the future seeks an order that the husband pay half of the children's health premiums, she will need to provide

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<sup>14</sup> See paragraph 22 above.

<sup>15</sup> Paragraph 24 in the wife's Affidavit sworn on 31 January 2025.

<sup>16</sup> See paragraph 12 above.

<sup>17</sup> Initially both parties contributed to the installments for the braces, but the wife started to pay them in full when the husband purchased a truck.

verification from her employer how much the premium would be just for herself and how much that sum increases for the coverage for the dependent children. Although I accept that the husband has, post separation, consistently made 50% payments to the mortgage and house insurance, an asset which as a result has a reduced redemption figure which he will also benefit from, in circumstances where he has not been paying a separate child maintenance order and has been able to live 'rent free' at his partner's property, I am satisfied that it is fair that he contribute \$3,180.00 towards these aged health premium expenses.

33. **Accordingly, I order that the payout figure that the wife has to pay to the husband if he transfers his interest in the FMH to her is \$166,763. That is to be paid within 120 days of the order. If the payment is not made within that period, the parties have liberty to apply in relation to the FMH transfer or sale.**

#### **The Law and the approach to be taken in relation to child maintenance**

34. Section 22 of the Act under the heading "duration of periodic payments" provides:

*"22. (1) Where an order is made under section 21 for periodic payments such order, unless varied by the Court, shall remain in force in respect of payments to a spouse, until the remarriage or death of such spouse and in respect of payments for the benefit of a child of the marriage until the death of such child or until such child attains the age of sixteen years:*

*Duration of periodic payments provided that in the case of payments for the benefit of a child of the marriage, the Court may extend the period of such payments so long as the child is receiving education and is under the age of twenty-one years."*

35. The parties invite me to make child maintenance orders for each of the two youngest children. They request that the duration of the orders be until the relevant child reaches 16 years of age or ceases full time education up to the age of 21, whichever is the later. They both understand that the amount of the order is open for review at a later date as the financial circumstances surrounding a child may well change. Parents who foresee their child going into tertiary education frequently submit ancillary relief consent orders containing the same duration figure. This approach may reduce the need for the parties to come back to Court at a later date as the duration of a maintenance order will not need to be extended, although they may of course apply or submit a consent order to vary the level of maintenance as and when the relevant child's or either of parents' circumstances change.

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The move to a new education establishment and the likely increased costs of that would of course be a change of circumstances enabling an application to vary to be made and for the Court to consider ordering a different level of maintenance having regard to the family's financial situation at that time. When I make the above observation, I am conscious that in *K v K* CICA 3 of 2017, where the children were young and where it appeared that the husband informed the Court of Appeal that, at the time of the appeal, he did not agree with the ordered expiry date being until aged 21<sup>18</sup>, Sir John Goldring P highlighted at paragraph 40 that the Court must exercise a discretion and added that in that case:

*“If the children’s education continues outside the Cayman Islands after they are 17, orders in their present form until 21 are not appropriate. However, that having been said, the orders can always be amended to reflect any changes in circumstances, whether by agreement or by application. I can see nothing presently to be gained by this court now interfering.”*

36. I see merit in again setting out the following analysis of the law as it relates to child maintenance and overlapping expenses that I conducted at *paragraphs 31 - 40* in the variation of maintenance case of *AL v NL* Fam 194 of 2012 (Judgment dated 25 September 2020):

*“31..... What is clear is that the Court, when considering an application to make or vary a child maintenance order in relation to X, must have regard first of all to his interests. Although the Court may then also consider the parents' circumstances, including any change in their circumstances since the Order, and specifically their responsibilities, needs, financial and other resources, actual and potential earning power and deserts of the parties, it must do so in the context of X's needs being put first.*

*32. The Grand Court in the Cayman Islands, in deciding whether to exercise its powers under s.21 and, if so, in what manner, when considering what is fair in all the circumstances of the case, traditionally may have regard not only to the matters set out in s.19, but also to the relevant factors raised in s.25(1) of the Matrimonial Causes Act 1973, and now s.3 of the Matrimonial and Family Proceedings Act 1984 in England and Wales. These factors may also be considered in a variation application made pursuant to s.23 of the Law. Similarly, when considering X's needs, the Court may have regard to:*

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<sup>18</sup> A position which he had not taken at the hearing in the Grand Court.

- (i) *his financial needs;*
- (ii) *his income, earning capacity and resources;*
- (iii) *any physical or mental disability; and*
- (iv) *the manner in which he is being, and the parties expect him to be, educated.*

33. *During the hearing I provided the parties with an extract from Butterworths Family Law Service, Issue 90 (“Butterworths”). At paragraph [860]–[870] the authors, helpfully for the matter before me and for future cases brought in the Family Division and Summary Court, outline the approach for the Courts and for the attorneys to take in child maintenance applications; stating:*

*“The court has to treat each case on its own merits and to do what it can to achieve a just result. Practitioners often do not go into these applications armed with sufficient information. Bringing up children these days is the most expensive business and, if at all possible, the applicant should bring to court calculations of what they have actually spent on the child during a preceding period, rather than simply taking the approach that the court can be asked to imagine or speculate upon the cost of maintaining the children. Obviously, it will be very difficult, often impossible, to show what proportion of heating, lighting and general household expenses is referable to the children, but some items such as clothing, footwear, school expenses, holidays, pocket money, travelling expenses and so on can be specifically calculated and, where possible, this should be done.”*

34. *In my judgment delivered on 7 February 2017 in AK v TK 39 of 2015 I opined that it was “important” that at the time of the divorce “the level of quality of lifestyle (for the children) in (a) party's home is not disproportionate to that which can be offered in the other”. I recognised, when fixing a figure for periodical payments for the children, Mr. McGrath's submission in AK v TK, which was accepted by me and the Court of Appeal in that case, that there would be some overlap in the children's needs between the expenditure that was clearly solely for the children and household expenditure that benefited both the mother and the children, but which enabled them to have adequate homes with both parents.*

35. *When AK v TK went before the Court of Appeal, a comprehensive and guiding decision was delivered. Goldring P, at paragraph 37, made clear that the Court has a wide discretion in such cases and that any order does not have to be solely for a child's benefit, stating:*

*“The starting point of any analysis must be s.21(f) of the Matrimonial Causes Law (para. 7 above). By it, the court was obliged to make an “appropriate” order “for the benefit of the children.” Those latter words seem to me to provide the judge with a wide discretion. They do not mean that the order has to be solely for the*

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*children's benefit. It is sufficient if it can reasonably be said of the order that it fulfils needs of the children which would otherwise not be met.”*

36. The President then added at paragraph 37 in *K v K* that the following guidance concerning the approach to quantification given by Thorpe LJ in *Re P (Child)* (8) [2002] EWCA CIV 837 at paragraph 47 was consistent with the wording of s.21(f) of the Law, namely:

*“[The issues of the home having been settled] the judge can proceed to determine what budget the mother reasonably requires to fund her expenditure in maintaining the home and its contents and in meeting her other expenditure external to the home, such as school fees, holidays, routine travel expenses, entertainments, presents etc. In approaching this last decision, the judge is likely to be assailed by rival budgets that specialist family lawyers are adept at producing. Invariably the applicant's budget hovers somewhere between the generous and the extravagant. Invariably the respondent's budget expresses parsimony. These arts have been developed in Matrimonial Causes Act claims, particularly where the budget is advanced to found the calculation of the price of the clean break. But it is worth emphasising the trite point that, by contrast, an order for periodical payments is always variable and will generally have to be revisited to reflect both relevant changes of circumstances and also the factor of inflation. Therefore in my judgment the court should discourage undue bickering over budgets. What is required is a broad common-sense assessment. What the court first ordains may have a comparatively brief life before a review is claimed by one or other party.”*

37...

38. At paragraph [871] in the extract from *Butterworths* the authors highlight that the Court should take into account that maintenance was for the child and not for the other parent and that each parent has a financial responsibility to meet the child's needs. The authors state that:

*“..., solicitors representing the respondents to applications should for their part, bear in mind, especially that:*

*(a) periodical payments for children are meant to be for the children. Accordingly, there should be no ‘profit element’ for the benefit of the custodial party;*

*(b) it is clear from the statute that the cost of supporting and bringing up the child is not necessarily required to fall entirely on one parent. If both parents have resources the question before the court should be ‘what contribution towards the total cost should be borne by the respondent?’”*

39. In light of the above and of the change of the circumstances, the exercise for the Court is to review and ascertain the needs of X and to apply the above-outlined principles, including the primacy of X's interests when doing so.

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40. Although the Court, when assessing the amount to be paid by the father, must not burden him with contributing to or overwriting the costs of the mother's domestic lifestyle which the father contends are "overstated" and which would in effect amount to a spousal maintenance order in disguise seven years after the certificate of dissolution, it must acknowledge that some of the needs for X will overlap with the mother's needs. The Court will in such instances have to apportion a reasonable amount for the child's benefit whilst leaving the mother to pick up the greater balance.<sup>19</sup>

### **The Application for child maintenance for the two youngest children**

37. It appears that prior to the hearing the wife had historically been seeking a child maintenance figure of \$550 per child per month. That then suggested level of maintenance was on the basis that the husband would also be required to meet 50% of the two children's educational and medical/dental/optical expenses. The husband opposed that figure and he said at the outset of the hearing that the wife was seeking \$550 per child for maintenance as a means of getting him to pay towards the mortgage. At the outset of the hearing, the wife said she was not clear about what the maintenance figure should be, and she said that she was at that time asking the Court to suggest and fix a figure. By the end of the hearing the wife stated that the monthly figure for child maintenance that she was now seeking was \$1,000 per child per month. The wife informed the Court that, if she were to receive that figure, she would take on all of the wider financial responsibility for the children and she would not require the husband to make any additional payments towards the children's education or health. This would mean, for example, that the husband could cease paying the \$300/month that he currently pays for L's nursery fees.

38. At the outset of the hearing the husband reiterated his offer to pay \$250/child/month. He said he would also pay 50% of the two children's educational and health expenses. However, during the hearing he increased that offer to \$275/month/child. That offer was not accepted by the wife.

### **The wife's income and outgoings**

39. The wife is a Senior Manager in a department of a bank. She has a net bi-weekly salary in the region of \$3,703.49<sup>20</sup>. It is contended on her behalf that means that she has a monthly salary of \$7,406.

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<sup>19</sup> My emphasis by underlining.

<sup>20</sup> This figure arrived at by looking at six of the wife's exhibited bi-weekly salary slips covering the period 1 January 2024 to 24 March 2024 - Both Counsel confirmed after the hearing by emails sent in reply to the Court's written

That is not strictly correct as that is the salary only for a 28-day month. The sum that would be paid if it were per month for a 30 or 31-day month would be more.<sup>21</sup> The wife has also received bonus payments of \$13,581 in 2022, \$17,724 in 2023 and around \$19,000 in 2024. The parties agreed that, as bonuses are variable, the bonus figure to be used for these proceedings should be an average figure taken over the above-mentioned three years. That figure would be \$16,768. If that figure is spread over 12 months, it gives a monthly figure of \$1,397. That would increase the wife's income on a 28-day month to \$8,803. The wife also receives \$500 per month from LE, the adult daughter. That would take the income figure to roughly \$9,303. The Court was informed that LE has an income of \$2,900 per month. Although LE, of course, has no responsibility to provide any child maintenance for her siblings she should be paying a reasonable amount to the household expenses while she lives in the FMH with the wife and thereby free-up some of the wife's income. On an income of \$2,900/month, LE should be contributing a much larger sum than \$500/month towards the household expenses from which she clearly benefits.

40. The wife highlights the projected monthly expenses for the household containing 2 adults and 2 children which she suggests will arise when the property is transferred to her, and she has a new sole mortgage. As seen in the below schedule provided by the wife<sup>22</sup>, she argues that outgoings related to the children will total in the region of \$4,142 per month and that her remaining outgoings will total \$7,343 per month. The wife's outgoings include double accounting if one is using her net income figure as they include costs that are already deducted by the employer, for example health insurance and pension payments.

	ITEM	COST	OVERLAPPING EXPENSEES & TOTAL ATTRIBUTABLE TO L & T
1	Health insurance for L & T	272.00	100% - \$272 (already deducted by employer in net salary figure)
2	Homeschooling fees (T)	66.76	100% - \$66.76 (converted from US\$)
3	Nursery fee (L)	600.00	100% - \$600
4	Tutoring (T)	325.00	100% - \$325 (range \$260-\$325 depending on month)
5	Books/craft materials (L & T)	50.00	100% - \$50
6	Clothing (L & T)	50.00	100% - \$50
7	Shoes (L & T)	20.00	100% - \$20

question on 19 March 2025 that there was no additional or more recent evidence to indicate the level of the wife's present income.

<sup>21</sup> Both Counsel confirmed after the hearing by emails sent in reply to the Court's written question on 19 March 2025 that the bi-weekly income arrangement meant that the wife's monthly income would be greater for a 30/31-day month than the income calculated over the 28-day periods in two bi-weekly salary slips.

<sup>22</sup> Item 12 - Haircuts for L reduced by the wife in her oral evidence from \$35 to \$25.

	ITEM	COST	OVERLAPPING EXPENSEES & TOTAL ATTRIBUTABLE TO L & T
8	Toiletries (L & T)	25.00	100% - \$25
9	Uncovered medical/therapeutic (incl. T's counselling)	250.00	100% - \$250 (not happening at this time)
10	Uncovered prescriptions (incl. T's medications)	75.00	100% - \$75
11	Haircuts - T	25.00	100% - \$25
12	Haircuts - L	25.00	100% - \$25
13	Activities - L (Swimming)	25.00	100% - \$25 (commences in April/May for the next term)
14	Activities - L (Karate)	50.00	100% - \$50 (will start in May/June 2025)
15	Holiday gifts (L & T)	100.00	100% - \$100
16	Birthday gifts (L & T)	42.00	100% - \$42
17	Parties for other children	42.00	100% - \$42
18	Vacations (L & T)	200.00	100% - \$200
19	Cell phone (T)	114.00	100% - \$114
20	Mortgage	2,496.00	25% - \$624
21	Home insurance	1,067.73	25% - \$266.93 (avg 12 months - increasing April 2024)
22	Electricity	600.00	25% - \$150 (cost ranges from \$500-\$700)
23	Water	300.00	25% - \$75
24	Gas	126.00	25% - \$31.50
25	Groceries (all)	1,000.00	25% - \$250
26	Internet	89.00	25% - \$22.25
27	Auto Lien	995.00	25% - \$248.75 (if wife buys new car for \$65,5000)
28	Auto tag/license	20.00	25% - \$5
29	Auto insurance	125.00	25% - \$31.25
30	Auto gas	200.00	25% - \$50
31	Auto repairs	50.00	25% - \$12.50
32	AC service/repairs	75.00	25% - \$18.75
33	Clothes/shoes (wife)	100.00	0%
34	Toiletries/cosmetics(wife)	50.00	0%
35	Pharmaceutical (wife)	50.00	0%
36	Hairdressing (wife)	50.00	0%
37	Medical copays (wife)	75.00	0%
38	Dental copays (wife)	50.00	0%
39	Optical copays (wife)	13.00	0%
40	Work lunches (wife)	100.00	0%
41	Subscriptions (wife)	28.00	0%
42	Meals out (wife)	50.00	0%
43	Entertainment (wife)	50.00	0%
44	Vacations (wife)	200.00	0%
45	Personal care (wife)	195.00	0%
46	Pension contributions	450.83	0% (already deducted by employer in net salary figure)

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	ITEM	COST	OVERLAPPING EXPENSEES & TOTAL ATTRIBUTABLE TO L & T
47	Life insurance	275.00	0%
48	Cell phone (wife)	114.00	0%
49	Health insurance (wife)	135.00	0% (already deducted by employer in net salary figure)
<b>TOTALS:</b>		<b>\$11,486.32</b>	<b>\$4,142.69</b>

41. In the above monthly schedule provided by the wife she has allocated certain costs as 100% applicable to the children, other “*overlapping*” costs at 25% for the two children (12.5% per child) and 0% applicable to the children in respect of those costs personal to the wife. Although I accept that there is some overlap in the children's needs between the expenditure that is solely for the children and household expenditure that benefits both the wife and the children, the percentage formula used by the wife is too rigid. Some of the above 100% attributable expenses for which the wife expects the husband to have a 50% financial responsibility<sup>23</sup> would not be a fair obligation to impose on him for reasons set out in paragraph 42 below. Where there is a disparity in the parents’ income and age in a case where the husband would, even if he acted promptly, possibly only be able to obtain a fourteen-year mortgage, it would not be fair to, in effect, require him to pay \$124 per month towards the wife’s intended new vehicle or \$312 towards her new mortgage and \$133 towards home insurance.
42. Apart from the auto lien entry, the figures given for the major child related outgoings set out by the wife are not excessive. The purchase of a new vehicle for over \$65,000 with monthly instalment payments of \$995 and resultant increased insurance payments (\$125/month, \$1,500/annum) is a luxury, especially as the wife owns a 2020 Honda CRV for which she pays instalments of \$500/month. There may be an argument for removing the holiday and birthday gifts and the vacations from the global calculations when determining the level of maintenance that the husband should contribute to the wife, as each parent may wish to separately give gifts to the children and have their own vacation time with the children.<sup>24</sup> There may also be room for reducing the \$42/month figure (\$504/annum) allocated for parties for other children.

<sup>23</sup> The wife seeks the husband to be ordered to pay \$1,000 per child per month which is approximately 50% of the costs that she has indicated are attributable to the children.

<sup>24</sup> As shown in the husband’s own outgoings schedule.

43. The husband is an electrician and has stable employment, having worked for the same employer since 1990. His average net pay with annual bonus added in<sup>25</sup> received over a 12-month period from March 2024 to February 2025 was 64,375.40<sup>26</sup> or \$5,364.61. In arriving at the net figure, the monthly deductions made by his employer are \$10 for a charitable children's fund, \$300.15 to his pension, \$5 to the work social club, \$386.52 to life assurance for the mortgage on the FMH, \$500 into his Credit Union account (from which \$100 is paid into accounts for the two youngest children) and \$149.20 for his employee health plan with Provident.
44. The husband's written evidence relating to his outgoings is rather dated and they are set out in written form in his dated Affidavit sworn on 8 March 2024. He did not take up the opportunity afforded to him by the November 2024 pre-trial directions which permitted the parties to file additional affidavits by or on 23 December 2024. The below schedule sets out the husband's outgoings, as best the Court can do, by extracting details from that affidavit and from the husband's oral evidence. The schedule does not include the outgoings deducted from his salary by his employer and it does not include the 50% mortgage and insurance expenses he has continued to make towards the FMH post separation, nor does it include his contributions towards the electricity bills, propane gas, air conditioning servicing and yard maintenance at the FMH.<sup>27</sup>

OUTGOING/ITEM	Monthly CIS
Home	0
Groceries	300
Shoes	50
Toiletries	75
Pharmaceuticals	62
Hairdressing	50
Work lunches	300
Mobile phone	140
Clothing	25
Auto lien	500

<sup>25</sup> Bonus payment of \$1,372 made in February 2025 and \$2,845.43 made in December 2024. The bonus payment of \$1,039.98 made for February 2024 was similar to the bonus paid in February 2025.

<sup>26</sup> This figure does not include the deductions of \$77.62 made in April and March 2024 to refund an overpayment for the 2024 bonus.

<sup>27</sup> These expenses are all set out in his list of outgoings seen at paragraph 41 in the husband's Affidavit sworn on 8 March 2024.

OUTGOING/ITEM	Monthly CIS
Auto license (oral evidence)	36
Auto insurance (oral evidence)	143
Auto gas	150
Auto repairs	50
Meals out	200
Entertainment	100
Gifts at holidays	50
Gifts for special occasions	30
<b>SUB-TOTAL</b>	<b>\$2,261</b>
School fees & lunch - (no longer the figure claimed \$875 in the affidavit as now home schooled)	0
Nursery fees	300
Tutoring (when required)	250
Clothing and shoes for children	125
Holiday gifts for children	167
Birthday gifts for children	50
Vacations for children	50
<b>SUB-TOTAL</b>	<b>\$942</b>
<b>TOTAL:</b>	<b>\$3,203</b>

45. The husband, relying upon the above outgoing figures says that he has, post separation, only been able to afford to pay 50% of the mortgage and house insurance (totalling \$1539/month) plus the other expenditure made on the FMH mentioned in paragraph 44 above because he has in effect been living rent free and utility payments free in a house which his partner owns. He says that his long-term housing situation is precarious due to this arrangement, and he wants to be in the same position as the wife and be able to have his own home where the children can visit and stay. He says that there is also in the short term a need for him to acquire his own home because the wife does not wish for the children to see the husband's partner and because his working years to pay a mortgage are limited due to his age. He says that, unlike the wife, due to his age, he could only obtain a fourteen-year mortgage. He says he would need a three-bedroom house and that might cost between \$400,000-\$500,000. That figure looks low for a three-bedroom property. Unhelpfully he says that he "has not got a clue" about what a mortgage would cost. That is regrettable, as the Court would have expected him to have conducted a real estate search and to have spoken to a bank to obtain and then share details about borrowing that might reasonably be obtained and what the monthly mortgage payments might be. In the absence of such evidence, I stated to the parties at the

hearing that an online mortgage calculator from Scotiabank shows that to borrow \$400,000 on a fourteen-year mortgage at the lowest interest rate on their website (5.25%<sup>28</sup>) would result in monthly repayments of \$3,355. It may be that the husband would be restricted to purchasing a two-bedroom property, but that would still be a stretch on his income.

46. If one looks at the figure for the husband's personal outgoings (totalling \$2,261), putting aside the payments that he says that he presently makes for the children, if he were to buy a home and contribute to the utilities and running of that household, he would have little or no disposable income. The position would be similar if he had to rent a property alone and, in any event, he would now be expected to make a reasonable contribution to the household that he shares with his partner. At the present time he is living in a rather artificial position where he lives in his partner's home and appears, with her consent at this time, to make little or no contributions towards the running of that household. To date that has had to be the arrangement put in place between the husband and his partner because he has for an extended period of time maintained his 50% contributions to the mortgage and insurance on the FMH. Therefore, it would be the wrong approach to suggest moving forward that, now that the wife is having the FMH transferred to her, the sums previously being expended by the husband on his contributions to the FMH mortgage and insurance are now liberated to be fully redirected to pay child maintenance rather than some sums being utilised by the husband to enable him to embark on a similar road of independence and housing security to the one that will be enjoyed by the wife upon the property transfer.
47. If both parents were paying 50% towards the amount needed to be expended to meet the children's needs, it is clear that if the husband was only pay \$275 per child that the figure of \$1,100<sup>29</sup> would not be sufficient for the two children. That said, even on the wife's provided dated income figure, which does not take into account any pay rises that she may have received after March 2024, the wife's average net income figure (including bonuses) is considerably more than that received by the husband.<sup>30</sup> Where there is a disparity of income at the level seen in this case where the

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<sup>28</sup> This is the custom rate and other rates offered are up to over 9%. It is likely that the amount to be paid each month would be at a higher rate than the 5.25% custom rate.

<sup>29</sup> This figure arrived at by each parent paying \$275 per child

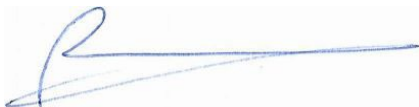
<sup>30</sup> Before any monthly contribution made to the wife by LE, the dated income figures produced by the wife show her average net salary with bonuses included to be \$8,803 whereas the husband's average net salary with bonuses figure based on the more recent figures produced by him is \$5,364.61.

disposable income of the husband is not significant, it is not unusual for one parent to take on the greater financial role for the children.

48. I am satisfied that the husband should pay maintenance of \$500 per child per month. This amount is assessed on the basis that each parent must contribute 50% towards the children's reasonable educational expenses (which will include but not be limited to fees, agreed extra tutoring, school supplies and uniforms). The payment should be made by or on the first day of each month, with the first payment being made on 1 April 2025. The wife will now be responsible for the payment of the health insurance premiums, but both parties contribute 50% towards all reasonable medical, optical and dental expenses for the two children which are not covered by the wife's work medical insurance policy. The party advancing payment for the above shall provide receipts to the other party within 14 days of payment and reimbursement shall be within 14 days. If a party seeks to spend more than \$500 on an invoice they must first consult with the other party. If a party can see that either educational payments or health payments may be in excess of \$500 in a particular month, then they should warn the other party and try to seek their consent to that expenditure. If they fail to do that that there may be an argument that the expenses were not reasonable. However, a party should not withhold their consent to reasonable required educational and health expenditure for the children even if the monthly \$500 threshold may be exceeded. The parties should also consult with each other before committing to the cost of therapeutic or counselling services for T.
49. As the parties told me during the hearing that they wished the Court to make the child maintenance orders remain in existence until the relevant child reached 16 years of age or up to the age of 21 if the child is in full time education (whichever is the later) I, by consent, make that the duration for the orders set out in paragraph 48 above.

#### Legal Fees/Costs

50. Unless I hear from the parties within seven days of the delivery of the perfected Judgment that they wish to make an application for costs, I intend to make no order for costs.



**Honourable Mr. Justice Richard Williams**  
**JUDGE OF THE GRAND COURT**