



**33 Bedford Row**  
Barristers' Chambers

## **King's College London & 33 Bedford Row Family Law Moot**

### **Round 1 – Common Instructions**

Welcome to the KCLBMS Family Law Moot, sponsored by 33 Bedford Row.

This sheet, legislation, case law and witness statements are common to both mooters. Each mooter will also have a separate set of confidential instructions from their client.

#### *Format*

Each competitor shall represent either the applicant or the respondent in an interim application for maintenance pending suit in front of a Circuit Judge in the Family Court under section 22 of the Matrimonial Causes Act 1973. This is a closed competition. You will only be able to refer to common sense/knowledge and:

- a. Section 22 of the Matrimonial Causes Act 1973;
- b. Part 28 of the Family Procedure Rules; and
- c. *Collardeau-Fuchs v Fuchs* [2022] EWFC 6.

If a case is quoted in the case law provided, you may quote it as far as it is quoted in the case law provided.

Written skeletons are **NOT** required for this round. Of course, make whatever written notes you need. Be prepared for judicial intervention during your submissions.

Counsel for the applicant will go first. They will have 20 minutes to make their application. Counsel for the respondent will then have 20 minutes to respond. Counsel for the applicant

will then be entitled to (but does not have to use) a further 5 minutes, limited strictly to reply. Your judge will let you know when you have 5 minutes left and when you have run out of time. Going over any time limit may result in losing points.

Counsel for the Applicant should introduce themselves (e.g. Ms Smith) and the name of their opponent when they open their case.

You may refer to the evidence of either party and argue that parts are unlikely, untrue or unrealistic but there will not be any cross-examination of witnesses. This is an interim application where values & figures are estimates and are not concrete.

For round one, there will be two separate moots back-to-back in a single 'room', with four rooms in total. The best speaker of the room (i.e. one out of the four) will progress to the next round. The next round will take place in the afternoon and be a less factually and legally dense application. That means you may unfortunately be the better speaker in your application but are not the best speaker overall from that room.

You must dress as you would as counsel in the Family Court and address the judge as you would in real life.

### *Common information*

This is an application by Mathilde de Beauharnais for maintenance pending suit against her husband, Louis Orléans. Essentially, Ms de Beauharnais is seeking that maintenance payments be made during financial remedies proceedings in a divorce before there has been full disclosure and before the end of proceedings where a final order (dealing with any maintenance) would be made.

Ms de Beauharnais petitioned for divorce five months ago under section 1(1) of the Matrimonial Causes Act 1973. She stated that the marriage had irretrievably broken down due to the repeated adultery and drug use of Mr Orléans. There has not yet been a final order of divorce.

In summary, the parties were married for six years before separating due to the alleged drug use and adultery. There are two children of the marriage:

- i. Eugène, a boy, three-years old; and
- ii. Hortense, a girl, one year-old (collectively, ‘the Children’).

The Children predominantly live with their mother. They usually stay with their father from Friday afternoon to Monday morning every other weekend. This depends on the work lives of the parties, so it is flexible in nature. Child contact and living arrangements are all agreed and neither party seeks to change the arrangements. Neither party alleges any safeguarding issues, nor does any party have any concerns over the other’s ability to look after the Children.

Ms de Beauharnais seeks £12,000.00 per month in maintenance pending suit until the end of the proceedings. Mr Orléans does not oppose the application in principle but argues that the court should order only £3,000.00 per month. Both parties refuse to compromise and there is no chance of settlement. Both parties also seek their legal costs relating to the application.

Both parties made open offers in the same respective amounts before the formal application was made by Ms de Beauharnais. As they are ‘open’ offers (i.e. not ‘without prejudice’), you may talk about them in the hearing.

The usual rule in the Family Court is that each side pays their own costs. However, this rule does not apply to maintenance pending suit applications, as per FPR28.4(b)(i). Therefore, in this application, the civil court rule applies; the loser usually pays (part of) the costs of the winner. You are to seek costs.



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## **King's College London & 33 Bedford Row Family Law Moot**

### **Round 1 – Confidential Instructions of Ms de Beauharnais**

You have just met your client at court. You discuss the case in general and get specific instructions from her. She also makes certain confidential disclosures to you. All of the financial disclosures relate to matters that occurred *after* the signing of her witness statement.

Ms de Beauharnais informs you that, in the not-so-distant future, she will likely have a reasonable income stream. She is currently in talks with a number of Russell Group universities and book publishers. The idea would be for her to write a book about her family's experiences in the various French Revolutions and then go on a speaking tour and give guest lectures at various universities.

It would involve her writing the non-fiction historical book, along with photos of artefacts from her family's collection. Due to her language skills, she has the ability to translate her own book into different languages (increasing sales and lowering costs) and going on speaking tours at universities to France, Italy, Spain and Germany.

The book and speaking tour are by no means a done deal. The speaking tour is nothing without the book and the potential publisher could abandon the contract negotiations at any time. Ms de Beauharnais thinks she would get a £40,000.00 up front advance for the book, and then 30% of all revenue. This percentage would mean she would receive about £70,000.00 in the first year after publishing, £45,000.00 the second year (once the book goes paperback) and then £30,000.00 the third year. She would then likely get about £3,000.00

each year on average for the next five years after that. She has all the notes she needs to write her book thanks to her previous research work. It would take her probably six months to write the book.

Ms de Beauharnais thinks that Mr Orléans has a new girlfriend. She is pretty sure that she is the 23-year-old heiress to a wealthy Austro-Italian family and that she is head-over-heels in love with Mr Orléans. She has heard that she is lavishing her family fortune on him and therefore he should have a lot of spare cash.

Ms de Beauharnais admits that she has started dating her tennis coach. He earns around £40,000 per annum, but they have only been on about five dates so far.

She leaves it up to you whether any, all or none of this information should be mentioned in the court hearing.

She instructs you to seek that the court orders Mr Orléans to pay £12,000.00 per month in maintenance pending suit and that he pays her legal fees relating to this specific application (not total legal fees), being £50,000.00.

**BETWEEN:**

**MATHILDE JOSÉPHINE de BEAUHARNAIS**

*Applicant*

**-v-**

**LOUIS PHILIPPE ORLÉANS**

*Respondent*

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**WITNESS STATEMENT OF MATHILDE  
JOSÉPHINE de BEAUHARNAIS**

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I, Mathilde Joséphine de Beauharnais of 11 Navarre Mansions, Brittany Avenue, London SW3 9QV, am the Applicant in this application. The facts in this statement come from my personal knowledge unless otherwise stated.

1. I am seeking maintenance pending suit from my husband, Louis Philippe Orléans. I require support before the end of these financial remedy proceedings and I cannot wait until the final hearing.

**Background**

2. I am 29 years old. I currently work part-time as a self-employed history tutor. I tutor GCSE, A-Level and university students. This is a very flexible job, with different hours and different days, depending on my clients. It also gives me flexibility and ability to pre-plan any child-care issues, as I am the main child-carer in the marriage.
3. I have a complex family history. My ancestors were French aristocrats. They were involved, in various capacities (and on different sides) in the French Revolution of 1789, the Hundred Days, the July Revolution, and the French Revolution of 1848. In 1873, members of my family tried and failed to restore the French Monarchy, resulting in their self-imposed exile in Britain soon thereafter.

4. I grew up in a reasonably middle-class family. My parents earned a reasonable salary. We had a bit in way of assets, but they were not realisable; they were mainly antique pieces from our family's history (like swords, silver plates, silver cutlery, tiaras, broaches etc.). They are family heirlooms; I would never sell them. In any event, they belong to my parents, not me.
5. I studied language and history at undergraduate level, making me fluent in Spanish and German. I was already fluent in French (the language I spoke at home) and English (which is technically my second language). I met the Respondent six years ago while I was working on my PhD in French History. He was visiting the university's history department, and we got talking over our families having similar backgrounds.
6. The Respondent then asked me out on a date. While I thought he was a little older than my usual type, I agreed. He was very witty and charming. He told me about how he owned a company that specialised in organising and selling bespoke history tours in different parts of France. The company also dealt in buying and selling antiques, with an emphasis on French antiques from the 18<sup>th</sup> and 19<sup>th</sup> centuries.
7. As we dated, I got to know his company more and more. I realised that the man he had employed to run parts of the company did not really know what he was doing, nor did he have a good understanding of the history of France, French historical sites or French antiques.
8. I proposed that I take over as manager of his company. He 'counter-proposed' by saying he would only let me if I married him. I was so swept up in it all that I said yes. It was a quick engagement and we were married soon thereafter.
9. Thanks to my historical knowledge, managing skills, shrewd negotiation tactics and language fluency, I increased the revenues of the company significantly. I put together better tour packages, with more interesting itineraries and lower costs for the company. I also had better knowledge about antiques. This meant I knew how much things were actually worth. Therefore, I could pick up bargains and also not pay a

high price for something that was not worth it. I then priced items well when we sold them, and negotiated to make sure we made a good profit.

10. Due to the increase in revenue from the company, we enjoyed a very good lifestyle. We went on frequent holidays to France, to visit all the places that related to the history of our respective families. Once we had children, they would come along. We also often travelled all over Europe to broker deals and attend auctions for antiques.
11. We also spent money on various experiences, tickets to events and museum & gallery admissions. This was partly for personal enjoyment and partly as research as to experiences we could package together on tours.
12. We bought a lovely flat at 11 Navarre Mansions, Brittany Avenue, London SW3 9QV and lived there as the family home. It is a very spacious four-bedroom townhouse, with large kitchen, reception room and dining room, in an old Victorian building in Chelsea. I found the property listing and did all the work to arrange the mortgage and conveyancing. We converted one of the rooms to a study/mini-antiques museum. This way, we could show off some of our latest acquisitions when we were entertaining friends or clients.
13. In order to woo clients, we often spent lots of time and money at fancy restaurants and exclusive bars. We also did this on our own as well, of course. We enjoyed a very good lifestyle. This increased our expenses, but was often aimed at trying to increase our revenues and customer base.
14. I wanted to have children, but I did not want them for a while. Due to his age, the Respondent really wanted to start a family soon. I accidentally got pregnant with Eugène and decided not to terminate the pregnancy. After a year or so, the Respondent and I started intentionally trying for another baby. If I was going to have children, I wanted to have at least two and I did not want them to be too far apart in age. Not long after, I got pregnant with Hortense and gave birth to her a little over a year ago.



15. It was agreed between myself and the Respondent that I would be the main child-carer. Due to my child-care responsibilities, my I scaled my work back slightly. I still worked a reasonable amount but did more work over the phone and the internet and less in person and made fewer trips to venues. The Respondent did all the in-person deals and he (re)became the face of the company.
16. The company finances took a hit due to the Covid-19 pandemic, as people were not travelling domestically (in France) or internationally (to France). However, the antique part of the business did improve during this time as people were keen to buy and sell, as they had cash they were not spending on holidays.
17. About six months ago, I found out that the Respondent was spending lots of money on partying with girls, alcohol, gifts to other people and cocaine. He had been hiding his drug use from me. He was making large cash withdrawals to hide what he was spending money on.
18. I could live with the drug use. To his credit, the Respondent never kept illegal substances in the house and never used cocaine while he was looking after the children. I want to make it clear that I am not saying he is an unfit father or that he should not be allowed around children.
19. What I could not live with was the serial cheating. A little but after the birth of Hortense, I found out that he had been having multiple affairs, and that he had a predilection to sleep with any and all women who showed him any modicum of interest. He had sex with some of these women in our home. That was unforgivable.
20. A few days after I found out, I confronted him in our home. He tried to blame me for his cocaine use and the cheating. He said incredibly hurtful things, such as I had gotten old, that I was no longer attractive and that I favoured the children over him. I then said some not nice things in response. The Respondent got angry and stormed off, accidentally running into one of the antiques we had on the wall. Unfortunately, it caused the Respondent to receive a cut on his face from above his left eyebrow down to his cheek.

21. The Respondent sought medical attention, but it turned out that he had damaged his left cornea, resulting in poor eyesight in that eye. He claims that his facial scar means that he is getting less work, but I do not believe it. He is merely using it as an excuse to artificially reduce his income to lessen any potential maintenance payment to me. He also claims that the company has no value, but I know it is considered one of the best antique and tour companies in Western Europe, so the goodwill of the company is worth a lot at the very least.
22. I left the Respondent and applied for a divorce five months ago. It was decided that I would continue to be the main child-carer. I moved out of the Family Home as I did not want to be in a property that the Respondent had committed adultery in. I do not earn much and am currently unable to afford the rent on my rental accommodation.

### **Maintenance pending suit**

23. I have provided as much financial information as possible. I have not been able to source all the primary documentation, but have provided a schedule of assets and liabilities, as well as a schedule of income needs.
24. I currently am self-employed as a history and languages tutor. I earn about £2,000.00 per month on average. My income fluctuates, depending on the time of year. During school holidays, I basically make no money. Nearer exam periods, I make more. I am able tutor online and in-person. I can either go to people's houses or have them come to our study at the family home. However, I have to pay for childcare during these tutoring sessions. Also, with the rise of apps like Duolingo, there is little room for me to expand the language part of my tutoring business.
25. When I go to other people's houses to tutor, I also have to spend money on transport costs as I do not know how to drive. I also have advertising expenses; I need to spend money for online advertisements to drum up business. I cannot rely solely on word of mouth.
26. When I go out, I always take Ubers or taxis when possible. I do not like taking public transport and avoid it as much as possible. This is because I was punched in the face

by a drunk student on the Piccadilly Line when I was doing my undergraduate degree at King's College London.

27. My parents want to help out, but they do not have any real money-making assets or cash. I do not think it is reasonable to ask me to ask my parents to sell our heritage to pay for my interim needs while the Respondent has lots of money. I have been able to borrow £20,000.00 to pay for some of my legal fees, but that well is very much now tapped.
28. The Respondent was earning around £750,000.00 per annum previously, paid via the company. I know, because I was the manager. While I accept that he is no longer making top Pound or Euro, I do not see why he cannot maximise his income potential and earn around £500,000.00. I do not think his injuries are as bad as he claims and it is his purely his own vanity that is stopping him from doing more face-to-face business.
29. Due to my fluctuating income and my personal & child expenses, I have made an application for maintenance pending suit to enable me to transition from the lifestyle I used to have and put food on the table for my children. I simply cannot get by on what I have now unless I were to eat nothing but rice and lived in a shelter. Times are tough and the cost of living has gone up. I attach a schedule of my income needs.
30. While the Respondent does pay child maintenance, it is not enough. It is also not enough for my personal expenses. While I do not expect to go back to 100% of our lifestyle, I do not think it is fair that I have to make incredible sacrifices while the Respondent have less of a dip in his standard of living. I have had to borrow money from my parents to fund my legal fees and have also put significant expenditure on credit cards.
31. I am currently living in rented accommodation in Chelsea. I do not see why I should move from the part of London that I enjoy and am used to. I know that there is a chance that the family home might need to be sold at the end of proceedings.

32. I do not think that the Applicant is maximising the company's (and therefore his) earning capacity. All he does is make excuses when the reality is that it is only his own vanity that is holding him back. He only has relative damage in one eye and the effects of his scar on his business is all in his head.

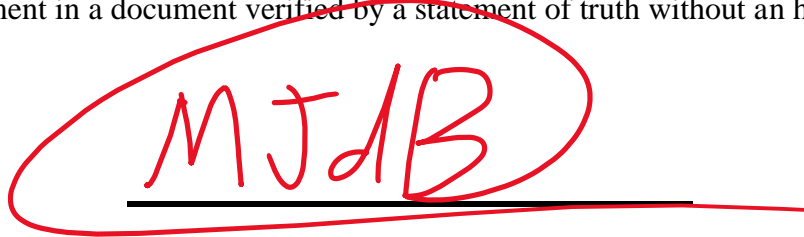
**Order sought**

33. I want an order that the Respondent pays £12,000.00 per month in maintenance pending suit. I made a formal open offer to the Respondent asking him to pay this before I made this application.

34. I also seek the costs of making this application. If the Respondent had accepted my reasonable offer, then all of these costs could have been avoided.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:



One month ago

Dated:

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**BETWEEN:**

**MATHILDE JOSÉPHINE de BEAUHARNAIS**

*Applicant*

**-v-**

**LOUIS PHILIPPE ORLÉANS**

*Respondent*

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**SCHEDULE OF ASSETS AND LIABILITIES OF  
MATHILDE JOSÉPHINE de BEAUHARNAIS**

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<b>Assets</b>	<b>Value (£)</b>
Half of Joint Santander Current Account	340.00
Half of Joint Santander ISA Account	10,000.00
Half of Joint Lloyds Savings Account	15,000.00
HSBC Current Account	429.00
HSBC Savings Account	2,300.00
Pensions	2,000.00
BMW 2022	90,000.00
Stocks	5,400.00
Jewellery collection	150,000.00
Household technology (phone, Macbook, iPad etc.)	2,000.00
<b>Total assets</b>	<b>277,469.00</b>
<b>Liabilities</b>	
Loan from parents for legal fees	30,000.00
Half of Joint Barclay Credit Card	20,000.00
Lloyds Credit Card	35,812.00
HP of BWM	80,000.00
Unpaid legal fees	25,000.00
<b>Total Debt</b>	<b>190,812.00</b>
<b>Total</b>	<b>86,957.00</b>

**BETWEEN:**

**MATHILDE JOSÉPHINE de BEAUHARNAIS**

*Applicant*

**-v-**

**LOUIS PHILIPPE ORLÉANS**

*Respondent*

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**SCHEDULE OF INCOME NEEDS OF  
MATHILDE JOSÉPHINE de BEAUHARNAIS**

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<b>Need</b>	<b>Expenditure per month (£)</b>
Rent	6,000.00
Contents insurance	25.00
Life Insurance	25.00
Child clothing, nappies etc.	1,000.00
Gym	100.00
Socialising	1,000.00
Work costs (incl. travel, advertising, social media etc.)	1,000.00
Presents (Christmas/Birthdays)	500.00
Private Health Insurance	150.00
Clothes	1,500.00
Make up, beauty products and perfume	750.00
Dry cleaning/shoe repair	500.00
Food	1,000.00
Holidays	500.00
Childcare	1,000.00
Netflix, Disney Plus, Amazon Prime, HBO Max & Apple +	90.00
Mobile	60.00
TV Licence	30.00
Household bills	600.00
<b>Total</b>	<b>15,830.00</b>

**BETWEEN:**

**MATHILDE JOSÉPHINE de BEAUHARNAIS**

*Applicant*

**-v-**

**LOUIS PHILIPPE ORLÉANS**

*Respondent*

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**WITNESS STATEMENT OF LOUIS  
PHILIPPE ORLÉANS**

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I, Louis Philippe Orléans, of Flat 73 Naples Tower, Sicily Avenue, London E14 9KV, am the Respondent in the application. The facts in this statement come from my personal knowledge unless otherwise stated.

1. I want to make it clear that I do not oppose the application that is before the court per se. I only oppose the amount the Applicant seeks. I feel that it is far in excess of what her needs are at this interim stage.

**Background**

2. I understand that this application is an interim matter but I feel it would assist the Court to have some background information.
3. I am 44 years old and currently work as a director for my company, Ancien Antiques & Tours Ltd. I own 100% of the shares. The company sells package tours to various historical sites and museums in France. We also buy and sell antiques. It is not really 'worth' anything. Its only worth maybe comes from the inventory of antiques, but there are also loans and liabilities. I earn income by drawing dividends from the profits of the company. Therefore, my income fluctuates depending on the performance of the company.

4. I come from a reasonably well-off family. My family is related to the last Bourbon Kings of France via an illegitimate son. My family managed to keep some of our wealth by playing both sides during the various revolutions, so we would always come out on top. This includes a number of properties, antiques and a chateau in France. However, the assets are all either owned by my parents, other relatives, or in a family trust.
5. I consider myself an intelligent man of culture. I have studied in England, the United States of America, Germany, France and Australia. I have studied languages, history and also have a business degree. I am quite the renaissance man.
6. I met the Applicant when I was in my late thirties. I was visiting King's College London's Department for War Studies. She was incredibly fascinating and had a similar background to me. She is also French, and we had many cultural similarities.
7. We got quite serious quite quickly; a whirlwind romance, as it were. The Applicant learnt more about my company. She thought she could do a much better job and offered to manage it. I was deeply in love and thought that, if we were going to share a livelihood, we should share a life together. I therefore proposed marriage at the same time. She accepted and we were quickly married. I was so happy, at the time.
8. I accept that the company made more money due to the skills of the Applicant. However, I disagree over the extent to which she contributed to the company's growth. I also 'wined and dined' clients and made many deals. Much of the growth was attributed to general advertising and word of mouth from previous clients.
9. The Applicant refused to work anywhere else. She kept calling the company 'our company'. She demanded that we open a joint account and that the money I earned from the company be deposited in it.
10. The Applicant became very controlling over money. Every month, when the bank statement would come in, she would corner me at home and go through all of the expenditure via my debit and credit cards, line by line, purchase by purchase. She would get annoyed at any expenditure she deemed unnecessary, whether big or small.



She told me to stop buying newspapers because there were free smartphone news apps available. She would get annoyed when she saw a coffee shop purchase, saying that we had a Nespresso machine at home and that I could always just have instant coffee at the office.

11. This became intolerable. I started making more and more cash withdrawals from ATMs with my debit card. This way, the Applicant was not able to know exactly what I was spending my money on, and she could not specifically criticise me. The vast majority of the cash withdrawals went on normal living expenses, such as lunches, dinners, drinks and clothes.
12. I wanted children, but was happy to wait until the Applicant was ready. I had seen men of my age marry young women and have children early, with disastrous consequences. The women still wanted to party and enjoy their youth (which is understandable), but now felt trapped because of the baby they had. I did not want that to happen to my marriage.
13. The Applicant became pregnant with Eugène almost four years ago. It was not a planned pregnancy; our birth control failed. I was of course thrilled by this happy accident.
14. However, the Applicant's behaviour got worse after Eugène was born. She got even more controlling and she would blame me for not spending enough time with her even though we agreed that she would be the main child carer and I would be the main breadwinner. She said that she wanted to try for another child, and I hoped that it would solve our issues and she would be more accepting of our jointly chosen division of functions in the marriage. Sadly, our marriage did not improve despite the birth of our beautiful daughter, Hortense.
15. I admit that I took cocaine on a few occasions during the marriage. It was a way of escaping from how the Applicant made me feel. It happened on a few nights out while partying with friends. The Applicant is trying to make out that I am some drug addict who spends large amounts of cash on drugs. That is not true. I have explained the many cash withdrawals. Only a tiny proportion of it was even used to purchase cocaine.

16. I also accept that I was unfaithful during the marriage. However, I do not see how it is relevant at all to this specific application and feel that the Applicant has only brought it up to make me look bad in the eyes of the court.
17. We enjoyed a good lifestyle during the marriage, but the Applicant spent excessively. While she monitored my spending, she was not careful at all with her expenditure. She would buy fancy jewellery, including diamonds, sapphires and rubies, and demanded that she visited every company tour location in person, She would only accept travelling via business class, whether it was short or long haul. I do not think she has valued her jewellery properly and that they are actually worth a lot more. She has been living outside of our means for years; I do not see why she cannot sell some of the jewellery and live off that for a time. Her family are also enormously wealthy. They own many expensive antiques and jewellery. The Applicant either has them now, or will get them one day.
18. We bought an expensive flat at 11 Navarre Mansions, Brittany Avenue, London SW3 9QV. It is registered in my sole name, but it was used as our family home. It is in Chelsea, a very desirable part of London. I wanted to live in a similarly nice, but not as expensive, part of London like parts of Hammersmith or Kensington, but the Applicant demanded that we live in Chelsea. She also demanded that we purchased a four-bedroom property, despite only planning on having two children. She arranged the mortgage, but we were only able to purchase the property as I took out a loan from the company. I still have that loan to pay back; the Applicant has never put money towards debts.
19. One evening about six months ago, I came home from working to provide for my family and the Applicant confronted me about my affairs and drug use. If anything, it was actually a relief for my infidelity to be out in the open. I thought she was originally going to accept it, but she became enraged. She kept demanding to know why I had cheated on her. In my anger, I said some unkind things about her.
20. This made the Applicant absolutely furious. She then launched into a tirade of verbal abuse. She insulted every part of my character. It was so graphic, I will not sully the

integrity of the court by repeating it. When she did not get a rise out of me, she insulted my family. She said that my family was filled with 'traitorous bastards' and that they had no honour. She said that she regretted marrying me and that she and her family were better than me and my family.

21. This made me lose my temper. I then stormed off, to get away from the Applicant. In my anger, I did not walk straight and banged into the corner of a wall. I hit my head on a battle-damaged cuirass from the Napoleonic era and sustained a bad injury. I am now half blind in my left eye; it is just incredibly blurry. I am told by the optometrist that I do not have any realistic chance of my eye returning to normal; eyesight in my left eye appears permanently damaged.

22. I also suffered a deep and unsightly scar on my face. It runs from just above the middle-left of my left eyebrow to just above the top of my cheek. While this has not left me with any permanent 'disability', I am still incredibly self-conscious about it.

### **Maintenance Pending Suit**

23. As this application has been made before full financial disclosure has been made, please see attached a rough schedule of my assets. I have also included a schedule of income needs.

24. It is hard to accurately portray what my income actually is. My best estimate is that I my current annual income is around £150,000.00 per annum. Covid and Brexit have drastically affected the profit of the company. I previously received a further £50,000.00 per year from a family trust. I am told by the trustees that times have been tough recently in their management portfolio, and therefore none of the beneficiaries are going to get any payments from the trust for this year or in the few years to come.

25. Since the birth of Eugène, and certainly since Hortense, I have been the one running and managing the company. The Applicant has done basically no work for the company. That is not a criticism, we decided that she would be the child carer and I would be the breadwinner.

26. I cannot earn as much as I used to. I find it hard to close deals and get new clients, and I struggle to buy and sell antiques. This is clearly because of my injury. No one wants

to buy tours or antiques from a man who looks like a Bond Villain or Anakin Skywalker.

27. I believe that the Applicant does not need as much money as she claims. I am already paying child maintenance of £400.00 per the Child Maintenance Service calculation. While I accept that the Applicant is the main child carer and therefore cannot work as much as I can, I believe that she spends frivolously and extravagantly. She wants the same overextravagant lifestyle that she was running up debts for during our marriage and before Covid, Brexit and my injury.
28. I have seen photos of the Applicant on Facebook and Instagram on what appears to be multiple nights out a week, and at concerts and bars. She is clearly living beyond her means. She also takes a lot of Ubers and private cars. She wants a luxury party lifestyle and I do not think I should have to fund it.
29. The Applicant would also be spending significant amount on childcare for her nights out. I do want to make it clear that I am not saying she should not be allowed to enjoy her own private life. I just want to point out that the Applicant is going out to expensive places more than is reasonable and incurring unreasonable childcare expenses in the process. It is all about living within one's reasonable means.
30. The Applicant is not maximising her income. She says that she is just a part-time tutor. She is educated enough to work as a teacher, or could work in a similar job as to the one she had when she was working for the company.
31. I received the open offer of the Applicant. She wanted £12,000.00 per month. I think that is a ridiculously high amount. She wants the lifestyle we had before my accident, and she wants me to fund it for her. I made an open counteroffer of £3,000.00 before the Applicant made this application. I think it is fair and reasonable in the circumstances.

### **Order sought**

32. I want an order that I pay the Applicant £3,000.00 per month in maintenance pending suit.

33. I also seek the costs of defending this application. If the Applicant had accepted my reasonable counteroffer, then all of this could have been avoided.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

A handwritten signature in blue ink, appearing to read 'L O'Leary', is written over a solid black horizontal line.

Two weeks ago

Dated:

A solid black horizontal line, likely representing a date, is positioned below the text 'Dated:'.

BETWEEN:

MATHILDE JOSÉPHINE de BEAUHARNAIS

*Applicant*

-v-

LOUIS PHILIPPE ORLÉANS

*Respondent*

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**SCHEDULE OF ASSETS AND LIABILITIES OF  
LOUIS PHILIPPE ORLÉANS**

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<b>Assets</b>	<b>Value (£)</b>
11 Navarre Mansions, Brittany Avenue, London SW3 9QV	8,000,000.00
Half of Joint Santander Current Account	340.00
Half of Joint Santander ISA Account	10,000.00
Half of Joint Lloyds Savings Account	15,000.00
Barclays current account	880.00
Barclays savings account	20,000.00
Ancien Antiques & Tours Ltd shares (nominal value)	100.00
Pension	26,050.00
BMW	10,000.00
Tech (computers, tablets etc.)	3,000.00
<b>Total assets</b>	<b>8,085,370.00</b>
<b>Liabilities</b>	
11 Navarre Mansions Mortgage	6,000,000.00
Loan from my company	1,000,00.00
Half of Joint Barclay Credit Card	20,000.00
American Express Credit Card	20,000.00
Lawyer's Fees	40,000.00
<b>Total Debt</b>	<b>7,080,000.00</b>
<b>Total</b>	<b>1,005,370.00</b>

**BETWEEN:**

**MATHILDE JOSÉPHINE de BEAUHARNAIS**

*Applicant*

**-v-**

**LOUIS PHILIPPE ORLÉANS**

*Respondent*

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**SCHEDULE OF INCOME NEEDS OF LOUIS  
PHILIPPE ORLÉANS**

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<b>Need</b>	<b>Expenditure per month (£)</b>
Mortgage	4,000.00
Council tax	200,00
House maintenance	250.00
Life Insurance	50.00
Gym	100.00
Socialising/'wine and dine' for clients	3,500.00
Cosmetics/Cologne	1.000.00
Presents (Christmas/Birthdays)	500.00
Private Health Insurance	100.00
Clothes	1,500.00
Dry cleaning/Shoe repair	500.00
Food	1,500.00
Child Maintenance	600.00
Holidays	500.00
Car Servicing/Maintenance	50.00
Netflix/Disney Plus	20.00
Mobile	100.00
TV Licence	16.00
Home Insurance	150.00
<b>Total</b>	<b>13,436.00</b>



# Matrimonial Causes Act 1973

## 1973 CHAPTER 18

### PART II

#### FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

*Ancillary relief in connection with divorce proceedings, etc.*

#### 22 Maintenance pending suit.

[<sup>F1</sup>(1) On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.]

[<sup>F2</sup>(2) An order under this section may not require a party to a marriage to pay to the other party any amount in respect of legal services for the purposes of the proceedings.

(3) In subsection (2) “legal services” has the same meaning as in section 22ZA.]

#### Textual Amendments

**F1** S. 22 renumbered as s. 22(1) (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 49\(1\)\(a\)](#), 151(1); S.I. 2013/773, art. 2

**F2** S. 22(2)(3) inserted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 49\(1\)\(b\)](#), 151(1); S.I. 2013/773, art. 2



**Changes to legislation:**

Matrimonial Causes Act 1973, Section 22 is up to date with all changes known to be in force on or before 15 August 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- s. 22 repealed by [1996 c. 27 Sch. 10](#) (This amendment not applied to [legislation.gov.uk](#). Entries in Sch. 10 repealed (13.5.2014) without ever being by [2014 c. 6, s. 18\(2\)\(j\)](#))
- s. 22(1) words substituted by [2020 c. 11 Sch. para. 19\(a\)](#)
- s. 22(1) words substituted by [2020 c. 11 Sch. para. 19\(b\)](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 10(2)-(3A) substituted for s. 10(2)(3) by [2020 c. 11 Sch. para. 10\(c\)](#)
- s. 12B inserted by [2020 c. 11 Sch. para. 12](#)
- s. 16(1) s. 16 renumbered as s. 16(1) by [2020 c. 11 Sch. para. 15\(3\)](#)
- s. 16(1) words substituted by [2020 c. 11 Sch. para. 15\(4\)\(a\)](#)
- s. 16(1) words substituted by [2020 c. 11 Sch. para. 15\(4\)\(b\)](#)
- s. 16(1) words substituted by [2020 c. 11 Sch. para. 15\(4\)\(c\)](#)
- s. 16(2) inserted by [2020 c. 11 Sch. para. 15\(5\)](#)
- s. 17(1)-(1B) substituted for s. 17(1) by [2020 c. 11 s. 2\(2\)](#)
- s. 21(3) inserted by [2020 c. 11 Sch. para. 18\(b\)](#)
- s. 23(7) inserted by [2020 c. 11 Sch. para. 20\(5\)](#)
- s. 24(4) inserted by [2020 c. 11 Sch. para. 21\(4\)](#)
- s. 24A(7) inserted by [2020 c. 11 Sch. para. 22\(3\)](#)
- s. 24B(6) inserted by [2020 c. 11 Sch. para. 23\(4\)](#)
- s. 24E(11) inserted by [2020 c. 11 Sch. para. 24\(4\)](#)
- s. 25A(4) inserted by [2020 c. 11 Sch. para. 25\(5\)](#)
- s. 25B(2)(c) added by [1996 c. 27 s. 16\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 16 repealed (13.5.2014) without ever being in force by [2014 c. 6, s. 18\(1\)](#))
- s. 25B(8)(9) added by [1996 c. 27 s. 16\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 16 repealed (13.5.2014) without ever being in force by [2014 c. 6, s. 18\(1\)](#))
- s. 27(2)-(2B) substituted for s. 27(2) by S.I. 2019/519, Sch. para 6(2) (as substituted) by [S.I. 2019/1338 reg. 3\(3\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 28(4) inserted by [2020 c. 11 Sch. para. 27\(6\)](#)
- s. 31(16) inserted by [2020 c. 11 Sch. para. 29\(8\)](#)
- s. 52A inserted by [2020 c. 11 Sch. para. 32](#)



Neutral Citation Number: [2022] EWFC 6

Case No: ZZ20D65691

**IN THE FAMILY COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21 February 2022

**Before:**

**Mr Justice Mostyn**

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**Between:**

**ALVINA COLLARDEAU-FUCHS**

**Applicant**

**- and -**

**MICHAEL FUCHS**

**Respondent**

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**Nicholas Cusworth QC and Nicholas Bennett (instructed by Payne Hicks Beach)  
for the applicant for maintenance pending suit  
Tim Bishop QC and Richard Sear (instructed by Stewarts Law) for the respondent for  
maintenance pending suit**

Hearing date: 9 February 2022  
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**Approved Judgment**

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**MR JUSTICE MOSTYN**

**This matter was heard in private. The judge gives leave for this version of the judgment to be published. In no report may the children of the parties be named. Breach of this prohibition will amount to a contempt of court.**  
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**Mr Justice Mostyn:**

1. I have before me the application by Alvina Collardeau-Fuchs for maintenance pending suit made on 13 September 2021.
2. I will refer to the applicant as “the wife” and to the respondent as “the husband”.

*The background facts*

3. The husband is 62 and the wife is 46. The husband holds German and US citizenship (having moved to the US from Germany in the 1990s). He has enjoyed an extremely successful career as a property entrepreneur. The wife holds French citizenship. She was a journalist but has not worked since the early days of the relationship.
4. The parties began cohabiting in 2008 (according to the wife) or in 2010 (according to the husband). Nothing turns on this disagreement for the purposes of this application. They were married on 14 April 2012. They separated in March 2020. The wife’s divorce petition was issued on 22 December 2020. Decree Nisi was granted on 24 August 2021 but has not yet been made Absolute.
5. Although this litigation is at a relatively early stage, the parties have nonetheless incurred considerable costs. The Forms H filed and served in advance of this hearing show that the husband has incurred costs of £450,189 and the wife has incurred costs of £467,793, a total of £917,982. They estimate spending a combined total of a further £288,700 to the conclusion of the Private FDR Appointment on 28 March 2022.
6. The wife continues to live in the family home in West London (“the West London property”). It is a substantial property. It has six floors, five bedrooms, an indoor underground swimming pool and access to both a private and communal garden. In total, its area is over 700 square metres. The parties historically employed a retinue of staff: two rota chefs, a house manager, two or three housekeepers, and a laundress in addition to contractors (gardeners, pool maintainers, builders, plumbers, electricians, and handymen). The husband asserts that the property is worth £30.2 million and is subject to a mortgage of £21.5 million. When in the UK, the husband lives in a relatively modest apartment owned by the parties which is located near to the West London property.
7. There are two children of the family, A who is 6 and B who is 3. They both live with the wife. There are ongoing private law children proceedings in respect of the arrangements for the two children. The detail of those proceedings is not before me. I note, however, that the litigation is hotly contested; I am told substantial sums have been spent on the legal fees in those proceedings.
8. Prior to their marriage, the parties executed a pre-nuptial agreement in New York on 2 March 2012 (“the PNA”). Both parties made disclosure of their financial circumstances prior to the execution of the PNA. The husband’s net worth was said to be \$1.064 billion and the wife’s was said to be \$4.471 million. Both parties had advice from, and were represented by, distinguished lawyers.

No suggestion has been made that there was any deficiency or pressure within the process leading up to the execution of the PNA.

9. Following their marriage, the parties executed a “Modification Agreement” in New York on 23 March 2014 (“the MA” and, collectively with the PNA, “the Agreements”). The MA increased the financial provision that was made to the wife pursuant to the PNA. As with the PNA, there has been no suggestion that the process leading to the execution of the MA was in any way flawed.
10. The husband seeks to hold the wife to the terms of the Agreements. In simple terms, he says that the effect of the Agreements, if implemented, would be to provide the wife with net capital of £23.5 million plus 18 years of rent-free accommodation at the West London property. The husband says that on any objective view this provision meets the wife’s needs. Notwithstanding the terms of the Agreements, the husband accepts that he will need to provide interim financial support to the wife pending the determination of whether or not the Agreements should be upheld.
11. It is common ground that during the marriage the parties enjoyed an extremely high standard of living. They had the use of properties around the world (including a property located in the heart of the Cap D’Antibes, to which I will return later in this judgment). The parties employed a significant number of staff at the West London property, as I have described above, and in their other properties. It is agreed that the parties would spend a great deal of time travelling, typically by private plane or first-class commercial flights, and staying in high-end hotels or villas at significant cost.
12. Following separation in March 2020, the wife complains that the husband, in effect, almost immediately reduced the provision he was making for her. She claims that, prior to separation, the husband had transferred £10,000 per month to her HSBC account and €20,000 to her Société Générale account (if not more in some months). He stopped making those payments in April 2020 and, upon being invited to reinstate the transfers in June 2020, declined to do so. The wife says that in December 2020 the husband limited expenditure on her American Express card to \$20,000 per month (although this was later raised to \$25,000 per month). The wife makes various other complaints about the husband’s failure to make payment of other outgoings on time (including payment of staff salaries).
13. The husband’s response to the wife’s complaint is that she had been spending at a profligate level and that the time had come to impose some financial discipline. He has said, for example, that the wife spent \$273,000 in October 2020 and \$185,000 in November 2020 on her American Express card and that that is why he imposed the limit on it. He also denies the allegation made that he has failed to make the payment of various outgoings on time.

#### *The procedural history*

14. On 30 March 2021, the husband made an application for financial remedies in Form A (“the substantive application”) and an application for the wife to show cause why an order should not be made in the terms of the Agreements (“the

show-cause application”). The husband also sought an order that the automatic timetable for the exchange of Forms E and other conventional directions be suspended.

15. Those applications were issued on 14 April 2021. I gave directions on paper on 19 April 2021 suspending the substantive application pending determination of the show-cause application; listing the show-cause application for directions before me; and directing the husband to serve a short schedule of his assets to which there was to be appended (i) in tabular form a schedule of the approximate global expenditure of the family for the calendar years 2019 and 2020; and (ii) an approximate calculation of the sum which the wife would receive pursuant to the Agreements.
16. The husband duly complied with my directions as to the information he was to provide. He filed and served the following documents (all dated 25 June 2021):
- i) A schedule of assets showing properties with a value of £28,128,293, bank accounts holding £25,220,234, investments of £72,311,909, insurance policies of £605,262, monies owed to him of £2,545,599, chattels of £27,763,662, pensions of £30,214, business interests of £1,695,915,726, and liabilities of £606,988,804. The husband’s total net assets were therefore said to be £1,245,532,056.
- ii) A schedule of living costs for the calendar years 2019 and 2020 showing the following:

<b>Item</b>	<b>2019</b>	<b>2020</b>
Global annual living costs incurred by the parties	£900,697	£1,236,390
Running costs of all properties used as a home by the family	£1,090,772	£1,169,803
Costs of all staff employed by the family	£1,196,822	£1,113,994
Costs of running the parties' household other than in relation to properties	£477,161	£497,672
Costs of travel and holidays	£853,288	£1,228,669
All discretionary expenditure of the parties not otherwise addressed above	£194,363	£680,689
Other expenditure exclusively incurred in relation to or for the benefit of the children of the family	£62,661	£38,369
<b>Total per annum</b>	<b>£4,775,764</b>	<b>£5,965,586</b>
<b>Total per month</b>	<b>£397,980</b>	<b>£497,132</b>

- iii) A schedule setting out the approximate calculation of the sum which the wife would receive pursuant to the Agreements. That sum totalled £23,500,267.
17. The wife made the maintenance pending suit application on 13 September 2021. In the body of the application notice, she explained that she sought the sum of £350,000 per month (which included an element of provision for the needs of the children of the family), on the basis that she would take over responsibility for paying overheads of the various homes including staff salaries. She filed and served a statement in support of the maintenance pending suit application also dated 13 September 2021.
18. The husband made an open offer for the overall resolution of the proceedings on 22 September 2021. In terms, it provides for the implementation of the Agreements which would have the net effect as explained above. The husband proposed that there be no order as to costs provided the open offer was accepted within 21 days (which has now long since passed) and thereafter the lump sum payable by the husband was to be reduced by £1 for every £1 spent by him on costs. In circumstances where the husband has thus far incurred costs of £450,189 and anticipates incurring a further £151,500 to the conclusion of the Private FDR Appointment, any such reduction in the lump sum to be paid by the husband to the wife will likely be substantial.
19. I conducted a case management hearing on 27 September 2021 at which:
- i) I gave further directions as to the evidence to be filed in both the show-cause application and the maintenance pending suit application. I granted express permission to the wife to make an application on short notice for an earlier hearing of the maintenance pending suit application in the event she considered she was entitled to emergency relief in advance of the substantive hearing of the maintenance pending suit application that I listed to be heard on the first open date after 1 November 2021.
  - ii) I granted the parties permission to instruct a single joint expert in the form of a lawyer suitably qualified in the State of New York to prepare a report on whether the Agreements would be upheld in the court in New York (including in relation to any interim maintenance application). No such report has been obtained by the parties.
  - iii) I dispensed with the requirement under FPR 9.15(4) that the parties attend an in-court FDR Appointment on the basis that the parties are to attend a Private FDR Appointment before Mr Dyer QC. I understand that that Private FDR Appointment has now been fixed to take place before Mr Dyer QC on 28 March 2022.
  - iv) Finally, I listed the show-cause application for a Final Hearing with a time estimate of three days. It is fixed to commence on 10 October 2022.
20. The wife applied for an earlier hearing of the maintenance pending suit application on 25 October 2021 on the basis that the husband had failed to make

payment of outstanding invoices and holiday costs notwithstanding an earlier assurance he would do so. In support of that application, she filed and served her second witness statement dated 23 October 2021. I understand that the wife was ultimately offered 19 January 2022 as the date for the earlier hearing of the maintenance pending suit application, but that she turned this down.

21. The husband filed his first witness statement in response to the maintenance pending suit application on 5 November 2021. He proposed that he should pay the wife:
  - i) A maximum of \$25,000 per month being approximately £18,500 per month for her discretionary expenditure.
  - ii) Her reasonable holiday costs. At the time of this hearing, the husband proposed the fixed sum of £100,000 for the next eight months.
  - iii) £6,250 per month for child maintenance on the basis that he would continue to meet the school/nursery fees.
22. The husband also proposed that he would continue to meet all of the running costs (including staff costs) for the West London property and the other properties directly.
23. This remained the husband's open position at this hearing.
24. The wife filed her third witness statement in the show-cause proceedings on 7 December 2021. Her core objection to an order being made in the terms of the Agreements is that, in real terms, it would not permit her to remain living at the West London property until the youngest child of the family attains the age of 21 as she would be unable to fund the cost of living in a property of that scale. As the design of the Agreements was that she be able to do so, she says that it would be unfair for an order to be made giving strict effect to the Agreements.
25. The wife exhibited a questionnaire to her third witness statement. No formal application for an order that the husband answer the same has been made by the wife. As I said during the hearing, I consider that the question of whether the husband should be required to answer some or all of the wife's questionnaire should be adjourned for consideration at the directions hearing that will be listed to take place in the event the Private FDR Appointment does not produce an overall agreement. In my judgment, the husband has provided sufficient information about his financial circumstances for an effective Private FDR Appointment to take place without the need for answers to the wife's questionnaire.
26. The wife made a revised open offer for the resolution of the maintenance pending suit application on 28 January 2022. In broad terms, she proposed that the husband pay:
  - i) £70,000 per month for her discretionary expenditure.
  - ii) £60,000 per month for her holiday costs.

- iii) £2,935 per month to enable her to meet the costs of the children's school/nursery fees.
  - iv) Sums sufficient to meet the costs of the staff at the West London property (on the basis that the husband takes all necessary steps to transfer the contractual employment of the same staff to her).
  - v) Sums sufficient to pay any invoice as to running costs, utilities, tax, insurance, repair or maintenance or legal costs relating to any of the properties considered "Joint Property" for the purpose of the PNA.
27. The wife also proposed that the husband should give various undertakings relating to the other properties and that the husband continue to meet her legal costs.

*The matters no longer in issue*

28. The wife has complained that the husband has been failing promptly to discharge various costs that he has agreed to meet. That is why in the maintenance pending suit application she has sought to, in effect, take over the responsibility for meeting various outgoings on the basis that the husband continues to pay for the same.
29. The husband denies the allegations made and says that any transfer of the responsibility for the management of meeting those various costs is unnecessarily complicated.
30. This matter is, however, now no longer in issue, as I shall explain.
31. In advance of this hearing the husband's lawyers circulated a draft order which contained recitals recording the parties' agreement that until the conclusion of the show-cause application:
- i) the husband would continue to meet all of the overheads (to include but not be limited to the running costs, utilities, insurance, repair or maintenance) and staff costs of the West London property directly as they fell due; and
  - ii) the husband would meet any additional or occasional invoice or bill received by either party (or their staff) relating to (i) the overheads or staff costs of the West London property; (ii) school or nursery fees and extras and any other expenses directly referable to the children; and (iii) the wife's legal fees within 14 days of the relevant invoice being uploaded to the portal (q.v.).
32. On 5 October 2021, the husband had proposed, and the wife had agreed, that a shared access folder ('the portal') should be set up. The intention was that the wife was to upload any relevant invoices to the portal. Upon the same being uploaded, the husband would pay the invoice and the same would be marked as having being paid on the portal.



33. The wife has complained that that regime has not worked well to date. She has provided numerous instances of what she says are failures of the husband to properly ensure invoices and other costs are paid promptly. The husband, both in his witness statement filed and served in advance of this hearing and through counsel, rejected those allegations. I was not invited to make any findings on these issues and nor would it be appropriate for me to do so at this stage of the proceedings.
34. However, provided that the husband gave undertakings in the terms of the proposed recitals contained in the draft order then the wife, through counsel, indicated that she would be content to accept them and would no longer pursue her claim for the management of the costs of the West London property being transferred by the husband to her.
35. I am content, subject to para 37 below, to approve this agreement and to accept undertakings in those terms; indeed, had the wife not requested them of the husband, I would have required them of him.
36. I was informed at the outset of this hearing that the husband, having committed to meet the wife's legal fees, has not paid them since early December 2021. Some £363,732.39 remains outstanding. That figure reflects her outstanding costs in these proceedings, being £204,513, plus a figure referable to the private law children proceedings.
37. This is unacceptable. It is not reasonable for the husband, who has committed to pay the wife's legal fees and on any view has the means to do so without delay, to expect the wife's advisors to work without payment for any material period. Those outstanding fees, and any future fees, are to be paid immediately by the husband following uploading of an invoice to the portal, and not within 14 days (see para 31(ii) above).

#### *My decision*

38. As explained above, the wife's claim for maintenance pending suit is that, in addition to the payment by the husband of the overheads, he should pay her £130,000 per month (an annual rate of £1.56 million). The husband's proposal is that he should pay the equivalent of £31,000 per month (an annual rate of £372,000), together with the agreed overheads.
39. Those overheads are set out at paragraph 16(ii) above. They are enormous. The 2020 figure for the annual running costs for the running of the London properties, the villa in Antibes and the penthouse in Miami is £1,169,803. The figure for the cost of staff in those properties is £1,113,994, and the husband has calculated that a further sum of household costs of £497,672 is payable giving a total amount for these overheads of £2,781,469. When added to the wife's spending claim of £1.56 million it can be seen that she is asking the court to endorse a rate of interim expenditure of £4,341,469 per annum.
40. In *F v F (Ancillary Relief: Substantial Assets)* [1996] 2 F.C.R. 397 Thorpe J memorably stated in a case where the husband was (by the standards of 1996) vastly rich:

“The fact is that the Matrimonial Causes Act 1973 is a statute designed to provide statutory criteria sufficiently flexible to meet the circumstances of every conceivable case. The reality is that the husband and wife in this case belong to a tiny percentage of the world population who have control and management and entitlement to huge sums of money. The husband in his substantive affidavit in the proceedings has said that for their purposes he is willing that the court should treat him as having now and in the foreseeable future capital assets of not less than £150m. The wife says, although it is in issue, that in marriage he told her that their annual expenditure amounted to £4m.

Thus, in determining the wife's reasonable needs on an interim basis it is important as a matter of principle that the court should endeavour to determine reasonableness according to the standards of the ultra rich and to avoid the risk of confining them by the application of scales that would seem generous to ordinary people. Thus I conclude that it would be wrong in principle to determine the application on some broad conclusion that if the wife cannot manage at the rate of a quarter of a million a year, she ought to be able to. I think that it is necessary to establish a yardstick that more nearly reflects the standard of living which has been the norm for the wife ever since marriage and for the husband for considerably longer.”

41. It may well be that Thorpe J, when warning against the application of middle-class, middle-income values to such a case, was consciously or subconsciously recalling the legendary, but almost certainly confected, remark by F. Scott Fitzgerald to Ernest Hemingway that “the rich are different from you and me” (to which Hemingway allegedly replied “Yes, they have more money.”)
42. The principles to be applied on an application for maintenance pending suit were summarised by me in *TL v ML and Others (Ancillary Relief: Claim against Assets of Extended Family)* [2006] 1 FLR 1263 at [124] as follows:

“From these cases I derive the following principles:

- (i) The sole criterion to be applied in determining the application is 'reasonableness' (s.22 of the Matrimonial Causes Act 1973), which, to my mind, is synonymous with 'fairness'.
- (ii) A very important factor in determining fairness is the marital standard of living (*F v F*). This is not to say that the exercise is merely to replicate that standard (*M v M*).
- (iii) In every maintenance pending suit application there should be a specific maintenance pending suit budget which excludes capital or long-term expenditure, more aptly to be considered on a final hearing (*F v F*). That budget should be examined critically in every case to exclude forensic exaggeration (*F v F*).

(iv) Where the affidavit or Form E disclosure by the payer is obviously deficient, the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources (*G v G*, *M v M*). In such a situation, the court should err in favour of the payee. ...”

43. In the recent decision of *Rattan v Kuwad* [2021] EWCA Civ 1 at [38] Moylan LJ accepted the “general effect” of these principles. But he added:

“...as with all guidance, they clearly have to be applied in the particular circumstances of the individual case. In the present case, for example, it was not necessary for the wife to provide a specific maintenance pending suit budget. Her income needs as set out in her Form E matched her needs for the purposes of her application for maintenance pending suit. Further, not all budgets require critical analysis. The extent to which a budget or other relevant factors require careful analysis will depend on the circumstances of the case. I return to this below but, in summary, the wife's budget in this case did not require any particular critical analysis; it was a straightforward list of income needs which were easily appraised.”

44. Moylan LJ went on at [39] to cite his decision in *BD v FD (Maintenance Pending Suit)* [2016] 1 FLR 390 at [34] where he in turn cited his decision in *G v G (Child Maintenance: Interim Costs Provision)* [2009] EWHC 2080 (Fam), [2010] 2 FLR 1264 at [52] in which he stated that an application for maintenance pending suit was:

“... a very broad jurisdiction but it is one which, as I have said, should be exercised when on a broad assessment the court's intervention is manifestly required. Otherwise parties will be encouraged to engage in what can often be an expensive exercise in the course of the substantive proceedings when the proper forum for the determination of those proceedings, if they cannot be resolved earlier by agreement or otherwise, is the final hearing when the evidence can be properly analysed and the parties' respective submissions can be more critically assessed.”

45. Earlier, at [34] and [35] Moylan LJ cited two cases which described the court's approach on a maintenance pending suit application as “rough and ready” viz:

- i) *F v F (Maintenance Pending Suit)* (1983) 4 FLR 382 where Balcombe J stated at 385:

"Clearly there must be an empirical approach, since on an application for maintenance pending suit it is quite impossible practically to go into all the kinds of detail that the court can go into when dealing with the full hearing of an application for financial relief, and in the ordinary sort of case the registrars who deal with these applications will have to take a broad view of

means on the one hand and income on the other and come to a rough and ready conclusion."

ii) *Moore v Moore* [2010] 1 FLR 1413, CA where Coleridge J stated at [22]:

"An order for maintenance pending suit is, as Bodey J observed, 'a creature different in form and substance from substantive orders made upon the making of decree nisi'. It is designed to deal with short-term cash flow problems, which arise during divorce proceedings. Its calculation is sometimes somewhat rough and ready, as financial information is frequently in short supply at the early stage of the proceedings."

46. In citing these cases I do not believe that Moylan LJ was saying that a claim for maintenance pending suit should not be subjected to the same degree of careful scrutiny as any other interlocutory claim. Sometimes, as here, enormous sums turn on the decision and it seems to me that just as much care should be taken in reaching it as would be applied to a claim, for example, for an injunction or interim damages. In this case, as mentioned above, the parties have in the financial proceedings already run up costs of over £900,000. For the maintenance pending suit application alone the wife has run up costs of £110,000; I assume that at least that amount has been incurred by the husband. The application was made on 13 September 2021; it is not as if it has come before the court in great haste. It therefore seems to me, given the sums at stake, that the court should try to paint its decision with a fine sable rather than a broad brush, where it has the ability to do so. Of course, in most cases the court will not have either the time or the material to conduct an exhaustive investigation and so the exercise will perforce be rough and ready. In this case, it will be seen that the court has not been equipped to conduct the sort of detailed investigation that the costs expended and the time available suggest should have been possible, and so, regrettably, there will be rough and ready aspects to my decision.
47. In this case, as explained above in paragraph 15, the husband was ordered by me on 19 April 2021 to give details for 2019 and 2020 of the annual costs of certain specified categories. The husband duly complied with my order, and the figures are set out at paragraph 16(ii) above. The data that he provided for 2020 formed the basis of the wife's claim as formulated in paragraph 34 of her witness statement dated 13 September 2021 and in her open proposal of 28 January 2022. That proposal seeks £70,000 per month for her personal discretionary spending. It was calculated as follows:

Global annual living costs	1,236,390	
Payments to dependants	<u>(554,775)</u>	
	681,615	
Less, say, 40% referable to H alone	<u>(272,646)</u>	
W's notional living costs	408,969	A
Discretionary expenditure	680,689	
Less 40% referable to H alone	<u>(272,276)</u>	
W's notional discretionary expenditure	408,413	B
Children	38,369	C
Total A + B + C	855,751	
per month	71,313	

48. In addition, the wife seeks £60,000 per month for holidays. This again was justified by reference to the 2020 data supplied by the husband. It was calculated as follows:

Travel and holidays	1,228,669
Less, say, 40% referable to H alone	<u>(491,468)</u>
	737,201
per month	61,433

49. Rounding down, the wife’s claim for these two items is therefore £70,000 + £60,000 = £130,000 per month.

50. Mr Bishop QC roundly condemns this approach as “completely flawed logic”. First, he says that the notes to the data provided by the husband show that the global annual living costs section is almost completely irrelevant to maintenance pending suit, being made up of insurance which the husband will pay directly, charity payments and furniture costs. He asserts that the only element which may have some maintenance pending suit relevance is entertainment.

51. Second, Mr Bishop says that it would have been fairer to have taken an average for 2019 and 2020 rather than 2020 alone.

52. Third, Mr Bishop says the 40% allocation of expenditure to the husband is illogical and wrong; it should be no lower than 50%.

53. Accordingly, Mr Bishop argues on behalf of the husband that the current allowance of \$25,000 per month, or £18,500, is entirely reasonable.

54. Mr Bishop rejects the holiday claim as being unsophisticated and grossly excessive. He submits that over the next eight months, being the period until the determination of the show-cause application, £100,000 for holidays is entirely

reasonable. At least one holiday can be taken during the period in the villa in Antibes, which would incur the wife virtually no cash cost whatsoever.

55. The husband’s proposal for holiday money corresponds to a rate of £100,000 ÷ 8 = £12,500 per month.
56. Therefore, the husband’s proposal for these two items is the equivalent of £18,500 + £12,500 = £31,000 per month.
57. The parties are therefore £99,000 per month apart, an annual rate of £1,188,000. This is a vast amount. The competing claims therefore should be examined with as much care as possible.
58. It is a dominant principle in a maintenance pending suit application that the marital standard of living immediately before the breakdown of the marriage is highly relevant, and can, in a minority of cases, be determinative of the application. In the majority of cases it cannot be determinative because of the impossibility of stretching the income which provided the marital standard of living in one home into the provision of that same standard in two homes. But with the very rich this problem does not arise.
59. In this case it is clear that the marriage was heading for the rocks at the end of 2019 when the husband began complaining about the wife’s expenditure. The parties separated in March 2020. I have concluded that the data which the court should be examining in order to determine the marital standard of living is that given by the husband for 2019. I am not satisfied that the higher figures for 2020 are representative of the marital standard of living, and it follows, by the same token, that I do not agree that an average of 2019 and 2020 is representative of that standard.
60. Surprisingly, neither side sought to undertake a granular analysis of the wife’s expenditure in 2019 for the whole of that year. The husband had, of course, produced the data for 2019 in his response to my 19 April 2021 order. Later, he did undertake some detailed analysis of the wife’s expenditure from October 2019 onwards. The wife, likewise, has analysed her expenditure by reference to her American Express card from October 2019 onwards. But no equivalent analysis was done of the family’s, and specifically the wife’s, expenditure for the whole of the last calendar year of the functioning marriage.
61. A major element in the husband’s Schedule of Family Living Costs was the very first entry. This was as follows:

	2019	2020	NOTES
<b>The global annual living costs incurred by the applicant and respondent</b>	£ 900,697	£ 1,236,390	Of this amount, in 2020, £554,775 were payments made by H to his ex-wife and other dependents. In 2019, that sum was £459,140.  'Global annual living costs' include insurance costs, charitable donations, entertainment and furniture costs alone of in excess of £170,000 by W in 2020.

62. In paragraph 50 above I have set out Mr Bishop QC’s attack on Mr Cusworth’s use of these figures. Mr Bishop QC contended that the phrase “costs include insurance costs, charitable donations, entertainment and furniture costs” meant that the overall total exclusively comprised these elements, and that of these elements only entertainment was relevant for maintenance pending suit purposes. I have to say that I did not read the phrase that way. The use of the verb “include” clearly suggests that other items made up the sum in question. More significant was the inexplicable failure of the husband to specify the actual numbers making up the elements which Mr Bishop contended were completely irrelevant for maintenance pending suit purposes. It was striking that Mr Bishop’s advocacy about this issue was cast in generalities when his client was at all times in a position to instruct his financial advisers to provide the necessary breakdown. I agree with Mr Cusworth’s submission that the likely reason that no breakdown was supplied was that it would not have been helpful to the husband.
63. In my judgment, the court should take the headline figure of £900,697 as being the stated global annual living costs of the applicant and the respondent for 2019. I make no deduction for items such as insurance, charity and furniture. In my judgment, the husband, having failed to particularise the value of the items which he says are irrelevant, should not be allowed to argue that some arbitrary proportion should be excluded.
64. In the schedule the figure for the parties’ “discretionary expenditure not otherwise addressed above” in 2019 is stated to be £194,363 (see paragraph 16(ii) above).
65. I agree with Mr Bishop that there is no basis for confining the husband’s element of the expenditure to 40%, and that it should be set at 50%.

66. My calculation is therefore as follows:

Global annual living costs	900,697	
Payments to dependants	<u>(459,140)</u>	
	441,558	
50% referable to each party	220,779	A
Discretionary expenditure	194,363	
50% referable to each party	97,182	B
expenditure on children	62,662	C
Total A + B + C	380,622	
per month	31,719	

67. I turn to the claim for holiday money. The husband’s schedule states that in 2019 the cost of travel and holidays incurred by the wife and the children when

with her was £475,000. That figure has not been challenged by the wife. It corresponds to a monthly rate of £39,583.

68. Therefore, on the best available evidence, for the last calendar year of the marriage, namely 2019, the total sum relevant for maintenance pending suit purposes spent by or on the wife, other than on property and staff overheads, was £380,622 + £475,000 = £855,622, a monthly rate of £71,302.
69. The wife has not submitted an interim budget. I agree with Mr Cusworth that this was not necessary on the particular facts of this case, just as one was not necessary in *Rattan v Kuwad* on the particular facts of that case.
70. In my judgment, on the facts of this case, a reasonable figure for maintenance pending suit is the same amount that the wife had for discretionary and holiday expenditure in 2019. I disagree with Mr Bishop's submission that the wife's historic freedom to spend extremely large amounts on holidays should be curtailed during this interim period. In my judgment, a reasonable award would be to give the wife the same holiday spending power that she had in 2019.
71. I therefore award the wife maintenance pending suit, to include maintenance for the children (but not including their nursery fees or the fees of any staff referable to them, which will be paid separately by the husband) in the sum of £71,300 per month. Mr Cusworth had sought that the discretionary (as opposed to holiday) element should be backdated with credit given for sums paid, but I indicated to him that I was not minded to do so as this would no doubt lead to extensive, furious and ultimately pointless disputes between the solicitors as to the calculation of the sums that should be credited against the backdated element of the award. Therefore, the first payment of £71,300 will be on 1 March 2022 and the payments will continue until determination of the substantive proceedings. However, I do not close the door on the wife's backdating claim. It will be adjourned and, if the wife chooses to pursue it, determined at the substantive hearing.
72. This award is only a minority element of the overall liability which the husband must meet in the interim. In paragraph 38 above I stated that the cost of the staff and other overheads were calculated at £2,781,469 in 2020. These expenses the husband has formally undertaken to pay. I am not fixing the husband's liability in this amount, of course. He must pay those expenses in their actual amounts, whatever they are. But £2.78 million is in my estimation a reasonable approximation of the annual rate of the expenses at the present time.
73. The annual rate of my above award is £855,600.
74. The husband's overall liability under my order will therefore be at an approximate annual rate of £3.64m.
75. That is my judgment.





# Justice

## PART 28 - COSTS

See also [Practice Direction 28A](#)

### Part 28 COSTS

Contents of this Part

Title	Number
Costs	Rule 28.1
Application of other rules	Rule 28.2
Costs in financial remedy proceedings	Rule 28.3
Omitted	Rule 28.4

### Costs

#### 28.1

The court may at any time make such order as to costs as it thinks just.



### Application of other rules

#### 28.2

(1) Subject to rule 28.3 Parts 44 (except rules 44.2(2) and (3) and 44.10(2) and (3)), 46 and 47 and rule 45.8 of the CPR apply to costs in proceedings, with the following modifications –

(a) in the definition of ‘authorised court officer’ in rule 44.1(1), for the words in sub-paragraph (i) substitute ‘the family court’;

(b) omitted;

(c) in accordance with any provisions in Practice Direction 28A; and

(d) any other necessary modifications.



### Costs in financial remedy proceedings

#### 28.3

(1) This rule applies in relation to financial remedy proceedings

(2) Rule 44.2(1), (4) and (5) of the CPR do not apply to financial remedy proceedings.

(3) Rules 44.2(6) to (8) and 44.12 of the CPR apply to an order made under this rule as they apply to an order made under rule 44.3 of the CPR.

(4) In this rule –

(a) ‘costs’ has the same meaning as in rule 44.1(1)(c) of the CPR; and

(b) ‘financial remedy proceedings’ means proceedings for –

(i) a financial order except an order for maintenance pending suit, an order for maintenance pending outcome of proceedings, an interim periodical payments order, an order for payment in respect of legal services or any other form of interim order for the purposes of rule 9.7(1)(a), (b), (c) and (e);

(ii) an order under Part 3 of the 1984 Act;

(iii) an order under Schedule 7 to the 2004 Act;

(iv) an order under section 10(2) of the 1973 Act<sup>2</sup>;

(v) an order under section 48(2) of the 2004 Act.

(5) Subject to paragraph (6), the general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party.

(6) The court may make an order requiring one party to pay the costs of another party at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them).

(7) In deciding what order (if any) to make under paragraph (6), the court must have regard to –

(a) any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant;

(b) any open offer to settle made by a party;

(c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(d) the manner in which a party has pursued or responded to the application or a particular allegation or issue;

(e) any other aspect of a party's conduct in relation to proceedings which the court considers relevant; and

(f) the financial effect on the parties of any costs order.

(8) No offer to settle which is not an open offer to settle is admissible at any stage of the proceedings, except as provided by rule 9.17.

(9) For the purposes of this rule “financial remedy proceedings” do not include an application under rule 9.9A.



Omitted

28.4



## Footnotes

2. Section 10(2) has been prospectively repealed by section 66(3) of and Schedule 10 to the Family Law Act 1996. 





**33 Bedford Row**  
Barristers' Chambers

## **King's College London & 33 Bedford Row Family Law Moot**

### **Round 1 – Common Instructions**

Welcome to the KCLBMS Family Law Moot, sponsored by 33 Bedford Row.

This sheet, legislation, case law and witness statements are common to both mooters. Each mooter will also have a separate set of confidential instructions from their client.

#### *Format*

Each competitor shall represent either the applicant or the respondent in an interim application for maintenance pending suit in front of a Circuit Judge in the Family Court under section 22 of the Matrimonial Causes Act 1973. This is a closed competition. You will only be able to refer to common sense/knowledge and:

- a. Section 22 of the Matrimonial Causes Act 1973;
- b. Part 28 of the Family Procedure Rules; and
- c. *Collardeau-Fuchs v Fuchs* [2022] EWFC 6.

If a case is quoted in the case law provided, you may quote it as far as it is quoted in the case law provided.

Written skeletons are **NOT** required for this round. Of course, make whatever written notes you need. Be prepared for judicial intervention during your submissions.

Counsel for the applicant will go first. They will have 20 minutes to make their application. Counsel for the respondent will then have 20 minutes to respond. Counsel for the applicant

will then be entitled to (but does not have to use) a further 5 minutes, limited strictly to reply. Your judge will let you know when you have 5 minutes left and when you have run out of time. Going over any time limit may result in losing points.

Counsel for the Applicant should introduce themselves (e.g. Ms Smith) and the name of their opponent when they open their case.

You may refer to the evidence of either party and argue that parts are unlikely, untrue or unrealistic but there will not be any cross-examination of witnesses. This is an interim application where values & figures are estimates and are not concrete.

For round one, there will be two separate moots back-to-back in a single 'room', with four rooms in total. The best speaker of the room (i.e. one out of the four) will progress to the next round. The next round will take place in the afternoon and be a less factually and legally dense application. That means you may unfortunately be the better speaker in your application but are not the best speaker overall from that room.

You must dress as you would as counsel in the Family Court and address the judge as you would in real life.

### *Common information*

This is an application by Mathilde de Beauharnais for maintenance pending suit against her husband, Louis Orléans. Essentially, Ms de Beauharnais is seeking that maintenance payments be made during financial remedies proceedings in a divorce before there has been full disclosure and before the end of proceedings where a final order (dealing with any maintenance) would be made.

Ms de Beauharnais petitioned for divorce five months ago under section 1(1) of the Matrimonial Causes Act 1973. She stated that the marriage had irretrievably broken down due to the repeated adultery and drug use of Mr Orléans. There has not yet been a final order of divorce.

In summary, the parties were married for six years before separating due to the alleged drug use and adultery. There are two children of the marriage:

- i. Eugène, a boy, three-years old; and
- ii. Hortense, a girl, one year-old (collectively, ‘the Children’).

The Children predominantly live with their mother. They usually stay with their father from Friday afternoon to Monday morning every other weekend. This depends on the work lives of the parties, so it is flexible in nature. Child contact and living arrangements are all agreed and neither party seeks to change the arrangements. Neither party alleges any safeguarding issues, nor does any party have any concerns over the other’s ability to look after the Children.

Ms de Beauharnais seeks £12,000.00 per month in maintenance pending suit until the end of the proceedings. Mr Orléans does not oppose the application in principle but argues that the court should order only £3,000.00 per month. Both parties refuse to compromise and there is no chance of settlement. Both parties also seek their legal costs relating to the application.

Both parties made open offers in the same respective amounts before the formal application was made by Ms de Beauharnais. As they are ‘open’ offers (i.e. not ‘without prejudice’), you may talk about them in the hearing.

The usual rule in the Family Court is that each side pays their own costs. However, this rule does not apply to maintenance pending suit applications, as per FPR28.4(b)(i). Therefore, in this application, the civil court rule applies; the loser usually pays (part of) the costs of the winner. You are to seek costs.



**33 Bedford Row**  
Barristers' Chambers

## **King's College London & 33 Bedford Row Family Law Moot**

### **Round 1 – Confidential Instructions of Mr Orléans**

You have just met your client at court. You discuss the case in general and get specific instructions from him. He also makes certain confidential disclosures to you. All of the financial disclosures relate to matters that occurred *after* the signing of his witness statement.

Mr Orléans informs you that, in the not-so-distant future, there is a strong possibility he will have a new job and a new money-making asset. He is in talks with both Netflix and Amazon Prime in relation to a docu-drama series about his family and the various French revolutions that they were involved with.

There is a bidding war between the two studios. However, there is no done deal between either studio yet. Either studio could walk away at any time and leave Mr Orléans with nothing. If it goes ahead, he will likely be a writer, consultant and presenter on the show.

Mr Orléans tells you that, at the moment, it looks like he will be paid between £50,000.00-£75,000.00 up front, a further £100,000.00-£150,000.00 on competition in one year's time and a further £50,000.00-£75,000.00 if certain streaming targets are hit (which he thinks is likely) in the first six months. He will also receive residuals, likely to average around £5,000.00 every year for the next 10 years. It would then likely drop off to around £1,000.00 on average per year. However, these residuals could be more or less; it is impossible to know how popular the show may or may not be.

Mr Orléans also says that he has a new girlfriend. Her name is Maria Habsburg-Savoy, and she is from a very wealthy Austro-Italian family. His new girlfriend's family has assets in foreign real estate, art and antiques that is valued in the tens, of not hundreds, of millions of Euros. It is early days, but Mr Orléans says he has never felt like this about someone before and feels that this time, she is 'the one'.

In turn, Mr Orléans believes that Ms de Beauharnais has a new boyfriend. He does not mind paying Ms de Beauharnais some money for the sake of his children, but he does not think he should have to subsidise her unreasonable lifestyle and pay for her and her new boyfriend.

He leaves it up to you whether any, all or none of this information should be mentioned in the court hearing.

He instructs you to seek that the court orders he pay Ms de Beauharnais only £3,000.00 per month in maintenance pending suit and that Ms de Beauharnais pays his legal fees relating to this specific application (not total legal fees), being £35,000.00.



**BETWEEN:**

**MATHILDE JOSÉPHINE de BEAUHARNAIS**

*Applicant*

**-v-**

**LOUIS PHILIPPE ORLÉANS**

*Respondent*

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**WITNESS STATEMENT OF MATHILDE  
JOSÉPHINE de BEAUHARNAIS**

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I, Mathilde Joséphine de Beauharnais of 11 Navarre Mansions, Brittany Avenue, London SW3 9QV, am the Applicant in this application. The facts in this statement come from my personal knowledge unless otherwise stated.

1. I am seeking maintenance pending suit from my husband, Louis Philippe Orléans. I require support before the end of these financial remedy proceedings and I cannot wait until the final hearing.

**Background**

2. I am 29 years old. I currently work part-time as a self-employed history tutor. I tutor GCSE, A-Level and university students. This is a very flexible job, with different hours and different days, depending on my clients. It also gives me flexibility and ability to pre-plan any child-care issues, as I am the main child-carer in the marriage.
3. I have a complex family history. My ancestors were French aristocrats. They were involved, in various capacities (and on different sides) in the French Revolution of 1789, the Hundred Days, the July Revolution, and the French Revolution of 1848. In 1873, members of my family tried and failed to restore the French Monarchy, resulting in their self-imposed exile in Britain soon thereafter.

4. I grew up in a reasonably middle-class family. My parents earned a reasonable salary. We had a bit in way of assets, but they were not realisable; they were mainly antique pieces from our family's history (like swords, silver plates, silver cutlery, tiaras, broaches etc.). They are family heirlooms; I would never sell them. In any event, they belong to my parents, not me.
5. I studied language and history at undergraduate level, making me fluent in Spanish and German. I was already fluent in French (the language I spoke at home) and English (which is technically my second language). I met the Respondent six years ago while I was working on my PhD in French History. He was visiting the university's history department, and we got talking over our families having similar backgrounds.
6. The Respondent then asked me out on a date. While I thought he was a little older than my usual type, I agreed. He was very witty and charming. He told me about how he owned a company that specialised in organising and selling bespoke history tours in different parts of France. The company also dealt in buying and selling antiques, with an emphasis on French antiques from the 18<sup>th</sup> and 19<sup>th</sup> centuries.
7. As we dated, I got to know his company more and more. I realised that the man he had employed to run parts of the company did not really know what he was doing, nor did he have a good understanding of the history of France, French historical sites or French antiques.
8. I proposed that I take over as manager of his company. He 'counter-proposed' by saying he would only let me if I married him. I was so swept up in it all that I said yes. It was a quick engagement and we were married soon thereafter.
9. Thanks to my historical knowledge, managing skills, shrewd negotiation tactics and language fluency, I increased the revenues of the company significantly. I put together better tour packages, with more interesting itineraries and lower costs for the company. I also had better knowledge about antiques. This meant I knew how much things were actually worth. Therefore, I could pick up bargains and also not pay a

high price for something that was not worth it. I then priced items well when we sold them, and negotiated to make sure we made a good profit.

10. Due to the increase in revenue from the company, we enjoyed a very good lifestyle. We went on frequent holidays to France, to visit all the places that related to the history of our respective families. Once we had children, they would come along. We also often travelled all over Europe to broker deals and attend auctions for antiques.
11. We also spent money on various experiences, tickets to events and museum & gallery admissions. This was partly for personal enjoyment and partly as research as to experiences we could package together on tours.
12. We bought a lovely flat at 11 Navarre Mansions, Brittany Avenue, London SW3 9QV and lived there as the family home. It is a very spacious four-bedroom townhouse, with large kitchen, reception room and dining room, in an old Victorian building in Chelsea. I found the property listing and did all the work to arrange the mortgage and conveyancing. We converted one of the rooms to a study/mini-antiques museum. This way, we could show off some of our latest acquisitions when we were entertaining friends or clients.
13. In order to woo clients, we often spent lots of time and money at fancy restaurants and exclusive bars. We also did this on our own as well, of course. We enjoyed a very good lifestyle. This increased our expenses, but was often aimed at trying to increase our revenues and customer base.
14. I wanted to have children, but I did not want them for a while. Due to his age, the Respondent really wanted to start a family soon. I accidentally got pregnant with Eugène and decided not to terminate the pregnancy. After a year or so, the Respondent and I started intentionally trying for another baby. If I was going to have children, I wanted to have at least two and I did not want them to be too far apart in age. Not long after, I got pregnant with Hortense and gave birth to her a little over a year ago.

15. It was agreed between myself and the Respondent that I would be the main child-carer. Due to my child-care responsibilities, my I scaled my work back slightly. I still worked a reasonable amount but did more work over the phone and the internet and less in person and made fewer trips to venues. The Respondent did all the in-person deals and he (re)became the face of the company.
16. The company finances took a hit due to the Covid-19 pandemic, as people were not travelling domestically (in France) or internationally (to France). However, the antique part of the business did improve during this time as people were keen to buy and sell, as they had cash they were not spending on holidays.
17. About six months ago, I found out that the Respondent was spending lots of money on partying with girls, alcohol, gifts to other people and cocaine. He had been hiding his drug use from me. He was making large cash withdrawals to hide what he was spending money on.
18. I could live with the drug use. To his credit, the Respondent never kept illegal substances in the house and never used cocaine while he was looking after the children. I want to make it clear that I am not saying he is an unfit father or that he should not be allowed around children.
19. What I could not live with was the serial cheating. A little but after the birth of Hortense, I found out that he had been having multiple affairs, and that he had a predilection to sleep with any and all women who showed him any modicum of interest. He had sex with some of these women in our home. That was unforgivable.
20. A few days after I found out, I confronted him in our home. He tried to blame me for his cocaine use and the cheating. He said incredibly hurtful things, such as I had gotten old, that I was no longer attractive and that I favoured the children over him. I then said some not nice things in response. The Respondent got angry and stormed off, accidentally running into one of the antiques we had on the wall. Unfortunately, it caused the Respondent to receive a cut on his face from above his left eyebrow down to his cheek.

21. The Respondent sought medical attention, but it turned out that he had damaged his left cornea, resulting in poor eyesight in that eye. He claims that his facial scar means that he is getting less work, but I do not believe it. He is merely using it as an excuse to artificially reduce his income to lessen any potential maintenance payment to me. He also claims that the company has no value, but I know it is considered one of the best antique and tour companies in Western Europe, so the goodwill of the company is worth a lot at the very least.
22. I left the Respondent and applied for a divorce five months ago. It was decided that I would continue to be the main child-carer. I moved out of the Family Home as I did not want to be in a property that the Respondent had committed adultery in. I do not earn much and am currently unable to afford the rent on my rental accommodation.

### **Maintenance pending suit**

23. I have provided as much financial information as possible. I have not been able to source all the primary documentation, but have provided a schedule of assets and liabilities, as well as a schedule of income needs.
24. I currently am self-employed as a history and languages tutor. I earn about £2,000.00 per month on average. My income fluctuates, depending on the time of year. During school holidays, I basically make no money. Nearer exam periods, I make more. I am able to tutor online and in-person. I can either go to people's houses or have them come to our study at the family home. However, I have to pay for childcare during these tutoring sessions. Also, with the rise of apps like Duolingo, there is little room for me to expand the language part of my tutoring business.
25. When I go to other people's houses to tutor, I also have to spend money on transport costs as I do not know how to drive. I also have advertising expenses; I need to spend money for online advertisements to drum up business. I cannot rely solely on word of mouth.
26. When I go out, I always take Ubers or taxis when possible. I do not like taking public transport and avoid it as much as possible. This is because I was punched in the face

by a drunk student on the Piccadilly Line when I was doing my undergraduate degree at King's College London.

27. My parents want to help out, but they do not have any real money-making assets or cash. I do not think it is reasonable to ask me to ask my parents to sell our heritage to pay for my interim needs while the Respondent has lots of money. I have been able to borrow £20,000.00 to pay for some of my legal fees, but that well is very much now tapped.
28. The Respondent was earning around £750,000.00 per annum previously, paid via the company. I know, because I was the manager. While I accept that he is no longer making top Pound or Euro, I do not see why he cannot maximise his income potential and earn around £500,000.00. I do not think his injuries are as bad as he claims and it is his purely his own vanity that is stopping him from doing more face-to-face business.
29. Due to my fluctuating income and my personal & child expenses, I have made an application for maintenance pending suit to enable me to transition from the lifestyle I used to have and put food on the table for my children. I simply cannot get by on what I have now unless I were to eat nothing but rice and lived in a shelter. Times are tough and the cost of living has gone up. I attach a schedule of my income needs.
30. While the Respondent does pay child maintenance, it is not enough. It is also not enough for my personal expenses. While I do not expect to go back to 100% of our lifestyle, I do not think it is fair that I have to make incredible sacrifices while the Respondent have less of a dip in his standard of living. I have had to borrow money from my parents to fund my legal fees and have also put significant expenditure on credit cards.
31. I am currently living in rented accommodation in Chelsea. I do not see why I should move from the part of London that I enjoy and am used to. I know that there is a chance that the family home might need to be sold at the end of proceedings.

32. I do not think that the Applicant is maximising the company's (and therefore his) earning capacity. All he does is make excuses when the reality is that it is only his own vanity that is holding him back. He only has relative damage in one eye and the effects of his scar on his business is all in his head.

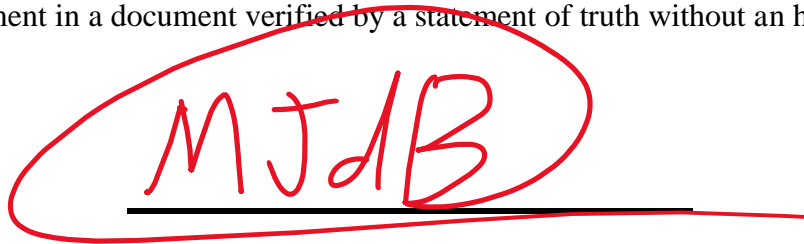
**Order sought**

33. I want an order that the Respondent pays £12,000.00 per month in maintenance pending suit. I made a formal open offer to the Respondent asking him to pay this before I made this application.

34. I also seek the costs of making this application. If the Respondent had accepted my reasonable offer, then all of these costs could have been avoided.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:



One month ago

Dated:

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**BETWEEN:**

**MATHILDE JOSÉPHINE de BEAUHARNAIS**

*Applicant*

**-v-**

**LOUIS PHILIPPE ORLÉANS**

*Respondent*

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**SCHEDULE OF ASSETS AND LIABILITIES OF  
MATHILDE JOSÉPHINE de BEAUHARNAIS**

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<b>Assets</b>	<b>Value (£)</b>
Half of Joint Santander Current Account	340.00
Half of Joint Santander ISA Account	10,000.00
Half of Joint Lloyds Savings Account	15,000.00
HSBC Current Account	429.00
HSBC Savings Account	2,300.00
Pensions	2,000.00
BMW 2022	90,000.00
Stocks	5,400.00
Jewellery collection	150,000.00
Household technology (phone, Macbook, iPad etc.)	2,000.00
<b>Total assets</b>	<b>277,469.00</b>
<b>Liabilities</b>	
Loan from parents for legal fees	30,000.00
Half of Joint Barclay Credit Card	20,000.00
Lloyds Credit Card	35,812.00
HP of BWM	80,000.00
Unpaid legal fees	25,000.00
<b>Total Debt</b>	<b>190,812.00</b>
<b>Total</b>	<b>86,957.00</b>



**BETWEEN:**

**MATHILDE JOSÉPHINE de BEAUHARNAIS**

*Applicant*

**-v-**

**LOUIS PHILIPPE ORLÉANS**

*Respondent*

---

**SCHEDULE OF INCOME NEEDS OF  
MATHILDE JOSÉPHINE de BEAUHARNAIS**

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<b>Need</b>	<b>Expenditure per month (£)</b>
Rent	6,000.00
Contents insurance	25.00
Life Insurance	25.00
Child clothing, nappies etc.	1,000.00
Gym	100.00
Socialising	1,000.00
Work costs (incl. travel, advertising, social media etc.)	1,000.00
Presents (Christmas/Birthdays)	500.00
Private Health Insurance	150.00
Clothes	1,500.00
Make up, beauty products and perfume	750.00
Dry cleaning/shoe repair	500.00
Food	1,000.00
Holidays	500.00
Childcare	1,000.00
Netflix, Disney Plus, Amazon Prime, HBO Max & Apple +	90.00
Mobile	60.00
TV Licence	30.00
Household bills	600.00
<b>Total</b>	<b>15,830.00</b>

**BETWEEN:**

**MATHILDE JOSÉPHINE de BEAUHARNAIS**

*Applicant*

**-v-**

**LOUIS PHILIPPE ORLÉANS**

*Respondent*

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**WITNESS STATEMENT OF LOUIS  
PHILIPPE ORLÉANS**

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I, Louis Philippe Orléans, of Flat 73 Naples Tower, Sicily Avenue, London E14 9KV, am the Respondent in the application. The facts in this statement come from my personal knowledge unless otherwise stated.

1. I want to make it clear that I do not oppose the application that is before the court per se. I only oppose the amount the Applicant seeks. I feel that it is far in excess of what her needs are at this interim stage.

**Background**

2. I understand that this application is an interim matter but I feel it would assist the Court to have some background information.
3. I am 44 years old and currently work as a director for my company, Ancien Antiques & Tours Ltd. I own 100% of the shares. The company sells package tours to various historical sites and museums in France. We also buy and sell antiques. It is not really 'worth' anything. Its only worth maybe comes from the inventory of antiques, but there are also loans and liabilities. I earn income by drawing dividends from the profits of the company. Therefore, my income fluctuates depending on the performance of the company.

4. I come from a reasonably well-off family. My family is related to the last Bourbon Kings of France via an illegitimate son. My family managed to keep some of our wealth by playing both sides during the various revolutions, so we would always come out on top. This includes a number of properties, antiques and a chateau in France. However, the assets are all either owned by my parents, other relatives, or in a family trust.
5. I consider myself an intelligent man of culture. I have studied in England, the United States of America, Germany, France and Australia. I have studied languages, history and also have a business degree. I am quite the renaissance man.
6. I met the Applicant when I was in my late thirties. I was visiting King's College London's Department for War Studies. She was incredibly fascinating and had a similar background to me. She is also French, and we had many cultural similarities.
7. We got quite serious quite quickly; a whirlwind romance, as it were. The Applicant learnt more about my company. She thought she could do a much better job and offered to manage it. I was deeply in love and thought that, if we were going to share a livelihood, we should share a life together. I therefore proposed marriage at the same time. She accepted and we were quickly married. I was so happy, at the time.
8. I accept that the company made more money due to the skills of the Applicant. However, I disagree over the extent to which she contributed to the company's growth. I also 'wined and dined' clients and made many deals. Much of the growth was attributed to general advertising and word of mouth from previous clients.
9. The Applicant refused to work anywhere else. She kept calling the company 'our company'. She demanded that we open a joint account and that the money I earned from the company be deposited in it.
10. The Applicant became very controlling over money. Every month, when the bank statement would come in, she would corner me at home and go through all of the expenditure via my debit and credit cards, line by line, purchase by purchase. She would get annoyed at any expenditure she deemed unnecessary, whether big or small.

She told me to stop buying newspapers because there were free smartphone news apps available. She would get annoyed when she saw a coffee shop purchase, saying that we had a Nespresso machine at home and that I could always just have instant coffee at the office.

11. This became intolerable. I started making more and more cash withdrawals from ATMs with my debit card. This way, the Applicant was not able to know exactly what I was spending my money on, and she could not specifically criticise me. The vast majority of the cash withdrawals went on normal living expenses, such as lunches, dinners, drinks and clothes.
12. I wanted children, but was happy to wait until the Applicant was ready. I had seen men of my age marry young women and have children early, with disastrous consequences. The women still wanted to party and enjoy their youth (which is understandable), but now felt trapped because of the baby they had. I did not want that to happen to my marriage.
13. The Applicant became pregnant with Eugène almost four years ago. It was not a planned pregnancy; our birth control failed. I was of course thrilled by this happy accident.
14. However, the Applicant's behaviour got worse after Eugène was born. She got even more controlling and she would blame me for not spending enough time with her even though we agreed that she would be the main child carer and I would be the main breadwinner. She said that she wanted to try for another child, and I hoped that it would solve our issues and she would be more accepting of our jointly chosen division of functions in the marriage. Sadly, our marriage did not improve despite the birth of our beautiful daughter, Hortense.
15. I admit that I took cocaine on a few occasions during the marriage. It was a way of escaping from how the Applicant made me feel. It happened on a few nights out while partying with friends. The Applicant is trying to make out that I am some drug addict who spends large amounts of cash on drugs. That is not true. I have explained the many cash withdrawals. Only a tiny proportion of it was even used to purchase cocaine.

16. I also accept that I was unfaithful during the marriage. However, I do not see how it is relevant at all to this specific application and feel that the Applicant has only brought it up to make me look bad in the eyes of the court.
17. We enjoyed a good lifestyle during the marriage, but the Applicant spent excessively. While she monitored my spending, she was not careful at all with her expenditure. She would buy fancy jewellery, including diamonds, sapphires and rubies, and demanded that she visited every company tour location in person, She would only accept travelling via business class, whether it was short or long haul. I do not think she has valued her jewellery properly and that they are actually worth a lot more. She has been living outside of our means for years; I do not see why she cannot sell some of the jewellery and live off that for a time. Her family are also enormously wealthy. They own many expensive antiques and jewellery. The Applicant either has them now, or will get them one day.
18. We bought an expensive flat at 11 Navarre Mansions, Brittany Avenue, London SW3 9QV. It is registered in my sole name, but it was used as our family home. It is in Chelsea, a very desirable part of London. I wanted to live in a similarly nice, but not as expensive, part of London like parts of Hammersmith or Kensington, but the Applicant demanded that we live in Chelsea. She also demanded that we purchased a four-bedroom property, despite only planning on having two children. She arranged the mortgage, but we were only able to purchase the property as I took out a loan from the company. I still have that loan to pay back; the Applicant has never put money towards debts.
19. One evening about six months ago, I came home from working to provide for my family and the Applicant confronted me about my affairs and drug use. If anything, it was actually a relief for my infidelity to be out in the open. I thought she was originally going to accept it, but she became enraged. She kept demanding to know why I had cheated on her. In my anger, I said some unkind things about her.
20. This made the Applicant absolutely furious. She then launched into a tirade of verbal abuse. She insulted every part of my character. It was so graphic, I will not sully the

integrity of the court by repeating it. When she did not get a rise out of me, she insulted my family. She said that my family was filled with 'traitorous bastards' and that they had no honour. She said that she regretted marrying me and that she and her family were better than me and my family.

21. This made me lose my temper. I then stormed off, to get away from the Applicant. In my anger, I did not walk straight and banged into the corner of a wall. I hit my head on a battle-damaged cuirass from the Napoleonic era and sustained a bad injury. I am now half blind in my left eye; it is just incredibly blurry. I am told by the optometrist that I do not have any realistic chance of my eye returning to normal; eyesight in my left eye appears permanently damaged.

22. I also suffered a deep and unsightly scar on my face. It runs from just above the middle-left of my left eyebrow to just above the top of my cheek. While this has not left me with any permanent 'disability', I am still incredibly self-conscious about it.

### **Maintenance Pending Suit**

23. As this application has been made before full financial disclosure has been made, please see attached a rough schedule of my assets. I have also included a schedule of income needs.

24. It is hard to accurately portray what my income actually is. My best estimate is that I my current annual income is around £150,000.00 per annum. Covid and Brexit have drastically affected the profit of the company. I previously received a further £50,000.00 per year from a family trust. I am told by the trustees that times have been tough recently in their management portfolio, and therefore none of the beneficiaries are going to get any payments from the trust for this year or in the few years to come.

25. Since the birth of Eugène, and certainly since Hortense, I have been the one running and managing the company. The Applicant has done basically no work for the company. That is not a criticism, we decided that she would be the child carer and I would be the breadwinner.

26. I cannot earn as much as I used to. I find it hard to close deals and get new clients, and I struggle to buy and sell antiques. This is clearly because of my injury. No one wants

to buy tours or antiques from a man who looks like a Bond Villain or Anakin Skywalker.

27. I believe that the Applicant does not need as much money as she claims. I am already paying child maintenance of £400.00 per the Child Maintenance Service calculation. While I accept that the Applicant is the main child carer and therefore cannot work as much as I can, I believe that she spends frivolously and extravagantly. She wants the same overextravagant lifestyle that she was running up debts for during our marriage and before Covid, Brexit and my injury.
28. I have seen photos of the Applicant on Facebook and Instagram on what appears to be multiple nights out a week, and at concerts and bars. She is clearly living beyond her means. She also takes a lot of Ubers and private cars. She wants a luxury party lifestyle and I do not think I should have to fund it.
29. The Applicant would also be spending significant amount on childcare for her nights out. I do want to make it clear that I am not saying she should not be allowed to enjoy her own private life. I just want to point out that the Applicant is going out to expensive places more than is reasonable and incurring unreasonable childcare expenses in the process. It is all about living within one's reasonable means.
30. The Applicant is not maximising her income. She says that she is just a part-time tutor. She is educated enough to work as a teacher, or could work in a similar job as to the one she had when she was working for the company.
31. I received the open offer of the Applicant. She wanted £12,000.00 per month. I think that is a ridiculously high amount. She wants the lifestyle we had before my accident, and she wants me to fund it for her. I made an open counteroffer of £3,000.00 before the Applicant made this application. I think it is fair and reasonable in the circumstances.

### **Order sought**

32. I want an order that I pay the Applicant £3,000.00 per month in maintenance pending suit.

33. I also seek the costs of defending this application. If the Applicant had accepted my reasonable counteroffer, then all of this could have been avoided.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

A handwritten signature in blue ink, appearing to read 'L O'Leary', is written over a solid black horizontal line.

Two weeks ago

Dated:

A solid black horizontal line, likely representing a date, is positioned below the text 'Dated:'.



BETWEEN:

MATHILDE JOSÉPHINE de BEAUHARNAIS

*Applicant*

-v-

LOUIS PHILIPPE ORLÉANS

*Respondent*

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**SCHEDULE OF ASSETS AND LIABILITIES OF  
LOUIS PHILIPPE ORLÉANS**

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<b>Assets</b>	<b>Value (£)</b>
11 Navarre Mansions, Brittany Avenue, London SW3 9QV	8,000,000.00
Half of Joint Santander Current Account	340.00
Half of Joint Santander ISA Account	10,000.00
Half of Joint Lloyds Savings Account	15,000.00
Barclays current account	880.00
Barclays savings account	20,000.00
Ancien Antiques & Tours Ltd shares (nominal value)	100.00
Pension	26,050.00
BMW	10,000.00
Tech (computers, tablets etc.)	3,000.00
<b>Total assets</b>	<b>8,085,370.00</b>
<b>Liabilities</b>	
11 Navarre Mansions Mortgage	6,000,000.00
Loan from my company	1,000,00.00
Half of Joint Barclay Credit Card	20,000.00
American Express Credit Card	20,000.00
Lawyer's Fees	40,000.00
<b>Total Debt</b>	<b>7,080,000.00</b>
<b>Total</b>	<b>1,005,370.00</b>

**BETWEEN:**

**MATHILDE JOSÉPHINE de BEAUHARNAIS**

*Applicant*

**-v-**

**LOUIS PHILIPPE ORLÉANS**

*Respondent*

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**SCHEDULE OF INCOME NEEDS OF LOUIS  
PHILIPPE ORLÉANS**

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<b>Need</b>	<b>Expenditure per month (£)</b>
Mortgage	4,000.00
Council tax	200,00
House maintenance	250.00
Life Insurance	50.00
Gym	100.00
Socialising/'wine and dine' for clients	3,500.00
Cosmetics/Cologne	1.000.00
Presents (Christmas/Birthdays)	500.00
Private Health Insurance	100.00
Clothes	1,500.00
Dry cleaning/Shoe repair	500.00
Food	1,500.00
Child Maintenance	600.00
Holidays	500.00
Car Servicing/Maintenance	50.00
Netflix/Disney Plus	20.00
Mobile	100.00
TV Licence	16.00
Home Insurance	150.00
<b>Total</b>	<b>13,436.00</b>



# Matrimonial Causes Act 1973

## 1973 CHAPTER 18

### PART II

#### FINANCIAL RELIEF FOR PARTIES TO MARRIAGE AND CHILDREN OF FAMILY

*Ancillary relief in connection with divorce proceedings, etc.*

#### 22 Maintenance pending suit.

[<sup>F1</sup>(1) On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.]

[<sup>F2</sup>(2) An order under this section may not require a party to a marriage to pay to the other party any amount in respect of legal services for the purposes of the proceedings.

(3) In subsection (2) “legal services” has the same meaning as in section 22ZA.]

#### Textual Amendments

**F1** S. 22 renumbered as s. 22(1) (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 49\(1\)\(a\)](#), 151(1); S.I. 2013/773, art. 2

**F2** S. 22(2)(3) inserted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 49\(1\)\(b\)](#), 151(1); S.I. 2013/773, art. 2

**Changes to legislation:**

Matrimonial Causes Act 1973, Section 22 is up to date with all changes known to be in force on or before 15 August 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- s. 22 repealed by [1996 c. 27 Sch. 10](#) (This amendment not applied to [legislation.gov.uk](#). Entries in Sch. 10 repealed (13.5.2014) without ever being by [2014 c. 6, s. 18\(2\)\(j\)](#))
- s. 22(1) words substituted by [2020 c. 11 Sch. para. 19\(a\)](#)
- s. 22(1) words substituted by [2020 c. 11 Sch. para. 19\(b\)](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 10(2)-(3A) substituted for s. 10(2)(3) by [2020 c. 11 Sch. para. 10\(c\)](#)
- s. 12B inserted by [2020 c. 11 Sch. para. 12](#)
- s. 16(1) s. 16 renumbered as s. 16(1) by [2020 c. 11 Sch. para. 15\(3\)](#)
- s. 16(1) words substituted by [2020 c. 11 Sch. para. 15\(4\)\(a\)](#)
- s. 16(1) words substituted by [2020 c. 11 Sch. para. 15\(4\)\(b\)](#)
- s. 16(1) words substituted by [2020 c. 11 Sch. para. 15\(4\)\(c\)](#)
- s. 16(2) inserted by [2020 c. 11 Sch. para. 15\(5\)](#)
- s. 17(1)-(1B) substituted for s. 17(1) by [2020 c. 11 s. 2\(2\)](#)
- s. 21(3) inserted by [2020 c. 11 Sch. para. 18\(b\)](#)
- s. 23(7) inserted by [2020 c. 11 Sch. para. 20\(5\)](#)
- s. 24(4) inserted by [2020 c. 11 Sch. para. 21\(4\)](#)
- s. 24A(7) inserted by [2020 c. 11 Sch. para. 22\(3\)](#)
- s. 24B(6) inserted by [2020 c. 11 Sch. para. 23\(4\)](#)
- s. 24E(11) inserted by [2020 c. 11 Sch. para. 24\(4\)](#)
- s. 25A(4) inserted by [2020 c. 11 Sch. para. 25\(5\)](#)
- s. 25B(2)(c) added by [1996 c. 27 s. 16\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 16 repealed (13.5.2014) without ever being in force by [2014 c. 6, s. 18\(1\)](#))
- s. 25B(8)(9) added by [1996 c. 27 s. 16\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 16 repealed (13.5.2014) without ever being in force by [2014 c. 6, s. 18\(1\)](#))
- s. 27(2)-(2B) substituted for s. 27(2) by S.I. 2019/519, Sch. para 6(2) (as substituted) by [S.I. 2019/1338 reg. 3\(3\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 28(4) inserted by [2020 c. 11 Sch. para. 27\(6\)](#)
- s. 31(16) inserted by [2020 c. 11 Sch. para. 29\(8\)](#)
- s. 52A inserted by [2020 c. 11 Sch. para. 32](#)



Neutral Citation Number: [2022] EWFC 6

Case No: ZZ20D65691

**IN THE FAMILY COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21 February 2022

**Before:**

**Mr Justice Mostyn**

-----  
**Between:**

**ALVINA COLLARDEAU-FUCHS**

**Applicant**

**- and -**

**MICHAEL FUCHS**

**Respondent**

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**Nicholas Cusworth QC and Nicholas Bennett (instructed by Payne Hicks Beach)  
for the applicant for maintenance pending suit  
Tim Bishop QC and Richard Sear (instructed by Stewarts Law) for the respondent for  
maintenance pending suit**

Hearing date: 9 February 2022  
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**Approved Judgment**

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**MR JUSTICE MOSTYN**

**This matter was heard in private. The judge gives leave for this version of the judgment to be published. In no report may the children of the parties be named. Breach of this prohibition will amount to a contempt of court.**  
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**Mr Justice Mostyn:**

1. I have before me the application by Alvina Collardeau-Fuchs for maintenance pending suit made on 13 September 2021.
2. I will refer to the applicant as “the wife” and to the respondent as “the husband”.

*The background facts*

3. The husband is 62 and the wife is 46. The husband holds German and US citizenship (having moved to the US from Germany in the 1990s). He has enjoyed an extremely successful career as a property entrepreneur. The wife holds French citizenship. She was a journalist but has not worked since the early days of the relationship.
4. The parties began cohabiting in 2008 (according to the wife) or in 2010 (according to the husband). Nothing turns on this disagreement for the purposes of this application. They were married on 14 April 2012. They separated in March 2020. The wife’s divorce petition was issued on 22 December 2020. Decree Nisi was granted on 24 August 2021 but has not yet been made Absolute.
5. Although this litigation is at a relatively early stage, the parties have nonetheless incurred considerable costs. The Forms H filed and served in advance of this hearing show that the husband has incurred costs of £450,189 and the wife has incurred costs of £467,793, a total of £917,982. They estimate spending a combined total of a further £288,700 to the conclusion of the Private FDR Appointment on 28 March 2022.
6. The wife continues to live in the family home in West London (“the West London property”). It is a substantial property. It has six floors, five bedrooms, an indoor underground swimming pool and access to both a private and communal garden. In total, its area is over 700 square metres. The parties historically employed a retinue of staff: two rota chefs, a house manager, two or three housekeepers, and a laundress in addition to contractors (gardeners, pool maintainers, builders, plumbers, electricians, and handymen). The husband asserts that the property is worth £30.2 million and is subject to a mortgage of £21.5 million. When in the UK, the husband lives in a relatively modest apartment owned by the parties which is located near to the West London property.
7. There are two children of the family, A who is 6 and B who is 3. They both live with the wife. There are ongoing private law children proceedings in respect of the arrangements for the two children. The detail of those proceedings is not before me. I note, however, that the litigation is hotly contested; I am told substantial sums have been spent on the legal fees in those proceedings.
8. Prior to their marriage, the parties executed a pre-nuptial agreement in New York on 2 March 2012 (“the PNA”). Both parties made disclosure of their financial circumstances prior to the execution of the PNA. The husband’s net worth was said to be \$1.064 billion and the wife’s was said to be \$4.471 million. Both parties had advice from, and were represented by, distinguished lawyers.

No suggestion has been made that there was any deficiency or pressure within the process leading up to the execution of the PNA.

9. Following their marriage, the parties executed a “Modification Agreement” in New York on 23 March 2014 (“the MA” and, collectively with the PNA, “the Agreements”). The MA increased the financial provision that was made to the wife pursuant to the PNA. As with the PNA, there has been no suggestion that the process leading to the execution of the MA was in any way flawed.
10. The husband seeks to hold the wife to the terms of the Agreements. In simple terms, he says that the effect of the Agreements, if implemented, would be to provide the wife with net capital of £23.5 million plus 18 years of rent-free accommodation at the West London property. The husband says that on any objective view this provision meets the wife’s needs. Notwithstanding the terms of the Agreements, the husband accepts that he will need to provide interim financial support to the wife pending the determination of whether or not the Agreements should be upheld.
11. It is common ground that during the marriage the parties enjoyed an extremely high standard of living. They had the use of properties around the world (including a property located in the heart of the Cap D’Antibes, to which I will return later in this judgment). The parties employed a significant number of staff at the West London property, as I have described above, and in their other properties. It is agreed that the parties would spend a great deal of time travelling, typically by private plane or first-class commercial flights, and staying in high-end hotels or villas at significant cost.
12. Following separation in March 2020, the wife complains that the husband, in effect, almost immediately reduced the provision he was making for her. She claims that, prior to separation, the husband had transferred £10,000 per month to her HSBC account and €20,000 to her Société Générale account (if not more in some months). He stopped making those payments in April 2020 and, upon being invited to reinstate the transfers in June 2020, declined to do so. The wife says that in December 2020 the husband limited expenditure on her American Express card to \$20,000 per month (although this was later raised to \$25,000 per month). The wife makes various other complaints about the husband’s failure to make payment of other outgoings on time (including payment of staff salaries).
13. The husband’s response to the wife’s complaint is that she had been spending at a profligate level and that the time had come to impose some financial discipline. He has said, for example, that the wife spent \$273,000 in October 2020 and \$185,000 in November 2020 on her American Express card and that that is why he imposed the limit on it. He also denies the allegation made that he has failed to make the payment of various outgoings on time.

#### *The procedural history*

14. On 30 March 2021, the husband made an application for financial remedies in Form A (“the substantive application”) and an application for the wife to show cause why an order should not be made in the terms of the Agreements (“the

show-cause application”). The husband also sought an order that the automatic timetable for the exchange of Forms E and other conventional directions be suspended.

15. Those applications were issued on 14 April 2021. I gave directions on paper on 19 April 2021 suspending the substantive application pending determination of the show-cause application; listing the show-cause application for directions before me; and directing the husband to serve a short schedule of his assets to which there was to be appended (i) in tabular form a schedule of the approximate global expenditure of the family for the calendar years 2019 and 2020; and (ii) an approximate calculation of the sum which the wife would receive pursuant to the Agreements.
16. The husband duly complied with my directions as to the information he was to provide. He filed and served the following documents (all dated 25 June 2021):
- i) A schedule of assets showing properties with a value of £28,128,293, bank accounts holding £25,220,234, investments of £72,311,909, insurance policies of £605,262, monies owed to him of £2,545,599, chattels of £27,763,662, pensions of £30,214, business interests of £1,695,915,726, and liabilities of £606,988,804. The husband’s total net assets were therefore said to be £1,245,532,056.
- ii) A schedule of living costs for the calendar years 2019 and 2020 showing the following:

<b>Item</b>	<b>2019</b>	<b>2020</b>
Global annual living costs incurred by the parties	£900,697	£1,236,390
Running costs of all properties used as a home by the family	£1,090,772	£1,169,803
Costs of all staff employed by the family	£1,196,822	£1,113,994
Costs of running the parties' household other than in relation to properties	£477,161	£497,672
Costs of travel and holidays	£853,288	£1,228,669
All discretionary expenditure of the parties not otherwise addressed above	£194,363	£680,689
Other expenditure exclusively incurred in relation to or for the benefit of the children of the family	£62,661	£38,369
<b>Total per annum</b>	<b>£4,775,764</b>	<b>£5,965,586</b>
<b>Total per month</b>	<b>£397,980</b>	<b>£497,132</b>



- iii) A schedule setting out the approximate calculation of the sum which the wife would receive pursuant to the Agreements. That sum totalled £23,500,267.
17. The wife made the maintenance pending suit application on 13 September 2021. In the body of the application notice, she explained that she sought the sum of £350,000 per month (which included an element of provision for the needs of the children of the family), on the basis that she would take over responsibility for paying overheads of the various homes including staff salaries. She filed and served a statement in support of the maintenance pending suit application also dated 13 September 2021.
18. The husband made an open offer for the overall resolution of the proceedings on 22 September 2021. In terms, it provides for the implementation of the Agreements which would have the net effect as explained above. The husband proposed that there be no order as to costs provided the open offer was accepted within 21 days (which has now long since passed) and thereafter the lump sum payable by the husband was to be reduced by £1 for every £1 spent by him on costs. In circumstances where the husband has thus far incurred costs of £450,189 and anticipates incurring a further £151,500 to the conclusion of the Private FDR Appointment, any such reduction in the lump sum to be paid by the husband to the wife will likely be substantial.
19. I conducted a case management hearing on 27 September 2021 at which:
- i) I gave further directions as to the evidence to be filed in both the show-cause application and the maintenance pending suit application. I granted express permission to the wife to make an application on short notice for an earlier hearing of the maintenance pending suit application in the event she considered she was entitled to emergency relief in advance of the substantive hearing of the maintenance pending suit application that I listed to be heard on the first open date after 1 November 2021.
  - ii) I granted the parties permission to instruct a single joint expert in the form of a lawyer suitably qualified in the State of New York to prepare a report on whether the Agreements would be upheld in the court in New York (including in relation to any interim maintenance application). No such report has been obtained by the parties.
  - iii) I dispensed with the requirement under FPR 9.15(4) that the parties attend an in-court FDR Appointment on the basis that the parties are to attend a Private FDR Appointment before Mr Dyer QC. I understand that that Private FDR Appointment has now been fixed to take place before Mr Dyer QC on 28 March 2022.
  - iv) Finally, I listed the show-cause application for a Final Hearing with a time estimate of three days. It is fixed to commence on 10 October 2022.
20. The wife applied for an earlier hearing of the maintenance pending suit application on 25 October 2021 on the basis that the husband had failed to make

payment of outstanding invoices and holiday costs notwithstanding an earlier assurance he would do so. In support of that application, she filed and served her second witness statement dated 23 October 2021. I understand that the wife was ultimately offered 19 January 2022 as the date for the earlier hearing of the maintenance pending suit application, but that she turned this down.

21. The husband filed his first witness statement in response to the maintenance pending suit application on 5 November 2021. He proposed that he should pay the wife:
  - i) A maximum of \$25,000 per month being approximately £18,500 per month for her discretionary expenditure.
  - ii) Her reasonable holiday costs. At the time of this hearing, the husband proposed the fixed sum of £100,000 for the next eight months.
  - iii) £6,250 per month for child maintenance on the basis that he would continue to meet the school/nursery fees.
22. The husband also proposed that he would continue to meet all of the running costs (including staff costs) for the West London property and the other properties directly.
23. This remained the husband's open position at this hearing.
24. The wife filed her third witness statement in the show-cause proceedings on 7 December 2021. Her core objection to an order being made in the terms of the Agreements is that, in real terms, it would not permit her to remain living at the West London property until the youngest child of the family attains the age of 21 as she would be unable to fund the cost of living in a property of that scale. As the design of the Agreements was that she be able to do so, she says that it would be unfair for an order to be made giving strict effect to the Agreements.
25. The wife exhibited a questionnaire to her third witness statement. No formal application for an order that the husband answer the same has been made by the wife. As I said during the hearing, I consider that the question of whether the husband should be required to answer some or all of the wife's questionnaire should be adjourned for consideration at the directions hearing that will be listed to take place in the event the Private FDR Appointment does not produce an overall agreement. In my judgment, the husband has provided sufficient information about his financial circumstances for an effective Private FDR Appointment to take place without the need for answers to the wife's questionnaire.
26. The wife made a revised open offer for the resolution of the maintenance pending suit application on 28 January 2022. In broad terms, she proposed that the husband pay:
  - i) £70,000 per month for her discretionary expenditure.
  - ii) £60,000 per month for her holiday costs.

- iii) £2,935 per month to enable her to meet the costs of the children's school/nursery fees.
  - iv) Sums sufficient to meet the costs of the staff at the West London property (on the basis that the husband takes all necessary steps to transfer the contractual employment of the same staff to her).
  - v) Sums sufficient to pay any invoice as to running costs, utilities, tax, insurance, repair or maintenance or legal costs relating to any of the properties considered "Joint Property" for the purpose of the PNA.
27. The wife also proposed that the husband should give various undertakings relating to the other properties and that the husband continue to meet her legal costs.

*The matters no longer in issue*

28. The wife has complained that the husband has been failing promptly to discharge various costs that he has agreed to meet. That is why in the maintenance pending suit application she has sought to, in effect, take over the responsibility for meeting various outgoings on the basis that the husband continues to pay for the same.
29. The husband denies the allegations made and says that any transfer of the responsibility for the management of meeting those various costs is unnecessarily complicated.
30. This matter is, however, now no longer in issue, as I shall explain.
31. In advance of this hearing the husband's lawyers circulated a draft order which contained recitals recording the parties' agreement that until the conclusion of the show-cause application:
- i) the husband would continue to meet all of the overheads (to include but not be limited to the running costs, utilities, insurance, repair or maintenance) and staff costs of the West London property directly as they fell due; and
  - ii) the husband would meet any additional or occasional invoice or bill received by either party (or their staff) relating to (i) the overheads or staff costs of the West London property; (ii) school or nursery fees and extras and any other expenses directly referable to the children; and (iii) the wife's legal fees within 14 days of the relevant invoice being uploaded to the portal (q.v.).
32. On 5 October 2021, the husband had proposed, and the wife had agreed, that a shared access folder ('the portal') should be set up. The intention was that the wife was to upload any relevant invoices to the portal. Upon the same being uploaded, the husband would pay the invoice and the same would be marked as having being paid on the portal.

33. The wife has complained that that regime has not worked well to date. She has provided numerous instances of what she says are failures of the husband to properly ensure invoices and other costs are paid promptly. The husband, both in his witness statement filed and served in advance of this hearing and through counsel, rejected those allegations. I was not invited to make any findings on these issues and nor would it be appropriate for me to so at this stage of the proceedings.
34. However, provided that the husband gave undertakings in the terms of the proposed recitals contained in the draft order then the wife, through counsel, indicated that she would be content to accept them and would no longer pursue her claim for the management of the costs of the West London property being transferred by the husband to her.
35. I am content, subject to para 37 below, to approve this agreement and to accept undertakings in those terms; indeed, had the wife not requested them of the husband, I would have required them of him.
36. I was informed at the outset of this hearing that the husband, having committed to meet the wife's legal fees, has not paid them since early December 2021. Some £363,732.39 remains outstanding. That figure reflects her outstanding costs in these proceedings, being £204,513, plus a figure referable to the private law children proceedings.
37. This is unacceptable. It is not reasonable for the husband, who has committed to pay the wife's legal fees and on any view has the means to do so without delay, to expect the wife's advisors to work without payment for any material period. Those outstanding fees, and any future fees, are to be paid immediately by the husband following uploading of an invoice to the portal, and not within 14 days (see para 31(ii) above).

#### *My decision*

38. As explained above, the wife's claim for maintenance pending suit is that, in addition to the payment by the husband of the overheads, he should pay her £130,000 per month (an annual rate of £1.56 million). The husband's proposal is that he should pay the equivalent of £31,000 per month (an annual rate of £372,000), together with the agreed overheads.
39. Those overheads are set out at paragraph 16(ii) above. They are enormous. The 2020 figure for the annual running costs for the running of the London properties, the villa in Antibes and the penthouse in Miami is £1,169,803. The figure for the cost of staff in those properties is £1,113,994, and the husband has calculated that a further sum of household costs of £497,672 is payable giving a total amount for these overheads of £2,781,469. When added to the wife's spending claim of £1.56 million it can be seen that she is asking the court to endorse a rate of interim expenditure of £4,341,469 per annum.
40. In *F v F (Ancillary Relief: Substantial Assets)* [1996] 2 F.C.R. 397 Thorpe J memorably stated in a case where the husband was (by the standards of 1996) vastly rich:

“The fact is that the Matrimonial Causes Act 1973 is a statute designed to provide statutory criteria sufficiently flexible to meet the circumstances of every conceivable case. The reality is that the husband and wife in this case belong to a tiny percentage of the world population who have control and management and entitlement to huge sums of money. The husband in his substantive affidavit in the proceedings has said that for their purposes he is willing that the court should treat him as having now and in the foreseeable future capital assets of not less than £150m. The wife says, although it is in issue, that in marriage he told her that their annual expenditure amounted to £4m.

Thus, in determining the wife's reasonable needs on an interim basis it is important as a matter of principle that the court should endeavour to determine reasonableness according to the standards of the ultra rich and to avoid the risk of confining them by the application of scales that would seem generous to ordinary people. Thus I conclude that it would be wrong in principle to determine the application on some broad conclusion that if the wife cannot manage at the rate of a quarter of a million a year, she ought to be able to. I think that it is necessary to establish a yardstick that more nearly reflects the standard of living which has been the norm for the wife ever since marriage and for the husband for considerably longer.”

41. It may well be that Thorpe J, when warning against the application of middle-class, middle-income values to such a case, was consciously or subconsciously recalling the legendary, but almost certainly confected, remark by F. Scott Fitzgerald to Ernest Hemingway that “the rich are different from you and me” (to which Hemingway allegedly replied “Yes, they have more money.”)
42. The principles to be applied on an application for maintenance pending suit were summarised by me in *TL v ML and Others (Ancillary Relief: Claim against Assets of Extended Family)* [2006] 1 FLR 1263 at [124] as follows:

“From these cases I derive the following principles:

- (i) The sole criterion to be applied in determining the application is 'reasonableness' (s.22 of the Matrimonial Causes Act 1973), which, to my mind, is synonymous with 'fairness'.
- (ii) A very important factor in determining fairness is the marital standard of living (*F v F*). This is not to say that the exercise is merely to replicate that standard (*M v M*).
- (iii) In every maintenance pending suit application there should be a specific maintenance pending suit budget which excludes capital or long-term expenditure, more aptly to be considered on a final hearing (*F v F*). That budget should be examined critically in every case to exclude forensic exaggeration (*F v F*).

(iv) Where the affidavit or Form E disclosure by the payer is obviously deficient, the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources (*G v G*, *M v M*). In such a situation, the court should err in favour of the payee. ...”

43. In the recent decision of *Rattan v Kuwad* [2021] EWCA Civ 1 at [38] Moylan LJ accepted the “general effect” of these principles. But he added:

“...as with all guidance, they clearly have to be applied in the particular circumstances of the individual case. In the present case, for example, it was not necessary for the wife to provide a specific maintenance pending suit budget. Her income needs as set out in her Form E matched her needs for the purposes of her application for maintenance pending suit. Further, not all budgets require critical analysis. The extent to which a budget or other relevant factors require careful analysis will depend on the circumstances of the case. I return to this below but, in summary, the wife's budget in this case did not require any particular critical analysis; it was a straightforward list of income needs which were easily appraised.”

44. Moylan LJ went on at [39] to cite his decision in *BD v FD (Maintenance Pending Suit)* [2016] 1 FLR 390 at [34] where he in turn cited his decision in *G v G (Child Maintenance: Interim Costs Provision)* [2009] EWHC 2080 (Fam), [2010] 2 FLR 1264 at [52] in which he stated that an application for maintenance pending suit was:

“... a very broad jurisdiction but it is one which, as I have said, should be exercised when on a broad assessment the court's intervention is manifestly required. Otherwise parties will be encouraged to engage in what can often be an expensive exercise in the course of the substantive proceedings when the proper forum for the determination of those proceedings, if they cannot be resolved earlier by agreement or otherwise, is the final hearing when the evidence can be properly analysed and the parties' respective submissions can be more critically assessed.”

45. Earlier, at [34] and [35] Moylan LJ cited two cases which described the court's approach on a maintenance pending suit application as “rough and ready” viz:

- i) *F v F (Maintenance Pending Suit)* (1983) 4 FLR 382 where Balcombe J stated at 385:

"Clearly there must be an empirical approach, since on an application for maintenance pending suit it is quite impossible practically to go into all the kinds of detail that the court can go into when dealing with the full hearing of an application for financial relief, and in the ordinary sort of case the registrars who deal with these applications will have to take a broad view of

means on the one hand and income on the other and come to a rough and ready conclusion."

ii) *Moore v Moore* [2010] 1 FLR 1413, CA where Coleridge J stated at [22]:

"An order for maintenance pending suit is, as Bodey J observed, 'a creature different in form and substance from substantive orders made upon the making of decree nisi'. It is designed to deal with short-term cash flow problems, which arise during divorce proceedings. Its calculation is sometimes somewhat rough and ready, as financial information is frequently in short supply at the early stage of the proceedings."

46. In citing these cases I do not believe that Moylan LJ was saying that a claim for maintenance pending suit should not be subjected to the same degree of careful scrutiny as any other interlocutory claim. Sometimes, as here, enormous sums turn on the decision and it seems to me that just as much care should be taken in reaching it as would be applied to a claim, for example, for an injunction or interim damages. In this case, as mentioned above, the parties have in the financial proceedings already run up costs of over £900,000. For the maintenance pending suit application alone the wife has run up costs of £110,000; I assume that at least that amount has been incurred by the husband. The application was made on 13 September 2021; it is not as if it has come before the court in great haste. It therefore seems to me, given the sums at stake, that the court should try to paint its decision with a fine sable rather than a broad brush, where it has the ability to do so. Of course, in most cases the court will not have either the time or the material to conduct an exhaustive investigation and so the exercise will perforce be rough and ready. In this case, it will be seen that the court has not been equipped to conduct the sort of detailed investigation that the costs expended and the time available suggest should have been possible, and so, regrettably, there will be rough and ready aspects to my decision.
47. In this case, as explained above in paragraph 15, the husband was ordered by me on 19 April 2021 to give details for 2019 and 2020 of the annual costs of certain specified categories. The husband duly complied with my order, and the figures are set out at paragraph 16(ii) above. The data that he provided for 2020 formed the basis of the wife's claim as formulated in paragraph 34 of her witness statement dated 13 September 2021 and in her open proposal of 28 January 2022. That proposal seeks £70,000 per month for her personal discretionary spending. It was calculated as follows:

Global annual living costs	1,236,390	
Payments to dependants	<u>(554,775)</u>	
	681,615	
Less, say, 40% referable to H alone	<u>(272,646)</u>	
W's notional living costs	408,969	A
Discretionary expenditure	680,689	
Less 40% referable to H alone	<u>(272,276)</u>	
W's notional discretionary expenditure	408,413	B
Children	38,369	C
Total A + B + C	855,751	
per month	71,313	

48. In addition, the wife seeks £60,000 per month for holidays. This again was justified by reference to the 2020 data supplied by the husband. It was calculated as follows:

Travel and holidays	1,228,669
Less, say, 40% referable to H alone	<u>(491,468)</u>
	737,201
per month	61,433

49. Rounding down, the wife’s claim for these two items is therefore £70,000 + £60,000 = £130,000 per month.

50. Mr Bishop QC roundly condemns this approach as “completely flawed logic”. First, he says that the notes to the data provided by the husband show that the global annual living costs section is almost completely irrelevant to maintenance pending suit, being made up of insurance which the husband will pay directly, charity payments and furniture costs. He asserts that the only element which may have some maintenance pending suit relevance is entertainment.

51. Second, Mr Bishop says that it would have been fairer to have taken an average for 2019 and 2020 rather than 2020 alone.

52. Third, Mr Bishop says the 40% allocation of expenditure to the husband is illogical and wrong; it should be no lower than 50%.

53. Accordingly, Mr Bishop argues on behalf of the husband that the current allowance of \$25,000 per month, or £18,500, is entirely reasonable.

54. Mr Bishop rejects the holiday claim as being unsophisticated and grossly excessive. He submits that over the next eight months, being the period until the determination of the show-cause application, £100,000 for holidays is entirely



reasonable. At least one holiday can be taken during the period in the villa in Antibes, which would incur the wife virtually no cash cost whatsoever.

55. The husband’s proposal for holiday money corresponds to a rate of £100,000 ÷ 8 = £12,500 per month.
56. Therefore, the husband’s proposal for these two items is the equivalent of £18,500 + £12,500 = £31,000 per month.
57. The parties are therefore £99,000 per month apart, an annual rate of £1,188,000. This is a vast amount. The competing claims therefore should be examined with as much care as possible.
58. It is a dominant principle in a maintenance pending suit application that the marital standard of living immediately before the breakdown of the marriage is highly relevant, and can, in a minority of cases, be determinative of the application. In the majority of cases it cannot be determinative because of the impossibility of stretching the income which provided the marital standard of living in one home into the provision of that same standard in two homes. But with the very rich this problem does not arise.
59. In this case it is clear that the marriage was heading for the rocks at the end of 2019 when the husband began complaining about the wife’s expenditure. The parties separated in March 2020. I have concluded that the data which the court should be examining in order to determine the marital standard of living is that given by the husband for 2019. I am not satisfied that the higher figures for 2020 are representative of the marital standard of living, and it follows, by the same token, that I do not agree that an average of 2019 and 2020 is representative of that standard.
60. Surprisingly, neither side sought to undertake a granular analysis of the wife’s expenditure in 2019 for the whole of that year. The husband had, of course, produced the data for 2019 in his response to my 19 April 2021 order. Later, he did undertake some detailed analysis of the wife’s expenditure from October 2019 onwards. The wife, likewise, has analysed her expenditure by reference to her American Express card from October 2019 onwards. But no equivalent analysis was done of the family’s, and specifically the wife’s, expenditure for the whole of the last calendar year of the functioning marriage.
61. A major element in the husband’s Schedule of Family Living Costs was the very first entry. This was as follows:

	2019	2020	NOTES
<b>The global annual living costs incurred by the applicant and respondent</b>	£ 900,697	£ 1,236,390	Of this amount, in 2020, £554,775 were payments made by H to his ex-wife and other dependents. In 2019, that sum was £459,140.  'Global annual living costs' include insurance costs, charitable donations, entertainment and furniture costs alone of in excess of £170,000 by W in 2020.

62. In paragraph 50 above I have set out Mr Bishop QC’s attack on Mr Cusworth’s use of these figures. Mr Bishop QC contended that the phrase “costs include insurance costs, charitable donations, entertainment and furniture costs” meant that the overall total exclusively comprised these elements, and that of these elements only entertainment was relevant for maintenance pending suit purposes. I have to say that I did not read the phrase that way. The use of the verb “include” clearly suggests that other items made up the sum in question. More significant was the inexplicable failure of the husband to specify the actual numbers making up the elements which Mr Bishop contended were completely irrelevant for maintenance pending suit purposes. It was striking that Mr Bishop’s advocacy about this issue was cast in generalities when his client was at all times in a position to instruct his financial advisers to provide the necessary breakdown. I agree with Mr Cusworth’s submission that the likely reason that no breakdown was supplied was that it would not have been helpful to the husband.
63. In my judgment, the court should take the headline figure of £900,697 as being the stated global annual living costs of the applicant and the respondent for 2019. I make no deduction for items such as insurance, charity and furniture. In my judgment, the husband, having failed to particularise the value of the items which he says are irrelevant, should not be allowed to argue that some arbitrary proportion should be excluded.
64. In the schedule the figure for the parties’ “discretionary expenditure not otherwise addressed above” in 2019 is stated to be £194,363 (see paragraph 16(ii) above).
65. I agree with Mr Bishop that there is no basis for confining the husband’s element of the expenditure to 40%, and that it should be set at 50%.

66. My calculation is therefore as follows:

Global annual living costs	900,697	
Payments to dependants	<u>(459,140)</u>	
	441,558	
50% referable to each party	220,779	A
Discretionary expenditure	194,363	
50% referable to each party	97,182	B
expenditure on children	62,662	C
Total A + B + C	380,622	
per month	31,719	

67. I turn to the claim for holiday money. The husband’s schedule states that in 2019 the cost of travel and holidays incurred by the wife and the children when

with her was £475,000. That figure has not been challenged by the wife. It corresponds to a monthly rate of £39,583.

68. Therefore, on the best available evidence, for the last calendar year of the marriage, namely 2019, the total sum relevant for maintenance pending suit purposes spent by or on the wife, other than on property and staff overheads, was £380,622 + £475,000 = £855,622, a monthly rate of £71,302.
69. The wife has not submitted an interim budget. I agree with Mr Cusworth that this was not necessary on the particular facts of this case, just as one was not necessary in *Rattan v Kuwad* on the particular facts of that case.
70. In my judgment, on the facts of this case, a reasonable figure for maintenance pending suit is the same amount that the wife had for discretionary and holiday expenditure in 2019. I disagree with Mr Bishop's submission that the wife's historic freedom to spend extremely large amounts on holidays should be curtailed during this interim period. In my judgment, a reasonable award would be to give the wife the same holiday spending power that she had in 2019.
71. I therefore award the wife maintenance pending suit, to include maintenance for the children (but not including their nursery fees or the fees of any staff referable to them, which will be paid separately by the husband) in the sum of £71,300 per month. Mr Cusworth had sought that the discretionary (as opposed to holiday) element should be backdated with credit given for sums paid, but I indicated to him that I was not minded to do so as this would no doubt lead to extensive, furious and ultimately pointless disputes between the solicitors as to the calculation of the sums that should be credited against the backdated element of the award. Therefore, the first payment of £71,300 will be on 1 March 2022 and the payments will continue until determination of the substantive proceedings. However, I do not close the door on the wife's backdating claim. It will be adjourned and, if the wife chooses to pursue it, determined at the substantive hearing.
72. This award is only a minority element of the overall liability which the husband must meet in the interim. In paragraph 38 above I stated that the cost of the staff and other overheads were calculated at £2,781,469 in 2020. These expenses the husband has formally undertaken to pay. I am not fixing the husband's liability in this amount, of course. He must pay those expenses in their actual amounts, whatever they are. But £2.78 million is in my estimation a reasonable approximation of the annual rate of the expenses at the present time.
73. The annual rate of my above award is £855,600.
74. The husband's overall liability under my order will therefore be at an approximate annual rate of £3.64m.
75. That is my judgment.



# Justice

## PART 28 - COSTS

See also [Practice Direction 28A](#)

### Part 28 COSTS

Contents of this Part

Title	Number
Costs	Rule 28.1
Application of other rules	Rule 28.2
Costs in financial remedy proceedings	Rule 28.3
Omitted	Rule 28.4

### Costs

#### 28.1

The court may at any time make such order as to costs as it thinks just.



### Application of other rules

#### 28.2

(1) Subject to rule 28.3 Parts 44 (except rules 44.2(2) and (3) and 44.10(2) and (3)), 46 and 47 and rule 45.8 of the CPR apply to costs in proceedings, with the following modifications –

(a) in the definition of ‘authorised court officer’ in rule 44.1(1), for the words in sub-paragraph (i) substitute ‘the family court’;

(b) omitted;

(c) in accordance with any provisions in Practice Direction 28A; and

(d) any other necessary modifications.



### Costs in financial remedy proceedings

#### 28.3

(1) This rule applies in relation to financial remedy proceedings

(2) Rule 44.2(1), (4) and (5) of the CPR do not apply to financial remedy proceedings.

(3) Rules 44.2(6) to (8) and 44.12 of the CPR apply to an order made under this rule as they apply to an order made under rule 44.3 of the CPR.

(4) In this rule –

(a) ‘costs’ has the same meaning as in rule 44.1(1)(c) of the CPR; and

(b) ‘financial remedy proceedings’ means proceedings for –

(i) a financial order except an order for maintenance pending suit, an order for maintenance pending outcome of proceedings, an interim periodical payments order, an order for payment in respect of legal services or any other form of interim order for the purposes of rule 9.7(1)(a), (b), (c) and (e);

(ii) an order under Part 3 of the 1984 Act;

(iii) an order under Schedule 7 to the 2004 Act;

(iv) an order under section 10(2) of the 1973 Act<sup>2</sup>;

(v) an order under section 48(2) of the 2004 Act.

(5) Subject to paragraph (6), the general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party.

(6) The court may make an order requiring one party to pay the costs of another party at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them).

(7) In deciding what order (if any) to make under paragraph (6), the court must have regard to –

(a) any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant;

(b) any open offer to settle made by a party;

(c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(d) the manner in which a party has pursued or responded to the application or a particular allegation or issue;

(e) any other aspect of a party's conduct in relation to proceedings which the court considers relevant; and

(f) the financial effect on the parties of any costs order.

(8) No offer to settle which is not an open offer to settle is admissible at any stage of the proceedings, except as provided by rule 9.17.

(9) For the purposes of this rule “financial remedy proceedings” do not include an application under rule 9.9A.



Omitted

28.4



## Footnotes

2. Section 10(2) has been prospectively repealed by section 66(3) of and Schedule 10 to the Family Law Act 1996. 