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

The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the Judgment itself) may be identified by name or location and in particular the anonymity of the children and the adult members of their family must be strictly preserved.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE No. FAM 257 of 2021

BETWEEN:

J.S.

PETITIONER

-v-

K.R.

RESPONDENT

IN CHAMBERS

Appearances:	**Mr Nicholas Cusworth KC and Ms Kate McClymont of Nelsons for the Petitioner/Husband** **Mr Michael Horton KC and Ms Louise Desrosiers of Travers Thorpe Alberga for the Respondent/Wife**
Before:	**Hon Justice Alistair Walters, Actg.**
Hearing date:	**24 - 27 October 2022**
Draft circulated:	**17 November 2022**
Interim Hearing:	**12 December 2022**
Judgment Delivered:	**31 March 2023**[1]

[1] There has been some delay in this judgment being finalized. At the trial the court was advised that the Respondent was unwell and would require invasive medical treatment. That started shortly after the trial concluded. There was a short hearing on 12 December 2022 at which a number of issues arose including the cost of the Respondent's future health insurance, indexation of various income and maintenance figures and costs. The Respondent's medical condition has caused understandable delays to her ability to provide instructions to her counsel as has the availability of counsel. By 13 March 2023, both parties provided further written submissions addressing the outstanding items. Those submissions have been taken into account in this final version of the judgment and are highlighted accordingly.

HEADNOTE

Final ancillaries - division of matrimonial assets - whether clean break achievable.

JUDGMENT

1. This is the financial ancillaries hearing in connection with the divorce proceedings commenced by the Petitioner/husband on 21 October 2021. There are two minor children of the marriage, S and A. For the purposes of this judgment there are no issues of substance that arise in relation to the children. The questions of residence, contact and maintenance have been agreed as has the repayment to one of the children of monies which had been given to them by their paternal grandfather but which ended up being mixed with matrimonial funds and spent.

2. The principal issues remaining for determination are:
   2.1 the extent and value of the matrimonial assets;
   2.2 whether the Respondent/wife's needs (once determined) can be met from the equal sharing of matrimonial assets; and,
   2.3 if not, can they be met with an enhanced share of the matrimonial assets and/or continued spousal maintenance for a period of time.

3. For reasons that I discuss below I will say at the outset that I am of the view that this is an unusual case and does not easily fit into what might be regarded as a more conventional approach to final ancillaries proceedings.

4. The parties had sworn various affidavits in connection with the proceedings and both gave oral evidence at the hearing. The affidavits stood as the parties' evidence in chief and they were cross examined at some length about their contents.

Background and chronology

5. The parties met at a wedding in 2001. At the time, the Respondent was a marketing manager in Montreal (the Respondent is Canadian). In 2002 the Respondent moved to Cyprus (the Petitioner has joint British and Cypriot citizenship) to live with the Petitioner and started a position there as a marketing manager. In 2003 the parties moved to Montreal where the Respondent worked again

as a marketing manager. At that time, the Petitioner started a position as a consultant for a company called P9G in London. The parties married in Montreal on 19 March 2004 and the Respondent moved to London in 2005 to join the Petitioner where she started another position as a marketing manager.

6. In 2007 the Petitioner suffered kidney failure and received a transplant from his sister. In 2008 the Respondent started her own company, Red/Ribbon marketing. In April 2009 the Petitioner started work at Deutsche Bank. The parties' first child (S) was born in 2010. The Respondent ceased full time employment in March 2012 and became pregnant with their second child in April 2012.

7. In December 2012, the Petitioner was made redundant from Deutsche Bank and was unemployed until February 2014. In January 2013 the parties' second child (A) was born. In December 2013 the Petitioner was offered a job with UBS. In February 2014 the parties moved to New York and the Petitioner started work with UBS Global Asset Management in New York. Around December 2015 that division of UBS was acquired by MUFG and the Petitioner started as Global Head of Sales and Marketing for MUFG.

8. In July 2016 the family moved to Montreal and purchased a home there although the Petitioner continued to be based in New York for work. The same year the Petitioner suffered a second kidney failure. The Respondent was a transplant match and donated a kidney to him resulting in some subsequent corrective surgery for her.

9. In December 2018 the parties purchased an apartment in New York (the "New York Apartment") which was registered in the sole name of the Petitioner. In January 2019, the Petitioner was appointed by MUFG as Deputy CEO of Investor Services Canada. In August 2020 the Petitioner started work as CEO of MUFG Alternative Fund Services (Cayman) Limited ("MUFG Cayman") and the parties moved to the Cayman Islands the same month. In October 2020 they purchased a 3 bedroom apartment at the Kimpton Seafire ("Unit 501") which became the matrimonial home. Again, this was registered in the Petitioner's sole name. In January 2021 the parties sold the home in Montreal and purchased an additional one bedroom unit at the Kimpton Seafire ("Unit 403") which was registered in joint names. The parties separated in June/July 2021 with the Respondent initially living in Unit 403 but subsequently moving to rented accommodation.

10. The Respondent has recently been diagnosed with stage 1 breast cancer which raises a question about continued health insurance.

11. There is little dispute over the background facts. The Petitioner agreed that during the period that the parties were both working, the Respondent earned a higher salary than him. When the Respondent stopped work to care for the parties' children, she was earning approximately GBP65,000. It is also not disputed that during the parties' marriage the Respondent has been a stay-at-home mother and housewife and has not worked full time since 2012. The Respondent is very much of the view that she has made sacrifices for the benefit of her marriage and family and that, without those sacrifices and, in particular, the kidney that she donated to the Petitioner, he could not have been as successful as he has been.

12. The Petitioner's income and remuneration has varied over recent years ranging from approximately US$450,000 per annum in 2018 to his current base salary of US$750,000 per annum. In 2020 the Petitioner received bonuses of US$1,760,199 (including a bonus for 2020, deferred bonuses for 2018 and 2019 and long term incentive payments ("LTIs"). Elements of the LTIs already awarded will be paid in 2023, 2024 and 2025.

13. The Petitioner also receives from MUFG Cayman a rental allowance for accommodation in the US. This is now US$6,000 per month and is used by the Petitioner to defray the expenses of the New York Apartment where he stays when visiting New York on business. In addition, the Petitioner receives from MUFG Cayman personal travel benefits (US$20,000 per annum), as well as health insurance coverage and pension contributions. The Petitioner is able to access the latter to meet the cost of the children's school fees.

14. The Petitioner also receives an annual payment from Mitsubishi UFJ Trust and Banking ("MUTB") as "chief executive officer" of MUFG Investor Services. This was an issue covered in some detail in cross-examination and in relation to which it seems that there had been no or very limited prior disclosure. According to the Petitioner the role of chief executive officer of MUFG Investor Services is honorary, rarely given to non-Japanese employees but awarded to him in recognition of the success of the Cayman Islands subsidiary. The role brings with it an annual payment of approximately US$75,000 from MUTB. In addition, the Petitioner holds a number of external directorships one of which pays him Euro 12,500 per annum and another US$10,000 per annum.

15. Overall, the Petitioner's recurring annual income is approximately US$961,000.

16. One question that has to be addressed is the standard of living in the marriage and what benchmark should be used when considering the needs of the parties. This is complicated by the fact that the parties moved to the Cayman Islands during the Covid-19 pandemic and have had their regular lives and expenditure interrupted as a result as well as facing a change in their cost of living. Their means also changed substantially after the move to the Cayman Islands.

17. The immigration status of the family is of significance to these proceedings. The Petitioner was initially granted a work permit by the Cayman Islands Immigration Department on 13 November 2020 for the period 16 October 2020 to 16 October 2022. In July 2021 the Petitioner's application for a Certificate of Permanent Residence for Persons of Independent Means[2] ("PR Certificate") was approved with a right to work. The certificate included his children (who are currently 12 and 9 years old) and gives them a right to reside in the Cayman Islands as dependants of the Petitioner until they reach the age of 18. Upon reaching the age of 18 the Petitioner must then apply for a variation for his respective children to continue as dependants. If granted, the variation will allow the children to continue to reside in the Cayman Islands until reaching the age of 24 or when they have completed tertiary education, whichever happens earlier. The Respondent was also included as a dependant without any time restrictions.

18. Following an application by the Petitioner, on 25 October 2021, the Respondent was removed from the PR Certificate as a dependant. The Respondent remains in the Cayman Islands as a visitor requiring her to regularly seek an extension of her permission to remain. At the date of the hearing the Petitioner was 49 years old and the Respondent 50. During the course of cross examination the Petitioner agreed that he is resident in the Cayman Islands for tax reasons and that he will remain here for the foreseeable future as will the parties' children and as should the Respondent.

19. The PR Certificate is one a number of different categories of immigration status that provide the opportunity for wealthy, private investors and senior executives to seek long-term residence in the Cayman Islands. The certificate granted to the Petitioner is available to persons who invest a minimum of CI$2,000,000[3] in developed real estate in the Cayman Islands. The certificate gives the holder the right to reside indefinitely in the Cayman Islands. They also have the option of seeking naturalisation as a British overseas territory citizen and, thereafter, the right to be Caymanian. The holder and their spouse may also have their permission to remain varied to allow

[2] Granted pursuant to s.42 of the Immigration (Transition) Act (2021 Revision).
[3] CI$1:US$1.2.

the right to work in the Cayman Islands. In addition to the investment threshold the applicant and their spouse have to have a clean criminal record, be in good health and possess adequate health insurance coverage. Their financial resources must be sufficient to maintain the applicant and their dependants adequately.

20. An alternative option is a residency certificate for Persons of Independent Means. This is available for persons who wish to reside long-term in the Cayman Islands but without the right to work. A successful applicant will be granted permission to reside in the Cayman Islands for a period of 25 years (which is renewable) but this type of certificate cannot be varied to allow the right to work. To apply for such a certificate an applicant must be at least 18 years old, not have any serious criminal convictions, be in good health and possess adequate health insurance coverage. For Grand Cayman, they also have to satisfy the Chief Immigration Officer that they have a continuous source of annual income of no less than CI$120,000 without the need to engage in employment in the Cayman Islands or that they have opened a local bank account and maintain a minimum deposit in that account of at least CI$$400,000. They must also show that they have invested the sum of CI$1,000,000 of which at least CI$500,000 must be in developed real estate in the Cayman Islands.

21. These alternatives are relevant for the current proceedings because the position of the Respondent is that it is only fair for her to have the opportunity to apply for her own PR Certificate (with the ability to apply to vary it to have the right work) which would put her in the same position as the Petitioner. Although the Respondent's preference is that she should not have to return to work she wishes to retain the option to do so if she chooses or is required to. Applying for a PR Certificate will inevitably be subject to the conditions set out above which, in turn, raises issues as to the extent to which an equal sharing of the matrimonial estate will be sufficient for the Respondent to not only make the required investment in Cayman Islands real estate but also have sufficient separate assets to generate an income with which to support herself.

The matrimonial assets and their value

Unit 501

22. All of the real estate has been valued recently and the values are agreed save for an argument about the furniture in Unit 501. This unit has been given an estimated sale price of US$5,000,000. The question of the furniture was covered extensively in cross examination. Some of the furniture was shipped to the Cayman Islands from the house in Canada and is approximately 6 years old, some was bought new but is now a number of years old. The Respondent has taken some items to use in her rental apartment, some are in storage. The Respondent estimates that the furniture cost

approximately US$400,000 to purchase and is prepared to agree a value of US$200,000. The Petitioner takes the view that the estimated sales price includes furniture. I have been asked to express an opinion based on the available evidence as to whether or not the estimated sales price includes furniture; not a position in which I think that I should have been left.

23. The valuation of Unit 501 was provided by Ms Fleur Coleman, a real estate agent who used to work for Provenance Properties and now works for IRG. She is familiar with the sales history of various units at Kimpton Seafire. Ms Coleman was not called to give evidence or asked to clarify her estimated sale price so the only material available to me is that in the main hearing bundle (tab E pages 1-5 and pages 65-72). Ms Coleman was instructed jointly as an expert by letter dated 21 December 2021. She was asked to provide her valuation on a furnished and unfurnished basis. Ms Coleman's reply by email on 28 December 2021 provided an estimated sale price for unit 501 of approximately US$4,150,000 – 4,300,000. She did not provide separate price for the unit furnished or unfurnished.

24. Ms Coleman was asked by email dated 4 October 2022 to update her valuation. She replied on 5 October 2022 making the point that she is not an "Evaluation Agent" but explaining that from her review of previous sales of similar 3 bedroom units she estimated a sale price of between US$4,600,000 and US$5,400,000. Ms Coleman amplified her response in an email dated 5 October 2022 in which, amongst other things, she refers to the sales of some units in 2019 and mentions that those were sold unfurnished. She refers to the sale of a number of other units and confirms her estimated sale price at US$4,600,000 and US$5,400,000 subject to the floor level of the unit. She makes reference to the furniture that had been purchased for Unit 501 but indicates that she is not aware of how much had been spent on it. She also make reference to some basic furniture packages that had been offered in relation to other units. Ms Coleman does not distinguish between furnished and unfurnished units when discussing estimated sales prices.

25. Ms Coleman was asked by email dated 6 October 2022 to confirm whether her valuation of Unit 403 included furniture and she replied saying again that she was not aware of the cost of the furniture in that unit but that her estimate of sales price included furniture.

26. It is not clear whether the comparable sales figures relied on by Ms Coleman related to other units that were sold furnished or unfurnished. It is also not clear whether information separating the price for the actual units as opposed to their furnishings would have been available to her. In my view,

in the absence of any sales information that separates out the value of furniture for units that have been sold and in the absence of any express indication from Ms Coleman that she had approached her estimate of the sale price for Unit 501 differently to that for Unit 403 it is reasonable to assume that her estimated sale price for Unit 501 includes furniture. This appears to be consistent with publicly available information about the real estate sales market in the Cayman Islands which suggests that the vast majority of property is sold furnished with notional values for furniture only being relevant to the question of stamp duty.[4]

The Petitioner's clothes

27. The Respondent has raised an issue about the collection of designer clothes that she says the Petitioner has acquired during the course of the marriage and continues to acquire. The Petitioner has been quite candid in his evidence and accepts that he likes designer clothes and has a large collection. He says that he feels that he needs to wear such clothing not ony because he likes it but because he believes that his clients expect it.

28. The Petitioner appears to have sufficient clothes to fill a closet in Unit 501, some are also kept in storage at the Kimpton Seafire and some are kept in the New York Apartment. In 2021 the Petitioner appears to have spent approximately US$74,000 on clothing although he suggested in cross examination that this was higher than average because of the Covid-19 pandemic. His annual budget for clothing for the purposes of these proceedings is put at US$30,000.

29. In her evidence, the Respondent equated designer clothing with art and she has suggested that the Petitioner's collection has an inherent value which she estimates at US$500,000.

30. There is no inventory of the Petitioner's clothing nor is there any independent evidence of its value or the extent to which that value could be realized through re-sale. The Petitioner says that he wears his clothes and, over time, he replaces them giving the old clothes away. He has some customized

[4] Ms Coleman is a member of the Cayman Islands Real Estate Brokers Association. On its web site at https://www.cireba.com/common-real-estate-questions there is a list of frequently asked questions, one of which is "*Q. Are properties sold furnished or unfinished? Answer. Approximately 95% of all condos and homes are sold furnished. The 7.5% stamp duty is calculated on the price you paid for the property minus the value of the used furniture. For example, if you buy a home for US$500,000 and the furniture is valued at US$22,489, you will be required to pay stamp duty on US$477,511.*"

clothes (e,g, two tuxedos which cost around US$14,000) but remarked in evidence that he has a unusual body shape which does make some of the clothing somewhat unique.

31. In the absence of relevant evidence I find it difficult to assess the value of the Petitioner's clothing in any meaningful way. However, in view of the level of expenditure in 2021 and his proposed annual budget it does seem clear that substantial matrimonial resources have been expended on his clothing over and above what one might reasonably expect and certainly when compared with what the Respondent herself says that she spends on clothing. In the circumstances, I assess the value of his clothing as a matrimonial asset at US$100,000. The Respondent has suggested that values should also be attributed for her jewellery and some items of clothing amounting to US$82,600 and various other personal items belonging to the Petitioner (sporting equipment, IT equipment and some jewellery totaling US$85,000). There are no valuations for these items and the values suggested by the Respondent are not agreed by the Petitioner, are similar and relatively minor in the context of this case so I do not intend to attribute any value to them for current purposes.

Pensions

32. The two additional main differences between the parties in relation to matrimonial assets are pensions and the Respondent's legal costs. The Petitioner has a variety of pension funds of which he is the beneficiary. They are in a number of different jurisdictions and are subject to differing withdrawal conditions and potential tax treatment, including, the Petitioner says, in some cases 25% withholding tax. The Respondent has two funds of which she is a beneficiary, also outside the Cayman Islands. Subject to the withholding tax point, the Petitioner has already agreed in principle to an equalization payment being made. In the absence of any real evidence in relation to the ability to access the non-Cayman Islands funds, the application of any withholding tax and the lack of jurisdiction over them I am of the view that the only reasonable approach that the court can take is to treat them at market value and make an order for an equalization payment based on the market values as at the date of trial.

The Respondent's legal costs

33. The Petitioner has advanced funds to the Respondent in order to meet her legal costs. The amount paid for her costs alone is US$281,182.17. The Petitioner says that that amount should be deducted from the Respondent's share of the matrimonial assets as he has met the bulk of the Respondent's legal fees from post separation income. There is some lack of clarity about the Petitioner's own

legal fees, a significant amount of which remained unpaid as at the date of trial. The Respondent says that the Petitioner has partly funded both of their legal fees from an account that held matrimonial assets. The Respondent gave evidence to the effect that she has followed the Petitioner's example in relation to level of legal fees incurred, maintaining an "*equality of arms*" as and when, for example, he instructed leading counsel.

34. Once matters such as child maintenance and sharing of deferred LTI's were agreed, much of the remaining argument in this case has centered on the parties standard of living, what their needs are and the extent to which the Respondent will need continued spousal maintenance. For reasons that I will discuss further below, in my view whether one notionally deducts the amount of the legal fees from the Respondent's share of the matrimonial assets and subsequently excludes it or treats it as being an initial deduction from matrimonial assets it does not make much of a difference in relation to the question of how the larger financial questions are resolved. The Petitioner had access to matrimonial assets and could have discharged the bulk if not all of the Respondent's legal fees from that source but ultimately used those funds for other purposes. On that basis, I will treat the Respondent's legal fees as having been an expense of the matrimonial estate[5].

Life changing bonus and stock options

35. Much time was spent by counsel for the Respondent exploring what has been described as a "*life changing*" bonus that the Petitioner informed the Respondent that he might become entitled to receive. Again, there is no dispute that there was the possibility of such a bonus. The Respondent claims that the bonus was sufficiently likely that the Petitioner started looking actively at more expensive real estate and commented that they would not have to fly commercial again. The Petitioner explained that the bonus was tied to a prospective merger and acquisition deal that MUFG Cayman was investigating. He says that if the deal had gone ahead and if the business in question had reached certain performance targets over time, he might have become eligible to receive a bonus based on his participation in the new business. However, he says that not only did the deal not proceed but the bonus itself would have been entirely contingent on the performance

[5] The Petitioner has subsequently challenged this approach and argues that the Respondent should meet her own legal costs with the amount being deducted from the amount payable to her as her share of the matrimonial assets. It is argued that the proceedings were drawn out unnecessarily by the Respondent. It was not until trial that some clarity seemed to be finally shed by the Petitioner on matters such as level of the Petitioner's remuneration from MUFG. Overall, it seems to me that both parties argued points that ultimately turned out to have no major significance. Having considered the submission of the parties at trial and subsequently, my decision remains unchanged and there is to be no order for costs other than as provided for here.

of the new business. He says that there is no life changing bonus and currently no prospect of one. The Respondent suggests that there is a conflict in the evidence given by the Petitioner in that although he says that there is no prospect of any such bonus, he had acted as though it might be likely.

36. In the absence of any real evidence in relation on this issue, in my view I cannot make any assumptions about a life changing bonus. As I said to Mr Horton during his closing submissions, if it turns out that in fact a bonus is paid based on a pre-separation transaction then that may amount to a factor which will entitle the Respondent to apply to vary the final ancillaries order made.

37. Similarly, the question of the extent to which the Petitioner might be entitled to stock options in MUFG was canvassed at length in pre-trial correspondence and covered in cross examination. The Respondent claims that the Petitioner has been less than clear about this issue[6] and that it was not resolved until a letter dated 11 October 2022 was received from the Executive Director, Reward & HR Operations, Human Resources at MUFG providing confirmation that the Petitioner is not entitled to receive any such options.

38. Again, it seems that the issue has been resolved in that the only available evidence is that the Petitioner does not receive this benefit.

39. The conduct of the parties in relation to both issues may well be relevant to the question of the allocation of the costs of the proceedings.

Summary of matrimonial assets

40. Below is a copy of the contents of a spreadsheet prepared by the Respondent which sets out what are largely agreed items. It also reflects adjustments based on the various items discussed above.

	A	B	C	D	E	F	G
1		**£/$**	**0.88**	**(All values in US$)**			
2		**€/$**	**0.98**				
3	**Property**				**H**	**W**	**Total**

[6] As well as being unclear about or failing to give disclosure of his salary increase from US$600,000 to US$750,000 at the beginning of February 2021.

5	**Seafire #S501 + CHATTELS**			$5,000,000.00			
6	Mortgage		29.9.22	-$692,837.00			
7	less costs of sale at 5%			-$250,000.00			
8				**$4,057,163.00**	**$4,057,163.00**		
9							
10	**Seafire #N403**			$1,200,000.00			
11	Less costs of sale at 6%			-$60,000.00			
12				**$1,140,000.00**	**$570,000.00**	**$570,000.00**	
14	**NYC**						
15	New York Apartment			$1,440,000.00			
16	Less costs of sale at 5%			-$72,000.00			
17				**$1,368,000.00**	**$1,368,000.00**		
19					**$5,995,163.00**	**$570,000.00**	**$6,565,163**
20	**Personal Bank accounts / investment account**						
3	**Property**				**H**	**W**	**Total**
33	Loan from S's inheritance			-$50,000.00			
36	Respondent's post separation inheritance a/c of CND104,299.52 excluded as non-marital asset					$80,900.24	
38					**$34,796.25**	**$80,900.24**	**$115,696.49**
39	**Cars**						
40	Range Rover			$200,000.00		$200,000.00	
41	Porsche			$60,000.00	$60,000.00		
42	Gold G Wagon			$40,000.00	$40,000.00		
43	Audi			$42,000.00	$42,000.00		
47	**Pensions**						
48	Manulife NRSP			$89,252.07	$89,252.07		
49	Manulife RPP			$27,867.09	$27,867.09		
50	UBS			$21,008.20	$21,008.20		
51	Sovereign			$295,175.97	$295,175.97		
52	MUFG			$86,986.48	$86,986.48		

53	Silver Thatch			$219,952.07	$219,952.07		
54	Scottish Widows			$16,816.22			
55	RBC			$16,816.22 $18,769.38 $18,769.38			
56				**$775,827.47**	**$740,241.87**	**$35,585.60**	**$775,827.47**
59					**$6,912,201.12**	**$886,485.84**	**$7,798,686.96**
3	**Property**				**H**	**W**	**Total**
60	**Retained Earnings (LTIs)**						
61	2023			$935,204.00	$935,204.00		$935,204.00
62	2024			$788,931.00	$788,931.00		$788,931.00
63	2025			$270,113.00	$270,113.00		$270,113.00
64				**$1,994,248.00**	**$1,994,248.00**	**$0.00**	**$1,994,248.00**
65	H clothing			$100,000	$100,000		
66					**$9,006,449.12**	**$886,485.84**	**$9,892,934.96**
68	50% of matrimonial assets				$4,946,467.48		
69	Amount payable by H to W to equalise asset capital				**$4,059,981.64**		

41. It has been agreed that Unit 403 should be transferred into the Respondent's sole name. As mentioned above, I am of the view that the Respondent's legal fees should be treated as a matrimonial expense and therefore should not be deducted from her share of the capital. The amount to be paid to equalize pensions will be US$352,328.14 which is the sum put forward by the Respondent. The Respondent also seeks an equal division (whether in specie or by value) of air miles and other reward points accumulated during the course of the marriage and there does not appear to be any disagreement about that.

Relevant law

42. The relevant legislation setting out principles for the Court to apply when considering the financial aspects of a divorce are ss. 19 and 21 of the Matrimonial Causes Act (2015 Revision) (the "Act").

> *"19. In dealing with all ancillary matters arising under this Law, the Court shall have regard first of all to the best interests of any children of a marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties.*
>
> *...*
>
> *21. At the time of pronouncing a decree under this Law, the Court shall, as appropriate, make orders for —*
> *(a) the custody, care and control of the children of the marriage;*
> *(b) the disposition of matrimonial property, including the matrimonial home;*
> *(c) varying any settlement of the property of the spouses made in consideration of the marriage, whether such settlement was made before or upon the treaty of the said marriage.*
> *(d) varying any other settlement of matrimonial property;*
> *(e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse;*
> *(f) providing for periodic payments to be made by either spouse for the benefit of the children of the marriage and for the other spouse; and*
> *(e) costs.*

43. When considering the distribution of matrimonial property, the court will apply three principles that were set out by the Court of Appeal in *McTaggart v McTaggart*[7]

> *"It is not, I think, necessary to look further than the decision of the House of Lords in Miller [[2006] 2 A.C. 618]—and, in particular, the speeches of Lord Nicholls and Baroness Hale—in order to identify the principles. Leaving aside, in this context, the best interests of the children (which, as I have said, are paramount), there are three strands: need, compensation and sharing ([2006] 2 A.C. 618, at paras. 10–16 (per Lord Nicholls); and at paras. 138–143 (per Baroness Hale)). The ultimate objective, as Baroness Hale explained (ibid., at para. 144) is to give each party an equal start on the road to independent living. She said this:*
>
> > *"Thus far, in common with my noble and learned friend, Lord Nicholls of Birkenhead, I have identified three principles which might guide the court in making an award: need (generously interpreted), compensation, and sharing. I agree that there cannot be a hard and fast rule about whether one starts with equal sharing and departs if need or compensation supply a reason to do so, or whether one starts with need and compensation and shares the*

[7] [2011 (2) CILR 366] paragraph 40.

balance. Much will depend upon how far future income is to be shared as well as current assets. In general, it can be assumed that the marital partnership does not stay alive for the purpose of sharing future resources unless this is justified by need or compensation. The ultimate objective is to give each party an equal start on the road to independent living."

44. The Court of Appeal went on to comment on the jurisdiction under s.19 of the Act, saying:

"39 As I have said, s.19 of the Law requires that, in exercising the powers under s.21, the court is to have regard to "the responsibilities, needs, financial and other resources, actual or potential earning power and the deserts of the parties." For convenience, I will refer to those matters as "the s.19 factors." In this context, also, the underlying statutory provisions in this jurisdiction, although similar, are not the same as those in England and Wales. Section 25(1) and (2) of the Matrimonial Causes Act 1973, as amended by the Matrimonial and Family Proceedings Act 1984, requires the court, when exercising the powers under ss. 23 and 24 of that Act, to have regard to all the circumstances of the case; and, in particular, to the following matters:

"(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

(h) in the case of proceedings for divorce . . . the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring."

It has not been suggested that, despite the more extensive list of matters to which the English and Welsh statute requires the court to have regard when addressing questions of ancillary relief (in the financial sense), the approach which should be adopted in this jurisdiction in having regard to the s.19 factors differs materially from that which has been adopted by the courts in England and Wales. Indeed, there are observations in this court—in Doak *v.* Doak *(2) (2002 CILR 224, at paras. 17; 21–22); in* Wight *v.* Wight *(11) (2010 (1) CILR*

60, at para. 58); and in W v. W (9) (2009 CILR 255, at para. 12)—which support the view that the approach should be the same."

45. The Court has a wide discretion in relation to such matters. It is agreed by the parties in this case that the matrimonial assets are to be shared equally and the asset schedule set out above has been prepared on that basis. The schedule also reflects the agreement by the Petitioner to share with the Respondent the deferred bonuses or LTIs that he is due to receive in years 2023, 2024 and 2025, being bonuses/LTIs earned in respect of 2021, the year of separation and in earlier years. The basis of the sharing of assets is, of course dependent on the Court's overall assessment of how the Respondent's needs, once assessed, can and should be met.

46. There is no disagreement as to the relevant law. The real question comes down to how I exercise my discretion under the Act. Mr Cusworth had cited at some length the decision of Moylan LJ in the case of *Waggott v Waggott*[8] in which the judge discussed various questions that the court should consider when dealing with the sharing of matrimonial assets and the extent to which a clean break is desirable and achievable:

> *"121. First: (i) is an earning capacity capable of being a matrimonial asset to which the sharing principle applies and in the product of which, as a result, an applicant spouse has an entitlement to share?*
> *122. In my view, there are a number of reasons why the clear answer is that it is not.*
> *123. Any extension of the sharing principle to post-separation earnings would fundamentally undermine the court's ability to affect a clean break. In principle,… the entitlement to share would continue until the payer ceased working (subject to this being a reasonable decision), potentially a period of many years. If the court was to seek to affect a clean break this would, inevitably, require the court to capitalise its value which would conflict with what Wilson LJ said in Jones v Jones.*
> *124. Looking at its impact more broadly, it would apply to every case in which one party had earnings which were greater than the other's, regardless of need. This could well be a very significant number of cases. Further, if this submission was correct, I cannot see how this would sit with Lady Hale's observation in Miller that, even confined to "(i)n general", "it can be assumed that the marital partnership does not stay alive for the purpose of sharing future resources unless this is justified by need or compensation" (para 144) or her observation as to the effect of "(t)oo strict an adherence to equal sharing" (para 142).*

[8] [2018] EWCA Civ 727.

47. The Respondent had initially sought a 10% share of the Petitioner's net bonus/LTI receipts for the years of service 2022-2024. Mr Cusworth says that this is a very clear judgment which can leave no doubt that the Petitioner's future earnings, including his receipts earned in 2022, whether paid now or later, and thereafter, are not an asset in which the Respondent is entitled to claim a share. He says that any ongoing claim to periodical payments in her own right must therefore be justified firmly and squarely on the basis of need. In his closing submissions, Mr Horton indicated that such a claim was no longer being pursued on behalf of the Respondent so I will not consider the point further.

48. Turning next to the second question, Moylan LJ said:

> *"129. … (ii) How should the court assess whether an award determined by application of the sharing principle meets the party's needs? More specifically to the arguments advanced in this case, to what extent is it fair for the wife to be required to use her sharing award to meet her income needs when the husband will meet his needs from earned income?*
> *130. I reject (the) argument that the wife's capital, apart from her housing need, should be preserved and should not be used in any way to meet her income needs. This again would conflict with the clean break principle to such a significant extent as to undermine the statutory "steer" because, absent other resources, the applicant spouse would always have a claim for an additional award to meet his or her income needs.*
> *131. In my view it is clear from Miller and Charman alone that, as a matter of principle, the court applies the need principle when determining whether the sharing award is sufficient to meet that party's future needs…, there must be a means of determining whether, and if so how, the sharing award does or does not meet the applicant's needs. There is no suggestion that the question of needs for these purposes is to be determined by reference to a different need principle, or more broadly, by means of a different approach. Indeed, any other approach would be inconsistent with the observations made by both Lord Nicholls and Lady Hale, that there is no rule about where the court starts the exercise, and inconsistent with Charman (para 73) in which the sufficiency of the award by reference to the sharing principle is directly assessed by the award "suggested by the needs principle".*
> *132. This does not mean that the manner in which the need principle is applied to the sharing award is inflexible, no more that the application of the need principle is itself inflexible. …Further, as Wilson LJ observed in Jones (para 27), an earning capacity can be "relevant to a fair distribution of the assets pursuant to the sharing principle". It can be taken into account when the court is deciding whether the capital should be amortised in full, in part or not at all and when deciding what assumed rate of return to apply. However, to repeat what Wilson LJ said in Jones: "Even if, however, an earning capacity may also sometimes be relevant to a fair distribution of the assets pursuant to the sharing principle, it does not follow that the earning capacity should itself be treated*

as one of those assets, still less that an attempt should be made to capitalise it."

133. Further, even if in Vaughan Wilson LJ was not including a sharing award within the scope of capital received by a wife "otherwise than as a needs-based capital payment" (para 42), if, in some circumstances, a wife can be expected to meet her income needs out of inherited capital, it is difficult to see why the same should not apply to a wife's share of marital wealth.

134. I would also agree with his observation that it is "impossible to be categorical about what the law expects in this area". Given the range of options from full amortisation to an assumed rate of return and the range of potential circumstances (including all the section 25 factors) it is difficult to see how a definitive outcome can, in fairness, be mandated for all cases. In some cases it will clearly be fair for that part of the sharing award available to meet income needs to be fully amortised, for example, because neither party has any resources other than those being shared. In other cases, the court might take the view that the applicant should have a greater level of security than that provided by an amortised sum because of the respondent's earnings and apply only an assumed rate of return. To repeat, when determining this issue, the court will need to have regard to all the relevant circumstances, to the clean break principle and, as appropriate, the issue of undue hardship. 135. I have used the expression "assumed rate of return" because, again, of the scope for different rates of return sometimes to be applied as reflected in the cases referred to above... I also use the expression "rate of return" because, in my view, the relevant question is the gross rate of return which is not necessarily confined to income but can include both income and capital returns.

136. There are, however, clearly advantages – both in terms of providing clarity and of consistency – if the Duxbury model and the assumptions within it were to be used at least as a starting point. I note that in H v H there was "an assumption in the parties' calculations that 3.75% was an appropriate rate of return for the judge to apply" (para 15 25) ... the manner by which the court assesses an award by application of the need principle and the manner by which it assesses whether a sharing award is sufficient to meet needs must be consistent. Given the consequential correlation between needs and sharing, using the same model would remove a potential element of inconsistency between the two which might result in different outcomes depending on whether the court started with a needs-based award or vice-versa.

137. I would also add that I do not accept (the) submission that the court should determine what rate of return the wife can obtain "now" and leave any adjustments as may be justified in the future to a subsequent application. Apart from this being a recipe for continued litigation, it ignores the fact that the court is taking a long-term perspective when assessing whether the sharing award meets needs. If the needs are being assessed by reference to the applicant's life expectancy then the rate of return is being assessed by reference to the same period.

138. As to the specific issue raised in this case, namely whether it is fair for an applicant spouse to be required to use their sharing award to meet their income needs when the other spouse will meet their needs from earned income, the answer is that the latter factor will be relevant to the court's determination of the former issue."

49. Mr Cusworth says that Moylan LJ meant no more than that in determining the appropriate rate of return to be applied to the applicant's capital, the court weighs the respondent's position as one of the relevant factors. Mr Cusworth suggests that, as in that case, the Duxbury model should be used as at least a starting point in this case. Mr Cusworth says that here, there is no evidence before the Court that might lead it to the view that any other approach was sensible. As will be seen below, I accept this proposition and have made use of a notional rate of return when considering how the Respondent's needs might be met.

50. Moylan LJ when on to deal with the question of compensation saying:

> *"In my view it is clear from Miller that compensation is for the "disadvantage" sustained by the party who has given up a career… as a necessary factual foundation the court would have to determine, on a balance of probabilities, that the applicant's career would have resulted in them having resources greater than those which they will be awarded by application of either the need principle or the sharing principle.*"[9]

Although Mr Horton's position is that the Respondent sacrificed her career to support the family and the Petitioner she is not relying on this principle to seek compensation.

51. In *AD v JD*[10] Ramsay-Hale J (as she then was) considered the same principles. In her judgment the judge dealt with the impact of the English Court of Appeal's decision in *Waggott*, and determined as follows:

> *"48 Insofar as I am required to decide the point, I decline Mr. Turner's invitation to hold that the Court of Appeal in Waggott (10) was wrong, not only because I am satisfied that the decision is right for all the reasons stated by the court, the panel of which included Munby, L.J., then President of the Family Division, and Moylan, L.J., a specialist family judge of many years' experience before his elevation to the Court of Appeal, but also because the decision of the court relied on the decision of the Privy Council in Scatliffe v. Scatliffe (9) which is binding on this court.*
> *49 The passage in Scatliffe to which the Court of Appeal in Waggott referred can be found in the opinion given by Lord Wilson on behalf of the Board where he states that ([2017] 1 A.C. 93, at para. 25)—*
> *". . . in an ordinary case the proper approach is to apply the sharing principle to the matrimonial property and then to ask whether, in the light of all the matters specified in section 26(1) and of its concluding words, the result of so doing represents an appropriate overall*

[9] Paragraph 139.
[10] 2020 (2) CILR 985.

> *disposal. In particular it should ask whether the principles of need and/or of compensation, best explained in the speech of Lady Hale in the Miller case at paras 137 to 144, require additional adjustment in the form of transfer to one party of further property, even of non-matrimonial property, held by the other."*

50 I would here note too, the observation of Mr. Cusworth, Q.C. that the decision in Waggott (10) has been reaffirmed by the Court of Appeal most recently in XW v. XH (12), where Moylan, L.J. said ([2019] EWCA Civ 2262, at para. 136): "in clarification of what Lady Hale said in Miller . . . an earning capacity is not a marital asset . . ."

51 Moylan, J. also cited Scatliffe as deciding that (ibid.) "the application of the sharing principle impacts, in practice, only on the division of marital property and not to non-marital property."

52. Then turning to the question of need, the Judge said:

"56 Despite the lengthy submissions by counsel for the wife, this is the ordinary case where the court will be engaged on assessing the wife's needs, generously interpreted, as was submitted by Mr. Cusworth at the outset.

57 I turn now to consider the principles to be applied by the court in making periodical orders for spousal maintenance under s.21(e).

58 Mr. Turner submits that the reported authorities show that the concept of "needs" is a flexible one that is informed by the circumstances of the individual case, the assessment of which may take account of factors that include the length of the marriage, the lifestyle enjoyed during that marriage and the resources now available, including resources that are not directly referable to marital endeavour. He observes that Baroness Hale said in Miller; McFarlane (6) ([2006] 2 A.C. 618, at para. 138):

> *"In the great majority of cases, the court is trying to ensure that each party and their children have enough to supply their needs, set at a level as close as possible to the standard of living which they enjoyed during the marriage . . ."*

59 Mr. Turner reminds me that I should bear in mind as a first consideration the interests of the children, and that it is undesirable for children to enjoy wildly differing standards of living in the respective homes of their parents as set out in J. v. C. (Child: Financial Provision) (4), in which Hale, J., as she then was, held that a child whose father had won the lottery after the relationship with her mother had ended was entitled to be brought up in circumstances which bore some sort of relationship with the father's current resources and the father's present standard of living.

60 Mr. Cusworth invites me to consider the judgment of Charles, J. in G v. G (3), a case to which Mr. Turner also referred the court, in approaching the question of needs. In that matter, Charles, J. reviewed the cases of White (11) and Miller; McFarlane (6) and the guidance that followed and said this ([2012] EWHC 167 (Fam), at para. 136):

> *"136. What I take from this guidance on the approach to the statutory task is that the objective of achieving a fair result (assessed by reference to the words of the statute and the rationales for their application identified by the House of Lords):*

i) is not met by an approach that seeks to achieve a dependence for life (or until re-marriage) for the payee spouse to fund a lifestyle equivalent to that enjoyed during the marriage (or parity if that level is not affordable for two households), but

ii) is met by an approach that recognises that the aim is independence and self sufficiency based on all the financial resources that are available to the parties. From that it follows that:

iii) generally, the marital partnership does not survive as a basis for the sharing of future resources (whether earned or unearned). But, and they are important buts:

a) the lifestyle enjoyed during the marriage sets a level or benchmark that is relevant to the assessment of the level of the independent lifestyles to be enjoyed by the parties,

b) the length of the marriage is relevant to determining the period for which that level of lifestyle is to be enjoyed by the payee (so long as this is affordable by the payor), and so also, if there is to be a return to a lesser standard of living for the payee, the period over which that transition should take place,

. . .

d) the marriage, and the choices made by the parties during it, may have generated needs or disadvantages in attaining and funding self sufficient independence that (i) should be compensated, and (ii) make continuing dependence/ provision fair,

e) the most common source of a continuing relationship generated need or disadvantage is the birth of children and their care,

. . .

h) the provisions of s. 25A must be taken into account."

61 *In SS v. NS (Spousal Maintenance) (8), on which Mr. Turner also relies, Mostyn, J. gave guidance on the approach to determining the appropriate level and duration of spousal support in light of the principle of achieving a clean break. The learned judge said this ([2014] EWHC 4183 (Fam), at paras. 28–29, 33–35 and 46):*

"28. . . . The 1984 amendments to the Matrimonial Causes Act 1973 by the insertion of s25A(1) and (2) stipulate that spousal maintenance should be terminated as soon as it is just and reasonable. A term should considered by the court unless the payee would be unable to adjust without undue hardship to the ending of the payments. This suggests that Parliament anticipated that a degree of not undue hardship in making the adjustment is acceptable.

29. This has been described as the statutory steer to an eventual clean break (see Matthews v Matthews [2013] EWCA Civ 1874). Unless undue hardship would likely be experienced the court ought to be thinking of providing an end date to a periodical payments order."

"33. In its recent report the Law Commission set out its 'policy' on needs. . . I consider that the report sets out a useful summary of the guiding principles . . .

34. As for 'how much' the Commissioners wrote at para 3.96:

> *'Exactly how, and at what level, needs will be met will depend on the resources available and, usually, the marital standard of living. Replicating the marital standard of living in two homes, after divorce, will be rare: most parties will not be able, in the short to medium term, to live at the standard they enjoyed during the marriage. That said, their former standard of living will be relevant in so far as any reduction in standard of living as a consequence of the financial settlement made on divorce should not fall disproportionately on one party. In addition, the transition to independence, if possible, may mean that one party is not entitled to live for the rest of the parties' joint lifetimes at the marital standard of living, unless he or she can afford to do so from his or her own resources'*

35. I would emphasise the final sentence. It is a mistake to regard the marital standard of living as the lodestar. As time passes how the parties lived in the marriage becomes increasingly irrelevant. And too much emphasis on it imperils the prospects of eventual independence."

"46. Pulling the threads together it seems to me that the relevant principles in play on an application for spousal maintenance are as follows:

i) A spousal maintenance award is properly made where the evidence shows that choices made during the marriage have generated hard future needs on the part of the claimant. Here the duration of the marriage and the presence of children are pivotal factors.

ii) An award should only be made by reference to needs, save in a most exceptional case . . .

. . .

iv) In every case the court must consider a termination of spousal maintenance with a transition to independence as soon as it is just and reasonable . . . A degree of (not undue) hardship in making the transition to independence is acceptable.

. . .

vi) The marital standard of living is relevant to the quantum of spousal maintenance but is not decisive. That standard should be carefully weighed against the desired objective of eventual independence."

.....

63 Mr. Cusworth submits, uncontroversially, that the following principles emerge from those various judgments and reports in

determining the appropriate level and duration of an award for spousal maintenance:

- *The parties' standard of living is the benchmark or starting point against which needs are assessed: G v. G[11]; BD v. FD[12];*
- *Also relevant will be the length of the marriage, the length of contribution by the claimant, and the parties' available resources: G v. G; BD v. FD;*
- *However, the marital standard of living is not the lodestar—the ultimate aim is independence and self-sufficiency based on all the financial resources that are available to the parties: SS v. NS[13]; BD v. FD;*
- *The transition to independence may mean that one party is not entitled to live for the rest of the parties' joint lifetimes at the marital standard of living, unless he or she can afford to do so from his or her own resources: SS v. NS; BD v. FD;*
- *As time passes, how the parties lived in the marriage becomes increasingly irrelevant: SS v. NS; and*
- *The longer the period for which needs are met, the more likely that the court will not assess those needs at the marital standard of living throughout that period: BD v. FD."*

53. The Respondent has also referred to the decision of G v G[14], as cited with approval by Ramsay-Hale J as set out above. In particular, she relies on the following:

> "*the marriage and the choices made by the parties during it may have generated needs or disadvantages in attaining and funding self-sufficient independence that (i) should be compensated and (ii) make continuing dependence/ provision fair".*

Pre-trial open settlement offers

54. Prior to trial the Petitioner put forward the following alternative settlement offers:

CAPITAL (Option 1)			
	Timing of payment	Value	Balance
Half current value of H's pension funds (after withholding tax)	Payable by end of 2025	$340,084.55	$340,084.55
Half the value of deferred earnings	Each payment to be made forthwith after the payment to Petitioner by MUFG	$997,124.00	$1,337,208.55
Transfer of Unit 403 to Respondent	Forthwith after settlement	$570,000	$1,907,208.55

[11] [2012] EWHC 167 (Fam).
[12] [2016] EWHC 594 (Fam).
[13] [2014] EWHC 4183 (Fam).

Cash payment	Raised by refinancing of mortgage over Unit 501	$1,400,000	$3,307,208.55
Future cash payment	By end of 2023	$388,629.10	$3,695,837.65

CAPITAL (Option 2)			
	Timing of payment	Value	Balance
Half current value of H's pension funds (after withholding tax)	Payable by end of 2025	$340,084.55	$340,084.55
Half the value of deferred earnings	Each payment to be made forthwith after the payment to Petitioner by MUFG	$997,124.00	$997,124.00
Transfer of NY Apartment to Respondent	Forthwith after settlement	$1,368,000.00	$2,705,208.55
Transfer of Unit 403 to Petitioner	Forthwith after settlement	-$570,000.00	$2,135,208.55
Cash payment	Raised by refinancing of mortgage over Unit 501	$1,400,000.00	$3,535,208.55
Future cash payment	By end of 2023	$160,629.10	$3,695,837.64

55. The Petitioner initially did not offer any child maintenance but did offer to continue to pay the Respondent spousal maintenance at the current level of US$16,700 per month ($7,500 to her current landlord and $9,200 direct to the Respondent) until such time as the "*cash payment*" and "*future cash payment*" mentioned above have been paid in full. The Petitioner pointed out that if the Respondent accepts Option 1 above, the Respondent will also receive rental income from Unit 403 (less costs of the apartment) of US$5,000 per month (net US$3,500). If she selects Option 2 then she would be able to rent out the New York Apartment to receive additional income.

56. In relation to the children, the Petitioner offered to meet their costs directly to third parties until they reach the age of 18 or finish full time education, whichever occurs later.

57. During the course of the hearing the Petitioner also confirmed that he would agree to pay to the Respondent monthly child maintenance of US$2,900 per child until they reach the age of 18.

58. It was further agreed during the hearing that, in principle, the Petitioner would meet the cost of the monthly health insurance premium for the Respondent. This is subject to finalizing the details of the cover available, premium and deductibles payable[15].

59. The Petitioner takes the view that the Respondent's housing needs can be met through either of the above options and that once the full amount of the additional capital provided to her is paid, with amortization it will enable her to generate a sufficient income along with rent and child maintenance to be self-sufficient and achieve a clean break.

60. The Respondent takes the view that based on her assessment of her needs and the capital requirements related to an application for a PR Certificate there will be insufficient capital available from either option for her to generate an income on which to live and that she will have to continue to receive spousal maintenance for life to meet those needs. Neither option was accepted.

The marital standard of living, current circumstances and the Respondent's needs

61. I explained at the outset that I regard this case as being unusual. The primary reasons for saying that are ones that I have already touched on; namely:

61.1 The parties moved to the Cayman Islands in 2020 during the Covid-19 pandemic and do not have a clear track record here in relation to their standard of living in normal circumstances. This is compounded by the significant increase in the Petitioner's remuneration when the family moved here. At the hearing there was little evidence in relation to the standard of living enjoyed previously by the parties although it appears that

[15] This is an issue that has been debated by the parties since the draft judgment was handed down. At the trial the court was advised by the Petitioner's counsel that the health insurance provider for MUFG was willing to offer coverage to the Respondent by way of an individual policy but on the same terms as the MUFG corporate policy with no exclusion of pre-existing conditions. The monthly premium was said to be CI$2,541.73. No step seems to have been taken in relation to this partly because the Respondent was seeking further clarity as to the precise terms of the proposed policy and also because the Petitioner was concerned about the risk of the premium increasing significantly in the future. As indicated in paragraph 69 below, the cost of health insurance was omitted from the schedule of the Respondent's expenses and was an item that was to be dealt with separately. The Respondent clearly needs to have her own health insurance and in view of her current medical condition cannot in my view be expected to move to a policy that excludes what would be her pre-existing conditions. On that basis the Petitioner is to take such steps as are necessary to facilitate the establishment of a health insurance policy with MUFG's current health insurance provider as proposed at trial. For the period during which spousal maintenance is to be paid the Petitioner is to bear the monthly costs of the premium, and for non-elective treatment, the amount of any uninsured deductible along with any co-pay amounts and uninsured reasonable travel and associated expenses. If the Respondent's health care costs rise to a level at which they are materially different to the current level then it is open to the Petitioner to apply to vary this order.

it was high. When being cross examined about the cost of flights[16] on a recent trip that he took with his daughters, the Petitioner commented that they have always flown business class.

61.2 As mentioned, the question of the parties' immigration status is also of significance. I have already explained the basis upon which the Petitioner obtained the PR Certificate. This, by its very nature, was dependent on the use of matrimonial assets and continues to tie up those assets. The question is whether it is reasonable for the Respondent to seek to obtain an equivalent immigration status bearing in mind that for her to do so will involve an equal commitment of capital as that made by the Petitioner.

62. During the hearing a schedule was handed up by Mr Cusworth which analyzed the Respondent's position in relation to her needs and included the Petitioner's comments on those sums. When cross examining the Respondent, Mr Cusworth went to some lengths to suggest that, in fact, the Respondent's expenditure and needs were significantly less than she was suggesting and did so by reference to the spending from her Butterfield bank account for the period November 2021 – September 2022. He suggested that when considered carefully they showed average monthly expenditure of CI$11,450 which more closely represented her needs. The Respondent's evidence was that she had been particularly careful with her expenditure during that period because she was "petrified" to spend too much and be left short. She stated that she had benefited from the generosity of friends during that period who had covered some of her expenditure such as eating out but that during that period she had lived at a level that was below the standard she had enjoyed during the parties' marriage. Having heard the parties give evidence, I accept the positon of the Respondent and do not regard her expenditure during the period in question as reflecting the standard of living of the family or of the Respondent personally.

63. Mr Cusworth reiterated that, as the authorities referred to above confirm, the previous standard of living enjoyed by the parties should not be the "lodestar" by which needs should be considered. But, by contrast with the arguments put forward in relation to the Respondent's expenditure, between April and September 2022 the Petitioner had spent just over CI$38,500 on car maintenance for one of his three cars. As Mr Horton put to him, he did not operate within any budget but just spent what he chose.

[16] The cost of flights was partially offset by the Petitioner's personal flight allowance from MUFG Cayman.

64. The Respondent attended her father's funeral in Canada in March 2022 and had to purchase some new clothes and accessories. She confirmed when giving her evidence that she spent just over CND18,000 on two outfits, shoes and a handbag. The spending was on the Petitioner's American Express account without any apparent objection from him although it is suggested on his behalf that this was hardly typical spending.

65. In the autumn of 2020 the parties paid US$29,000 to fly the Respondent's parents in a private jet from Canada to the Cayman Islands because her parents were concerned about travelling during the Covid-19 pandemic. The Petitioner describes this as one-off generosity on his part.

66. In my view these are all indicative of a high standard of living and high level of family expense reinforced by the Petitioner's own schedule of expenditure below.

67. The Petitioner's updated expenditure is set out in his replies dated 15 October 2022 to a request for further and better particulars made by the Respondent. The breakdown is as follows:

Item	Per Annum US$	Per month US$ (approx.)
Household		
Mortgage	175,000	14,583
Strata (both units)[17]	64,000	5,333
Utilities (water, CUC, internet)	15,000	1,250
Food/groceries/take out	25,000	2,083
Helper	12,000	1,000
Car maintenance/licensing	10,000	833
Gas	2,400	200
Pension contribution	12,000	1,000
NY Apartment (Strata/maintenance/utilities)	72,000	6,000
	387,400	**32,282**
Children		
School fees	54,000[18]	4,500
Extracurricular	10,000	833
Misc (educational supplies, uniform, books, school trips)	15,000	1,250
Uninsured health, dental, prescription	5,000	416
Phone	1,463	122
Grooming	2,926	243

[17] Which will reduce if Unit 403 is transferred to the Respondent as is proposed.
[18] Paid for out of the Petitioner's Silver Thatch pension which is partly funded by employer contributions.

Birthday gifts	5,853	487
Clothes/shoes	5,853	487
Holidays	10,000	833
	110,095	**9,171**
Personal		
Uninsured health, dental, prescription	2,000	166
Grooming	800	66
Clothes/shoes	30,000	2,500
Family contribution[19]	100,000	8,333
Dry cleaning	6,000	500
Sports/exercise	1,000	83
Social/entertainment	10,000	833
	149,800	**12,415**
Grand totals	**647,295**	**53,867**

To be compared against the Petitioner's recurring annual income of approximately US$961,000 (80,083 per month). Although not the lodestar for assessing needs, I am of the view that, for the purposes of this case, the evidence as to the parties' expenditure and the level of expenditure enjoyed by the family is particularly relevant.

68. When approaching the Respondent's breakdown of her current and prospective expenditure on her needs set out below, I have reduced a number of items where I think that her proposed expenses are unreasonably high. Otherwise, in the circumstances of this case, and having approached her needs generously, in the context of what I have said above, I find little basis to criticize about what she has set out and assess her needs accordingly.

W budget CI$							
PCM	W current	W claim	Total subtotal	H suggested	Total subtotal	Court's assessment of W claim	Total sub-total
Rent	6225	0		0		0	
Strata	0	1456		1456		1456	
Maintenance - long term	0	1000		500		500	
General maintenance	0	200		100		100	
Contents insurance	0	150		150		150	
Pest control	0	60		60		60	
			2866		2266		2266

[19] Sums spent supporting various members of the Petitioner's family.

Water	70	70		70		70	
Electricity	150	250		250		250	
Cable	60	60		60		60	
Other utilities	85	85		85		85	
Mobile phone	100	100		100		100	
Laundry	0	150		50		100	
Cleaner	300	500		300		500	
Window cleaner	0	200		100		0	
			1415		1015		1165
Car replacement	0	1000		350		500	
Car insurance	250	275		250		250	
Petrol	400	440		250		400	
Car service	0	250		150		200	
Car wash	50	150		50		100	
			2115		1050		1450
Groceries	800	1200		800		800	
Coffee	165	330		165		200	
Green to go	160	160		160		160	
Wine	300	300		300		300	
Takeaway	700	700		350		500	
Restaurant	400	600		350		500	
			3290		2125		2460
Clothes	400	1000				1000	
Make up/cream	350	350					
Waxing	140	200					
Facial	400	400					
Facial treatments - non-surgical	170	300					
Pilates	640	640					
Aqua	80	80					
Yoga	60	60					
Spin	160	360					
Nails	400	400					
Hairdressing	200	300					
Hairdressing plus blow dry	0	200					
Hair products	50	50					
Reviv injections	250	350					
			4690		2000		3500
Dentist	140	140		140			
Optician	100	100		100			
Physio	0	100		100			
Therapy	85	85		85			

Co-Pay prescriptions	100	150		100			
Vaping	150	150		150			
			725		675		725
Gifts for friends/family	400	600		0		200	
Holidays	1000	1000		1000		1000	
			1600		1000		1200
Classes/training	0	500		0		0	
			500		0		
Pet food	75	75		75			
Vet	50	100		50			
Grooming	60	60		60			
Medication	25	40		25			
			275		210		275
Extended family travel	600	800		0			
			800		0		250
	16300		18276		10341		13291
Children - holidays	2000	2000		2000			
Restaurants/takeaways	400	400		400			
Books/Magazines	50	150		50			
Crafts	50	150		50			
Electronic items	200	250		100			
Haircuts	50	250		0			
Waxing	150	150		50			
Cleaner	250	350		0			
Groceries	1200	1200		1200			
School lunches	250	250		0			
Birthday parties/gifts	400	400		200			
			5550		4050		4050
			23826		**14391**		**17341**

69. As mentioned previously, the Petitioner has agreed to cover the children's direct costs, such as education until the children have finished tertiary education and the Petitioner will also be covering the costs of the Respondent's health insurance which may be in the region of CI$2,500 per month and is not included above. In addition, the Petitioner has agreed to pay monthly child maintenance of US$2,900 per child until the conclusion of secondary education. This, in my view, has to be

taken into account when assessing how the Respondent meets her needs as a proportion of those needs includes her costs related to the children.

70. However, before analyzing the question of spousal maintenance further, it seems to me that the question of the Respondent's potential immigration status has to be resolved. I do not believe that the Petitioner has sought to argue that the Respondent should remain as a visitor. That clearly would be inappropriate. The Petitioner accepts that he will remain resident here for the foreseeable future, as will the children. On that basis, the Respondent needs and is entitled to seek some security of tenure here. It was not suggested that the Respondent should seek to remain as a resident based on a work permit. The evidence is clear that the Respondent has not worked for a substantial period of time and taking into account the time out of the workplace, the relatively young age of her children, some current health issues and her age, a return to the work place may take some time to achieve. Although it seems it have been accepted that the Respondent might have a future earning capacity this was not explored in any detail.

71. As mentioned above, the Petitioner's PR Certificate is grounded upon CI$2,000,000 of matrimonial assets that must remain invested in Cayman Islands real estate for the foreseeable future. It was not suggested that the Respondent should be limited to seeking to remain in the Cayman Islands as a Person of Independent Means. Whilst the capital requirements are less than the PR Certificate, the Respondent would not be able to apply to be naturalized and would not be able to apply for a variation to allow a right to work. It seems to me that it is fair for the Respondent to seek residence in the Cayman Islands on the same basis as the Petitioner. This means that if she does decide to return to work she has that option, she can also apply for naturalization in due course if she wishes to do so.

72. The inevitable result of that is the Respondent will have to be able to invest CI$2,000,000 in Cayman Islands real estate and still have to have sufficient assets to generate an income to meet her needs, enable her to return to independent living and move towards a clean break from the Petitioner which is clearly the preferred position if that is achievable. As alluded to earlier in this judgment the question is whether an equal share of the matrimonial assets will enable her to achieve that result.

73. The Respondent has assessed her alternative capital needs for immigration purposes as follows:

Option 1	**US$**
Purchase current rental property[20]	1,700,000
Cost of purchase (assessed by the Respondent at 9.5% including stamp duty of 7%)	161,500
Immigration fees (Government) for PR Certificate	125,609.76
Immigration fees (legal)	25,000
Sub-total for purchase of rental property and PR Certificate (2,012,109.76)	
Once transferred - Unit 403	1,075,000
Total	**3,087,109.76**
Option 2	
Purchase an alternative property for at least CI$2m	2,400,000
Costs of purchase (assessed by the Respondent at 9.5% including stamp duty of 7%)	228,000
Immigration fees (Government) for PR Certificate	125,609.76
Immigration fees (legal)	25,000
Once transferred - Unit 403	1,075,000
Total	**2,778,609.76**

74. The Respondent has expressed the wish to purchase the apartment that she is currently renting. She says that it is comparable in size to Unit 501 and is a reasonable equivalent, certainly in terms of the home that it provides to the children when they stay with her. Option 1 would tie up Unit 403 but the advantage of that unit is that it does produce a net income monthly of approximately US$3,500. I am of the view that it is reasonable to proceed on the basis of Option 1.

75. Assuming, therefore that the amount to be paid to the Respondent to provide her with an equal share of the matrimonial assets is $4,059,981.64 the Petitioner suggests that it will be met as follows (the "Deferred Payment Approach"):

[20] A three bedroom apartment which the owner has indicated that they will sell to the Respondent for US$1,700,000.

75.1 the agreed transfer of the Petitioner's interest in Unit 403: US$570,000;

75.2 LTI 2023: US$467,000

75.3 LTI 2024: US$394,000

75.4 LTI 2025: US$135,000

75.5 Pension lump sum 2025: US$352,328.14

75.6 Balancing payment of US$2,141,653.50.

76. The Petitioner has offered to pay the current level of spousal maintenance (US$16,700 per month) until the final LTI payment has been made in 2025, the payments being due in tranches US$467,000 in 2023, US$394,000 in 2024 and US$135,000 2025 along with US$340,000 in respect of the pension equalization payment. If those payments are made, the Respondent accepts that once she receives them, the amount of annual spousal maintenance due should be reduced by 3.75%[21] of each sum and the monthly payments reduced by 1/12th of the reduction. Replacing the sum offered by way of spousal maintenance with my assessment of the Respondent's needs, the figure would change from US$16,700 per month to US$21,147 (CI$17,341 ÷ 0.82). So by way of example, when the sum of US$467,000 is received in 2023, assuming spousal maintenance of US$253,764 per annum, deducting 3.75% of US$467,000 (US$17,512.50) from that sum leaves US$236,251.50 per annum, US$19,688 per month.

77. During the course of cross examination, the Petitioner explained that upon receipt of his most recent bonus from MUFG Cayman he agreed with the mortgagee of Unit 501 that in order to reduce his monthly interest payments on the mortgage, he would temporarily pay down the mortgage by US$1,500,000. This was on the condition that the bank would allow him to effectively borrow that amount back when these proceedings reached a conclusion. By doing so, he estimated that he could pay US$1,400,000 to the Respondent without delay. Based on the above proposal, assuming that he does, that will leave a capital payment of US$820,653.50 (US$2,220,653.50 less US$1,400,000) due from him to the Respondent. It is not clear when this could be paid.

78. The difficulty with the Deferred Payments Approach is that the Respondent will not be able to gather sufficient capital in a reasonable period of time to facilitate an application for a PR Certificate. The current mortgage over Unit 501 is approximately US$692,837. If the mortgage is extended by US$1,500,000 the total owing will be approximately US$2,193,000. With a valuation

[21] Being the national rate of return on those sums see e.g. *Waggott.*

of US$5,000,000 the remaining equity in that property comes close to the CI$2,000,000 required by the Petitioner to maintain his PR Certificate.

79. The only option available to resolve this seems to me to be a sale of the New York Apartment. Assuming that it sells for the projected figure, it should realize US$1,368,000. If the sale occurs without delay then the Respondent should be able to receive US$1,400,000 and US$1,368,000 (US$2,768,000) which should be sufficient to fund Respondent's Capital Needs Option 1 (US$2,012,109.76) leaving a surplus of approximately US$755,890.

80. This would also result in an accelerated receipt of the Respondent's share of the matrimonial assets and would mean that matrimonial asset division and payment to the Respondent of US$4,059,981.64 would occur as follows:

80.1 the agreed transfer of the Petitioner's interest in Unit 403: US$570,000;
80.2 cash of US$1,400,000;
80.3 proceeds of sale of the New York Apartment: US$1,368,000
80.4 LTI 2023: US$467,000
80.5 part of LTI 2024: US$246,981.64

81. The question then is how that translates to income to meet the Respondent's needs. I am of the view that, in this case, an equal division of matrimonial assets will not result in the Respondent's needs being met. There also seem to be insufficient available matrimonial assets to enable an increased division favour of the Respondent to be made in order to address this problem. Although the Petitioner's future income is not a matrimonial asset, it is left as the only available source to enable the Respondent to meet her needs. On that basis, I am satisfied that the Respondent will need to continue to receive spousal support. I am not of the view that this is a whole life maintenance case. I think that, in view of the circumstances, it is reasonable to assume that the Respondent will want to be able to reside in the Cayman Islands as long as her children are entitled to do so under the Petitioner's PR Certificate. That means until the youngest (who is 9) reaches the age of 24, assuming that she remains in full time education. At that point, the Respondent may be in a position to apply for naturalisation (or may have already done so) may decide to no longer reside in the Cayman Islands or may decide to continue to do so. Leading up to that point she may still own Unit 403, the current rental property and will have received cash amounting to US$1,477,871.60. She may then well be in a position to release some capital. Taking all of that into account, I think that

this provides a natural point for a clean break. The table below sets out what I think is a reasonable approach.

82. I have set out in the schedule my approach to the different sources of income available to the Respondent (including child support) with the application of a notional return of 3.75% on the cash assets that she will have that can be invested. The schedule also sets out the shortfall between what I estimate the Respondent will receive when compared with her needs and the difference that will need to be made up by spousal maintenance. I have not provided for indexation of any of the income figures below and that is a matter that counsel may wish to address me on in due course.

83. In reaching this decision, I have considered carefully the guidance from the various cases cited by Mr Cusworth along with the factors set out in s.19 of the Act, and, by extension, the factors in s.25A of the Matrimonial Causes Act 1973.

84. The marriage has lasted approximately 18 years. The Respondent has not worked since 2012 and has committed herself to raising the parties' children and supporting the Petitioner in his career. I have already discussed the peculiarities of this case in relation to the immigration status of the parties, the intervention of the Covid-19 pandemic, change of the country of parties' residence and the substantial increase in the Petitioner's salary. All of these factors are relevant to my assessment of the Respondent's needs and the extent to which a clean break is achievable. There are insufficient available matrimonial assets to award greater than an equal share to the Respondent which is one route by which she could have moved more quickly and reliably towards independent living and a clean break from the Petitioner. This a case in which, in my view, an equal share of the matrimonial assets will not be sufficient to meet the Respondent's needs leaving the only alternative as an extended period of spousal maintenance.

85. In view of the amount of capital that the Respondent will be required to maintain and preserve for the purposes of a PR Certificate (assuming that she is granted one), for the period during which spousal maintenance will continue to be paid, I do not think that it is appropriate for her to have to make use of any of the remaining capital awarded to her to meet her needs.

86. I am conscious of the desirability of avoiding future litigation but my decision is predicated on the basis that the Respondent will make an application for a PR Certificate and the assumption that it will be granted. If she chooses not to make the application or it is made and is unsuccessful then I anticipate that an application to vary this decision will be inevitable. I considered incorporating

alternative outcomes in this judgment but as those outcomes are somewhat difficult to predict with any certainty it seemed like it would be a fruitless exercise.

87. Although the Respondent's immigration status in the Cayman Islands is clearly a matter for the Department of Immigration, it is to be hoped that she can continue to remain in the Islands as a visitor until the basis of her longer term residency is resolved.

88. The figures in the table below show the calculation of the Respondent's income needs and required spousal maintenance, and the impact of the child maintenance reducing when they finish school and then university by the age of 21, in both instances without any indexation[22].

All US$/m	Child maintenance	Unit 403 rent	Balance of proceeds New York Apartment US$755,890 @ 3.75%	LTI 2023 467,000 @ 3.75%	LTI 2024 246,981.64 @ 3.75%	Income without spousal maintenance	Additional maintenance/ income required to meet needs	R's needs as assessed
2023	5800	3500	2362.15	1487.50		13149.65	7997.35	21147
2024	5800	3500	2362.15	1487.50	771.82	13921.47	7225.53	21147
2025	5800	3500	2362.15	1487.50	771.82	13921.47	7225.53	21147
2026	5800	3500	2362.15	1487.50	771.82	13921.47	7225.53	21147
2027	5800	3500	2362.15	1487.50	771.82	13921.47	7225.53	21147
~ 2028	3517.38	3500	2362.15	1487.50	771.82	11638.85	7656.02	19295
2029	3517.38	3500	2362.15	1487.50	771.82	11638.85	7656.02	19295
2030	3517.38	3500	2362.15	1487.50	771.82	11638.85	7656.02	19295
# 2031	3517.38	3500	2362.15	1487.50	771.82	11638.85	7656.02	19295
2032	617.38	3500	2362.15	1487.50	771.82	8738.85	8086.53	16825.35
2033	617.38	3500	2362.15	1487.50	771.82	8738.85	8086.53	16825.35
2034	617.38	3500	2362.15	1487.50	771.82	8738.85	8086.53	16825.35
2035	617.38	3500	2362.15	1487.50	771.82	8738.85	8086.53	16825.35

[22] The table used is one proposed by the Respondent and is largely based on the original schedule that I prepared in the first draft of the judgment.

All US$/m	Child maintenance	Unit 403 rent	Balance of proceeds New York Apartment US$755,890 @ 3.75%	LTI 2023 467,000 @ 3.75%	LTI 2024 246,981.64 @ 3.75%	Income without spousal maintenance	Additional maintenance/ income required to meet needs	R's needs as assessed
2036		3500	2362.15	1487.50	771.82	8121.47	8086.53	16208
* 2037		3500	2362.15	1487.50	771.82	8121.47	8086.53	16208
~ Eldest child reaches 18 and finishes secondary education.								
# Youngest child reaches 18 and finishes secondary education.								
* Assuming youngest child remains in full time education until 21 and remains on the Petitioner's PR Certificate until the age of 24.								

Conclusion

89. The estimated sales price of Unit 501 includes furniture.

90. Petitioner's clothes to be treated as a matrimonial asset with a value of $100,000.

91. Pensions equalization payment of US$352,328.14 to be made based on current market values of the parties' pensions.

92. The Respondent's legal costs of US $281,182.17 to be treated as an expense of the matrimonial estate.

93. Matrimonial assets are valued at US$9,892,934.96 with an equalization payment to be made to the Respondent of US$4,059,981.64.

94. There is to be an equal division (whether in specie or by value) of air miles and other rewards points accumulated during the course of the marriage.

95. Respondent's needs assessed at CI$17,341 (US$21,147) per month including the children's needs, or US$15,347 excluding their needs.

96. The Petitioner to pay to the Respondent spousal maintenance at the rates and for the periods set out in the spreadsheet above.

97. The Petitioner's interest in Unit 403 (US$570,000) to be transferred to the Respondent forthwith.

98. The Petitioner to pay the Respondent the sum of US$1,400,000 forthwith.

99. The New York Apartment to be sold as soon as reasonably practicable and the net proceeds paid to the Respondent[23].

100. The Petitioner to pay to the Respondent the 2023 LTI of US$567,000 forthwith after receipt of it by him.

101. The Petitioner to pay to the Respondent US$246,981.64 of the 2024 LTI forthwith after receipt of it by him.

102. The Petitioner to pay to the Respondent monthly child maintenance of US$2,900 per child until they reach the age of 18 or finish full time education (up to the age of 21) whichever occurs later and pro-rated to take account of any time spent residing at university.

103. The Petitioner to meet the direct third parties cost of the children e.g. school fees until they reach the age of 18 or finish full time education (up to the age of 21) whichever occurs later.

104. For the period during which spousal maintenance is to be paid the Petitioner is to bear the monthly costs of the Respondent's health insurance, and for non-elective treatment, the amount of any uninsured deductible along with any co-pay amounts and uninsured reasonable travel and associated expenses.

Hon Justice Alistair Walters
Acting Judge of the Grand Court

[23] Subsequent to trial the Respondent has sought to include an order that she receive a guaranteed amount from the sale of the NY Apartment. I am not prepared to make that order now but as and when it is sold, if there is a material difference between the sale price and its valuation then the matter may need to be considered further.