Neutral Citation Number: [2025] EWFC 141

Case No: 1691-6601-2861-1699

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/05/2025

Before :

THE HONOURABLE MR JUSTICE COBB

- -

Between :

PN — **Applicant**

- and –

SA — **Respondent**

- -
- -

Timothy Bishop KC, Richard Sear KC, Emma Chamberlain OBE, and **Ben Wooldridge** (instructed by **Farrer & Co. LLP**) for the **Wife**
Harry Oliver KC, Amy Kisser and **Oliver Marre** (instructed by **Withers LLP**) for the **Husband**

Hearing dates: 11, 12, 13, 14, 17, 18 and 21 March 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 23 May 2025 by circulation to the parties or their representatives by e-mail.

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THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in private.

The Honourable Mr Justice COBB :

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Introduction

1. By application dated 7 September 2023, PN (who I shall refer to in this judgment as 'the wife') seeks financial relief consequent upon separation and divorce from SA (who I shall refer to as 'the husband').

2. Within these proceedings, the wife has issued (21 November 2023) a notice to show cause why a post-nuptial agreement entered into by the parties in March 2021 (hereafter the '2021 PNA') should not be given effect in the determination of her financial relief claim. The husband has countered this with a cross-application (18 December 2023) seeking the court's determination as to "why an order should not be made which gives effect to the terms of the parties' agreement dated 9 April 2023... it post-dates and therefore supersedes the parties' historic post-nuptial agreement dated 10 March 2021". The 2023 agreement is also a form of post-nuptial agreement, but it was created in the context of the parties' attempts to resolve their post-separation financial dispute. So as to avoid confusion with the 2021 PNA, I shall refer to the second post-nuptial agreement as the '2023 Settlement Agreement'.

3. For the purposes of determining these applications, I have been assisted by leading and junior counsel for the parties, and by their instructing solicitors, all specialists in the field of matrimonial finance. I have received and read with care the lengthy pre-hearing and post-evidence written submissions, running to (literally) hundreds of pages in total; I am conscious that even in this overly long judgment I cannot do justice to the myriad arguments and other points raised by each side. I heard a day of closing submissions from each counsel, and separate submissions from specialist tax counsel on two separate days after the evidence had been given. I read a core bundle of documents (>500 pages) and those parts of a supplemental bundle (>980 pages) to which I was taken (and more). I heard the oral evidence of the wife and the husband, and from one other witness, AA, a corporate lawyer and colleague of the husband, who was called on behalf of the husband. I have received almost-simultaneous transcriptions of each day's proceedings. Agreed expert evidence in the court bundle has been provided from two single joint experts: Mr Mark Bezant (forensic accountant, FTI Consulting), and from Mr Sebastian Deckker (chartered surveyor, Savills). Other expert evidence had been obtained and agreed. The hearing spanned altogether seven court days.

4. I am conscious that the parties have had an eye on the clock for tax purposes. They are both UK resident non-domiciled and there are tax implications of my decision; the tax regime has altered since 6 April 2025 in light of the provisions of the Finance Act 2025, albeit not yet in full force at the time of this judgment. Given the range of issues and the complexity of the arrangements proposed by the parties for the outcome, I could not do justice to their respective cases within the limited listed time available (10-21 March 2025, two days' judgment writing having been set aside) and I was obliged to reserve judgment beyond the end of the tax year. Other significant sitting commitments have inevitably and regrettably delayed the production of this judgment.

5. In light of this, and at the end of the hearing, a specific issue arose as to whether the husband should make an immediate offshore payment to the wife so as to maximise the tax benefits available in the financial year 2024/2025, by means of the 'dogleg' (i.e., cleansing Foreign Income and Gains (FIGs) by paying them offshore before 5 April 2025 and thereby avoiding the 12% tax on remitted FIGs) . As it happens the wife had earlier (December 2024) requested an interim payment prior to the final hearing and this had been

effectively rejected by the husband; when the proposal was put by the husband at the conclusion of the hearing the wife indicated her opposition to this payment, fearful that she would be circumscribed by the domestic tax rules as to how she would be able to use this money if/when brought onshore (i.e., for the benefit of the minor children). I was asked for an indication as to my view. I indicated that I thought it would be sensible for a payment to be made. Following this indication, I am told that a payment of $95 million was made offshore by the husband to the wife (before 6 April 2025) in partial satisfaction of her claim; various 'bootleg' restrictions (i.e., restrictions which prevent unauthorised use of the monies) and other conditions were attached to this payment (in the end uncontroversially) which it is unnecessary for me to rehearse here. It was further agreed that the wife would not remit this sum to the United Kingdom before the final divorce order was made. That said, the wife went on to apply for the final divorce order, again with the agreement of the husband, and the final divorce order was made on 1 April 2025.

6. These parties have phenomenal wealth; when they separated their accrued fortune was said to be in excess of £1.5 billion. It is now said to be somewhere between £460-540 million. The husband said in evidence, fairly it seemed to me, that they have accumulated more money during their marriage than they could ever sensibly spend in a lifetime. The parties agree that:

    i) They should receive equal treatment in the division of their assets; the husband told me in terms that "I have never asked [for] a single penny more than [the wife] is having…. I don't want to have a single penny extra; but I want to do it in a smart way, protecting my (sic.) kids";

    ii) There should be a 'clean break' as between the parties.

    In one of the many exchanges of social media messages passing between the parties in the period following their separation, I note that the wife at one stage said to the husband that "fairness" in the division of the marital assets "is very simple". If only that had proved to be so.

7. Indeed, given the underlying consensus referred to in §6 above, it is dispiriting that the parties have spent approximately £5.5 million between them in legal costs, in relation to a dispute as to how best to achieve a fair and equal division of significant assets. Relationships between them are indisputably poor. I am surprised and am sorry that these personable, engaging, intelligent people could not resolve this financial post-matrimonial dispute for themselves, assisted by their stellar legal teams.

The issues

8. The issues which arise for determination in this application can be summarised thus:

    i) Should the court give effect to the 2021 PNA (entered into between the parties in March 2021) when determining the wife's claim for financial remedies, and if so, to what extent?

    ii) Should the court give effect to the 2023 Settlement Agreement (entered into between the parties in April and/or June 2023) when determining the wife's claim for financial remedies, and if so, to what extent?

iii) What are the tax implications of the proposals of the parties? How should those be managed?

iv) Ultimately, what is the reasonable and fair award, so as to do justice to the parties?

9. Most of the lawyers' time and energy at the hearing was given to issues i) and ii) above; much less focus was brought to a range of not unimportant further issues on which there were, as is apparent from my discussion below, some reasonably significant disputes[1].

Background history (outline)

10. What follows in this section of the judgment is intended to be an uncontentious outline of the background history to this application.

11. The parties were born and raised in Country A; they are nationals of that country and their first language is Portuguese. The wife is currently 48 years old, and the husband is 46 years old. They met in 2002 and married in Country A in June 2005. There are three children of the marriage: namely, XX, YX, and ZX aged between 9 and 17. The three children are all privately educated at well-known co-educational day/boarding schools in England: XX and YX at School A, ZX at School B.

12. The parties come from relatively financially modest backgrounds; the wife says that her family was "very poor". The parties began their married life with "zero … absolutely nothing", as the husband described the position in his oral evidence. The husband has been a specialist in the sphere of technology since leaving university and subsequently achieving his MBA; he, together with his partner BB, have created and developed numerous businesses over the last twenty years. The husband is a serial entrepreneur, and in his working life has accumulated significant venture capital investments.

13. In 2012, the husband and BB founded Company A, a technology company. Company A was floated on the Nasdaq generating huge wealth for these parties ("rich beyond our wildest dreams" according to the wife), estimated to be $1.5 billion. This wealth was initially held in an entity called Company B.

14. In 2018, the parties and the three young children left Country A and moved to England. Their move was driven by two considerations: (i) because of their security fears in Country A (by reason of their wealth), and (ii) in order to provide their children with an English education. At the time of the move, it was said that they intended to remain in the UK until the children had completed their education.

15. In 2019, the husband, BB and a third partner, CC, founded Company C (Cayman). Company C operates software services across several countries in Europe and in Country C, providing similar services to those which Company A provides in Country

[1] Note for instance that Mr Oliver KC, for the husband, dedicated all but 17 minutes of his day-long closing submissions to points i) and especially ii) in §8 above. At c.4pm on 17 March 2025 he said: "In the last 22 minutes can I rattle through £80 million worth … I have miscounted. It is 17 minutes. Can I rattle through £80 million worth of mathematical differences, which could be the largest sum of money spoken about in the shortest time in this division".

A. The husband's shareholding in Company C is almost entirely held by Company D (also a Cayman entity); the husband holds c.43% of Company D.

16. In the spring of 2020, and pursuant to tax advice received from Macfarlanes LLP solicitors ('Macfarlanes'), the husband relocated alone to Country B; he was there for a complete tax year. The wife remained in England with the children. Given his status out of the UK jurisdiction (albeit temporarily), he was able to achieve 'clean capital' from the sale of shares in Company B which he then placed in trust (see §19 below).

17. At the time of the parties' marriage in Country A they had become bound (either by election[2] or default[3]) by the 'partial community of property regime' of Country A . This had the effect of deeming all assets acquired during the marriage, whether held in the name of one or other party or jointly, to be owned equally and subject to equal division on divorce[4]. As the parties had amassed such significant wealth since the marriage, they agreed that for tax reasons (i.e., they needed to generate 'clean capital' for spending in the UK, and this required re-ordering of the husband's asset-holding) it would be undesirable for the wife to be treated as having a defined interest in assets in the husband's sole name.

18. Accordingly, by application issued in the Country A Courts in January 2021 the parties jointly sought an order severing the community of property regime, in order thereby to create a separate property regime. This order was made on 23 February 2021. Simultaneously, and in order to protect the parties' positions as between each other, they negotiated and signed the post-nuptial agreement to like effect (the 2021 PNA). Both parties were independently advised and assisted in this endeavour by specialist English matrimonial solicitors, namely Farrer & Co. LLP ('Farrers') for the wife, and Stewarts ('Stewarts') for the husband. Under this agreement, all of the parties' property before and after the agreement was to be divided equally upon the happening of a specified triggering event (see more fully the key terms of the 2021 PNA at §48 below).

19. In the meantime, on 1 February 2021, with the proceeds of the sale of shares, the husband settled two trusts: the First Family Trust and the Second Family Trust in Jersey. The husband was assisted in this regard by Macfarlanes. The beneficiaries of the trusts were the husband (as settlor), the wife (protector) and descendants of the parties to the marriage, and any person added to the class of beneficiaries with protector consent. In the following tax year (i.e., from April 2021, having lived in Country B for a year), the husband transferred the assets held within Company B into the two trusts by way of sale at an undervalue for an I.O.U. (a non-interest-bearing loan repayable on demand), and also made significant additional cash loans to the First Family Trust. These transactions created a debt to the husband of $300m from the First Family Trust, and $500 million (in a similar way, using non-interest-bearing loans repayable on demand) from the Second Family Trust. At various times since then, part repayments of the loan have been made to the husband to fund the family's expenditure without incurring tax.

20. In the summer of 2022, the marriage came to an end, and the parties separated. At that time, it was said that the assets of the family were $2.348 billion (c.£1.82bn). The

[2] As the 2021 PNA refers
[3] The husband's position
[4] It is said to be a 'partial' community of property regime because assets owned by either spouse before the marriage, or inherited during the marriage, remain their separate property.

husband moved out of the family home. The wife issued an application for divorce on 2 September 2022. This was a 'triggering event' within the meaning of the 2021 PNA.

21. After negotiations and discussions (which I discuss in greater detail below), on 9 April 2023 (Easter Sunday), the parties signed the 2023 Settlement Agreement; this had been drawn up in their first language, Portuguese. An English translation was made of that document. The parties then facilitated the drafting of an English language version of the 9 April 2023 agreement; the English language version of the document was then signed on 1 June 2023 by both parties. The English language document was not however a direct (word-for-word) translation of the April document. Unhelpfully, there were differences between the April and the June versions (see §§83-87 below): the differences included: (a) a materially different introductory paragraph, which removed a clause enabling review by the parties' own English lawyers, (b) the insertion of a provision that "[b]oth parties also agree that no further disclosures are required", (c) new clauses concerning the care of the children and the division of time and (d) new clauses concerning dispute resolution and jurisdiction. Confusingly, the husband's notice to show cause in these proceedings specifically seeks to uphold the 9 April 2023 Portuguese version and not the final (June 2023) English language version, but in fact he attaches the final English language (June 2023) version of the 2023 Settlement Agreement to his court application.

22. In June 2023, the husband produced and sent to the wife a further asset schedule which showed that the marital assets had reduced to $800 million.

23. As I earlier indicated (§§1 and 2) the parties issued their respective applications for notice to show cause in November and December 2023. A conditional order for divorce was made in June 2024. In October 2024, the parties participated in a 2-day private FDR with Sir Philip Moor, but were not able to resolve the dispute. Both parties have made open offers for this hearing (discussed below §§26-38).

24. The wife currently lives at the former family home, Property 1. The parties had purchased this property in 2019 for over £6 million and have spent a significant further sum (in the region of £16-20 million) renovating and developing the same; it now has an agreed value of c.£13.45 million, with equity of c.£10 million. Within the last eighteen months, the wife has established and now runs her own company, Company E.

25. The husband currently lives at Property 2, a property which he purchased in February 2023 for £4.75 million. In January 2023, after the separation, he purchased a forty acre site for £8 million which includes planning permission for the redevelopment of an existing house; this is known as Property 3. There is a separate planning application for the demolition and rebuilding of the property which is still under consideration by the relevant council. The husband has a new partner, and a one year old son from that relationship. The husband continues to work as a Board Member for Company C. The 'Corporate Structure' organogram included in the papers demonstrates the complexity and global reach of the husband's business arrangements, and his (mainly offshore) investments.

The parties' positions (outline)

26. There is a dispute about the precise value of the joint marital assets. At the time of the husband's Form E (December 2023) he assessed them at c.£630 million. At the date of this hearing, the husband valued the joint assets for distribution at £463,836,025; the wife's valuation is £544,562,692, a difference of just over £80 million[5]. I set out the points of difference in [Table 1] at §177 below, and discuss the differences, and resolve them in the paragraphs which follow (see §§178-202).

Wife

27. The wife's first open proposal was made on 6 December 2024 but was conditional, and within a few weeks it was withdrawn. The wife made her final open offer in a document dated 7 February 2025.

28. As indicated above, the wife values the marital assets at c.£544,560,000. By the terms of her final open proposal, the wife contends for an equal division of the assets of the family in a way which is faithful to the terms of the 2021 PNA (i.e., a straight £272 million to each party). She expressly rejects the structure and/or distribution which would be achieved within the 2023 Settlement Agreement, and claims, for a number of reasons, that the Court should not uphold it.

29. Through her counsel, she has advanced a detailed proposal for the division of assets, which, it is argued, strikes the correct balance between risk/security and liquid/illiquid assets. Under the wife's proposal, the parties achieve a clean break.

30. It is the wife's case that either: (a) the husband pays her a lump sum in cash totalling £210,568,793; alternatively, (b) the husband pays her a lump sum of £189,085,904 (on the same terms) and transfers to her or procures the transfer to her of 25% of the Company C shares held by him either personally or through Company D, with minority protections to be agreed or determined by way of arbitration.

31. The balance of the equal division (on the wife's case) is represented by the transfer to her of Property 1, the property in Country A called Property 4 (plus adjoining plot), retention of her own funds and 50% of joint funds. The wife further proposes to take over the interests and obligations as shareholder of the shares in a number of companies (some with a 50% shareholding, others at 100%) which she argues should be transferred to her, together with the shareholding in Company F (which owns at least one other property). It is the wife's case that the shareholdings are all eminently transferable, but that if they prove not to be, the husband has the option to sell the shares and pay her the equivalent sum. In respect of this part of the wife's case, the husband filed, with my agreement and unopposed, a final statement shortly before the hearing (28 February 2025) purporting to demonstrate that the shareholdings could not be transferred easily. The wife did not respond, but in submissions, Mr Bishop KC has argued that:

    i) The husband's recent statement offers no more than uncorroborated evidence of the difficulties of *in specie* transfer of shares;

    ii) The husband had made no enquiries himself about the potential for the *in specie* transfer of shares; he said that a member of his family office ('DD') had made

[5] The difference is £80,726,667.

enquiries about this on the husband's behalf, as to which (it is accepted) there is no evidence;

iii) Contrary to the position described in the statement, the husband has in fact[6] made recent transfers of shares in a number of the companies to Bahamian Holdco called Company G (owned 100% by the husband);

iv) Although the husband maintains that there would be difficulties in the transfer of shares in Company H, this is contradicted by his voluntary replies to the schedule of deficiencies in August 2024 in which he confirmed that there would be "no such restrictions (subject to joining the Limited Partnership Agreement of Company H)" on the transfer of the investments to the wife.

32. The wife does not discount from her overall valuation of the assets any sum for tax liabilities, but accepts that if/when tax liabilities arise, she will contribute her one-half share of the tax liability and this can be achieved by way of a reverse contingent lump sum.

33. The wife will transfer all her estate and interest in Property 5 and Property 6 to the husband. On the basis outlined above, there shall be capital and income clean breaks in life and death.

Husband

34. It is the husband's primary case that the 2023 Settlement Agreement effectively implemented, manifested, or alternatively replaced, the 2021 PNA. Insofar as there are differences between the two post-nuptial agreements, then the terms of the 2023 Settlement Agreement should prevail, as: (a) this is the second in time, and therefore replaces the 2021 PNA, and (b) the 2021 PNA was said to be effective "unless otherwise agreed in writing".

35. Notwithstanding these arguments, the husband's open proposal for this hearing (dated 6 December 2024) advances an outcome for the parties which is different from the 2023 Settlement Agreement. Acknowledging the differences, the husband claims to have drafted and advanced his open proposal "out of a genuine desire to find a middle ground which allows us to resolve this case, while preserving the fundamentals of the agreement we reached in April 2023". He and his lawyers are careful in their choice of language, asserting that his proposal (like the 2023 Settlement Agreement) achieves 'equivalence' of outcome between the parties ("50/50 between H and W, both as to quantity *and* quality"[7]), if not specifically 'equal' division of the marital assets.

36. The essence of the husband's open proposal is as follows:

i) The majority of the marital assets will be placed in the two existing family trusts (the First Family Trust and Second Family Trust), from which the husband and wife will be permanently and irrevocably excluded;

ii) The husband will act as investment manager for the trusts on terms as to his remuneration for the same which includes a management fee and a performance

[6] Withers letter 4 March 2025
[7] Para.197 of the husband's Closing Submissions.

fee[8]; the husband's role as investment manager is reviewable "after three consecutive years" and he may be replaced if "based on a reasonable third party review" he is not performing well;

iii) The parties will be appointed as co-protectors of the trusts;

iv) The husband will draw down on the trust loans (i.e. in advance of any distribution) in order to "meet his charitable commitments", repay the mortgage on Property 1, and develop Property 3;

v) Before the transfer to the trusts as outlined in (i) above, the parties will each receive $130 million (comprised of assets and cash); the wife will receive $95,071,000 in cash (offshore)[9]; the husband will receive $75,303,000. This sum ($130 million) is said to be made up of: (a) $30 million lump sum (as per the 2023 Settlement Agreement), together with (b) a capitalisation of the $200,000 monthly payments (contemplated by the 2023 Settlement Agreement) amounting to $63 million (c.£50.55 million[10]) and (c) $20 million to reflect the 'additional withdrawals' which would otherwise have been possible under the 2023 Settlement Agreement, credit of course being given for assets already in the parties' sole names;

vi) The husband would retain 360,000 Company C shares, although the balance of the shares will be placed in one of the trusts;

vii) The husband will transfer all his estate and interest in Property 1 to the wife (mortgage-free); there will be other specific property transfers, with Property 5 and Property 6 being transferred to the husband;

viii) The husband's shares in Company F will be transferred to the wife;

ix) An escrow account will be created into which the husband will place c.$18 million or £12.3 million[11] which is to be applied for tax liabilities of the parties; any balance remaining after satisfaction of all tax liabilities arising from the implementation of the order would be placed into one of the two trusts.

37. It is notable that the husband's open proposals maintain the trust structure, which was a central feature of the 2023 Settlement Agreement. As it happens, Macfarlanes, who had, as I have mentioned, initiated the creation of the trusts in 2021, are no longer supportive of the preservation of the family trusts. In a memo dated 9 July 2024 they propose three alternative ways[12] in which the 2023 Settlement Agreement could be implemented without the use of the family trusts; they are now of the view that ownership of assets through the trusts is no longer practical or sensible, as an additional UK inheritance tax burden of up to 0.6% p.a. of the value of trust assets is imposed which would not otherwise arise if the assets were in the husband's and the wife's own

[8] A 1% management fee (on the remaining assets in the trusts) plus the incentive bonus of 20% above the hurdle rate (Secured Overnight Financing Rate + 2%)
[9] Note, this has now been paid
[10] £1,896,492.00 every year for life
[11] It is otherwise said to be £12.422 million, but I will describe it as £12.3 million for the purposes of this judgment as I was advised that this was the figure in dispute.
[12] Corporate, Nominee, Partnership

names. The husband has eschewed this advice, pointing out that under his proposal he contemplates that the parties would be *excluded* as beneficiaries from the trust (i.e., excluded from any benefit) and, given their life expectancies, the tax regime at 0.6% per annum would be more beneficial than a straight 40% on death; the husband's solicitors have argued in this regard that: "[t]he use of the trusts is consistent with the April Agreement, and the IHT and income tax deferral benefits combined with scope of utilising the capital losses makes my client's proposals considerably more efficient for the family". Farrers, on the wife's behalf, dispute the wisdom of the proposed trust arrangements, and suggest that the husband's proposal represents an extreme solution to a theoretical problem.

38. In view of the competing positions of the parties, it is necessary for me to consider in a little more detail the circumstances in which the 2021 PNA and the 2023 Settlement Agreement came into being, and make findings about the same. Before embarking on that exercise, it is appropriate that I should briefly review and rehearse the principles which I apply in considering the status of the agreements within the overall context of the case.

Agreements … and Financial Remedy Orders: the Law

39. Of the many well-known authorities which deal with separation agreements in the financial remedy context, the primary source is *Edgar v Edgar* [1980] 1 WLR 1410 at 1417 per Ormrod LJ:

> "To decide what weight should be given, in order to reach a just result, to a prior agreement … regard must be had to the conduct of both parties, leading up to the prior agreement, and to their subsequent conduct, in consequence of it. It is not necessary in this connection to think in formal legal terms, such as misrepresentation or estoppel; all the circumstances as they affect each of two human beings must be considered in the complex relationship of marriage. So, the circumstances surrounding the making of the agreement are relevant. Undue pressure by one side, exploitation of a dominant position to secure an unreasonable advantage, inadequate knowledge, possibly bad legal advice, an important change of circumstances, unforeseen or overlooked at the time of making the agreement, are all relevant to the question of justice between the parties. Important too is the general proposition that formal agreements, properly and fairly arrived at with competent legal advice, should not be displaced unless there are good and substantial grounds for concluding that an injustice will be done by holding the parties to the terms of their agreement. There may well be other considerations which affect the justice of this case; the above list is not intended to be an exclusive catalogue." (Emphasis by underlining added).

40. *Edgar v Edgar* was substantially relied upon by Munby J (as he then was) in his judgment in *X v X (Y and Z. intervening)* [2002] 1 FLR 508 at [103] in which he developed the jurisprudence further:

" - In exercising its duty under section 25 [MCA 1973] the task of the court is to reach a just result, what Lord Nicholls of Birkenhead in *White v White* [2001] 1 AC 596, [2000] 2 FLR 981 at 599H and 983H respectively called the 'fair' outcome. Fairness, of course, involves the principle of equality, for as Lord Nicholls of Birkenhead pointed out at 605B and 989H respectively there can be no place for discrimination between husband and wife and their respective roles, whatever they may be in the circumstances of the particular case.

– The fact that the parties have made their own agreement is a 'very important' factor in considering what is the just and fair outcome. The amount of importance will vary from case to case.

– The court will not lightly permit parties who have made an agreement between themselves to depart from it. The court should be slow to invade the contractual territory, for as a matter of general policy what the parties have themselves agreed should, unless on the face of it or in fact contrary to public policy or subject to some vitiating feature of the type referred to by Ormrod LJ, be upheld by the courts.

– A formal agreement, properly and fairly arrived at with competent legal advice, should be upheld by the court unless there are 'good and substantial grounds' for concluding that an 'injustice' will be done by holding the parties to it (I adopt Ormrod LJ's formulation in preference to that of Thorpe J[13]: his references to 'the most exceptional circumstances' and 'overwhelmingly strong considerations' seem to me, with respect, to put the matter perhaps a little too high).

– The mere fact that one party might have done better by going to court is not of itself generally a ground for permitting that party to resile from what was agreed.

– The court must none the less have regard to all the circumstances. The circumstances are to be judged in their totality and with a broad perspective rather than individually one by one.

– In particular the court must have regard to the circumstances surrounding the making of the agreement, the extent to which the parties themselves attached importance to it and the extent to which the parties themselves have acted upon it.

[13] This is a reference to *Smith v McInerney* [1994] 2 FLR 1077

> – The relevant circumstances are not limited to the purely financial aspects of the agreement: social, personal and, I would add, religious and cultural considerations, all have to be taken into account.
>
> – The court should bear in mind the undesirability of stirring up problems with parties who have come to an agreement.
>
> – On the contrary the court should if possible, and consistent with its duty under section 25, seek to bring about family peace and finality". (Emphasis by underlining added).

41. A relatively rare and important judgment concerning a post-nuptial agreement (other than a separation agreement) was delivered by Baron J in *NA v MA* [2006] EWHC 2900 (Fam), [2007] 1 FLR 1760 in which she considered these issues further, stating this at [18]:

> "… in a case involving a husband and wife where it is clear that interdependence and mutual influence are the basis of the relationship, I consider that the court has to take special care when assessing the manner in which each party's conduct affected the other. For example, if a wife has been accustomed to placing reliance upon her husband's decisions she might be much more easily influenced than an individual in a commercial transaction".

Baron J continued in her judgment in the same case to say at [20]/[21][14]:

> "[20]… I am clear that, to overturn the agreement, I have to be satisfied that this wife's will <u>was overborne by her husband</u> exercising undue pressure or influence over her.
>
> [21] I am also clear that if I do not overturn the agreement per se, I still have to consider whether it is fair and should be approved so as to become a court order." (Emphasis by underlining added).

The importance of the wife's will being assessed as 'overborne' derives from the speeches of the House of Lord in *Royal Bank of Scotland v Etridge (No.2)* [2002] AC 773 note especially at [162].

42. Finally, I extract from the judgment of the majority of the Supreme Court in *Radmacher v Granatino* [2010] UKSC 42 the following key points, to which I return below:

i) [68] "If an ante-nuptial agreement, or indeed a post-nuptial agreement, is to carry full weight, both the husband and wife must enter into it of their own free will, without undue influence or pressure, and informed of its implications";

[14] And see also Moor J in *MN v AM* [2023] EWHC 613 (Fam) at [61], [79], [80] "pressure… is not sufficient. It has to be undue pressure."

ii) [69] "Sound legal advice is obviously desirable, for this will ensure that a party understands the implications of the agreement, and full disclosure of any assets owned by the other party may be necessary to ensure this. But if it is clear that a party is fully aware of the implications of an ante-nuptial agreement and indifferent to detailed particulars of the other party's assets, there is no need to accord the agreement reduced weight because he or she is unaware of those particulars. What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end";

iii) [71] "The first question will be whether any of the standard vitiating factors: duress, fraud or misrepresentation, is present. Even if the agreement does not have contractual force, those factors will negate any effect the agreement might otherwise have. But unconscionable conduct such as undue pressure (falling short of duress) will also be likely to eliminate the weight to be attached to the agreement, and other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it";

iv) [72] "The court may take into account a party's emotional state, and what pressures he or she was under to agree";

v) [75] "The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement"[15].

43. The principles laid out by Lord Phillips and the majority in *Radmacher v Granatino* are of course directly applicable in this case; these principles have regularly featured in the family justice case law library over the last fifteen years, perhaps most notably in *Xanthopoulos v Rakshina* [2024] EWCA Civ 84 (see also, at first instance, *AH v BH* [2024] EWFC 125 and *BI v EN* [2024] EWFC 200).

44. Whatever view I form as to the status of either agreement, it is an accepted fact that an agreement between separated spouses does not oust the jurisdiction of the court.

The 2021 PNA

45. In December 2020, Macfarlanes contacted Farrers[16] seeking matrimonial law advice. At this point they were acting on the instructions of the husband (they had previously advised in relation to his non-domiciled status, and his year abroad: see §16 above) who was said to have "a substantial non-UK holding company which he needs to restructure this tax year while he is non-resident". Farrers were acting for the wife. Macfarlanes explained that the husband and his wife have "joint ownership" of assets under the

[15] I acknowledge that Lady Hale advanced a marginally differently worded formula at [169] which Lord Mance at [129] considered may be to the same effect. Lady Hale's formula is "Did each party freely enter into an agreement, intending it to have legal effect and with a full appreciation of its implications? If so, in the circumstances as they now are, would it be fair to hold them to their agreement?"
[16] Specifically Claire Gordon, the wife's current solicitor.

default community of property regime in Country A which was "potentially problematic from a UK tax perspective". The e-mail to Farrers continues:

> "The answer … appears to be for [the wife] to waive her rights against non-[Country A] assets under [Country A] law, and instead for [the husband] and [the wife] to enter into a postnuptial agreement under English law which makes it clear that he will ensure that she receives half their combined assets on a divorce – so she is essentially giving up [Country A] law rights (which may imply joint ownership) for English contractual rights (which don't)" (Emphasis by underlining added).

46. Thus, as I have described above, the parties sought and obtained a court order (23 February 2021) in Country A, extricating them from the partial community of property regime. More or less simultaneously, the 2021 PNA was created (10 March 2021), by formal notarised deed. In the negotiations for the 2021 PNA both parties received independent expert matrimonial advice from specialist solicitors in London.

47. Emblazoned on the front of the 2021 PNA are the words:

> "Important Notice. This Agreement is intended to create legal contractual relations between [the husband] and [the wife]. It is intended to confirm their separate property interests and to be determinative as to the division of their assets in the event of: the breakdown of their marriage; annulment; judicial separation; divorce; dissolution or death." (Emphasis by underlining added).

48. The 2021 PNA contains the following important clauses:

i) "In consequence of the [Country A court order] [the wife] has surrendered her automatic rights under [Country A] law to an equal interest in the assets in [the husband]'s name (and vice versa). The parties accordingly wish to enter into this Agreement to ensure that, should they separate or the Marriage be dissolved or annulled, [the wife] shall still be entitled to 50% of the overall wealth of the parties" (Recital H); (emphasis added);

ii) The purpose of the 2021 PNA was expressly designed to mitigate tax liabilities. It was the common understanding of the parties (recorded in the 2021 PNA) that the husband would transfer a substantial amount of his wealth into two offshore family trusts; "Both [the husband] and [the wife] shall be amongst the class of potential beneficiaries of such trusts". (Recital I); (it is to be noted that the husband did this in 2021);

iii) The parties agreed that they intended the 2021 PNA to be "of legal effect and shall be binding upon them to the greatest extent permitted by the laws of such jurisdiction anywhere in the world as may deal with any application to its courts in relation to the marriage" (Recital M);

iv) Importantly, Recital N recorded:

> "[The husband] and [the wife] each acknowledge that, under the laws of England and Wales as at the date of this Agreement, a nuptial agreement cannot exclude the jurisdiction of the court to make orders pursuant to the English statute the Matrimonial Causes Act 1973. Nonetheless [the husband] and [the wife] both wish to be treated by any court as if legally bound by this Agreement and for the financial consequences of any divorce, annulment or legal separation to be resolved in accordance with its terms and should the Agreement be considered in any jurisdiction in which such agreements are legally binding then [the husband] and [the wife] wish to be so legally bound" (Emphasis by underlining added).

v) The parties agreed that they had entered into the 2021 PNA of their own free will without any undue influence, duress, coercion or undue pressure and without any promise or representation other than as set out in the Agreement; all the terms in the 2021 PNA represent the agreement of the parties in its entirety and the husband and wife were both said to be entirely aware of the contents of this agreement, its implications and consequences (Recital R);

vi) Both parties confirmed that they had received independent legal advice (Recital V and W) and that they had made full financial disclosure (Recital Z);

vii) The 2021 PNA was to become operative from March 2021 and the "triggering event" for its implementation was said to be "the earlier of the date on which either party commences a suit or action in any jurisdiction seeking termination of the marriage whether by way of dissolution or annulment or howsoever" (Clause 1);

viii) "Upon the occurrence of a Triggering Event", each of the parties was to retain their own property, but the divisible property was to "be divided between [the husband] and [the wife] equally by value, unless otherwise agreed in writing, and in the event that [the husband] and [the wife] are not able to agree the fate of any asset within the Divisible Property within six months of the Triggering Event (or within such other time period as the parties agree in writing) it shall be sold as soon as reasonably practicable thereafter and the proceeds of such sale shall remain part of the Divisible Property and be divided as such" (Clause 9.1-9.3) (emphasis by underlining added);

ix) "[The husband] and [wife] will invite the Court to implement the terms of this Agreement and to incorporate its terms so far as they may be relevant into a consent order and both of them shall use their best endeavours to prepare, agree and sign such consent order as soon as reasonably practicable after a Triggering Event" (Clause 13);

x) "Save in accordance with this agreement, neither [the husband] nor [the wife] shall apply to any court in any jurisdiction for any court order of any kind arising from the marriage, including, but without limitation, periodical payments, secured periodical payments, lump sum payments or transfer of property, and

property adjustment… except, to any extent required, by way of a court order dismissing such claims." (Clause 14);

xi) "This Agreement shall only be varied by a document in writing executed as a deed by both parties" (Clause 18).

49. The 2021 PNA had been drafted and agreed without any or any significant conflict or controversy. It was achieved, in my finding (indeed there was no dispute about this before me) without undue influence or pressure on either party; both the husband and the wife were, I am satisfied, informed of its implications and entered into it of their own free will when they were still in the marriage. Having regard to the *Radmacher* principles outlined in §42 above, no reason has been advanced as to why it should not be upheld.

50. That all said, I note that two years later – well after the separation of the parties – the husband expressed his unhappiness with its terms. In a WhatsApp message to the wife (26 September 2023), he commented:

> "… in the agreement that the two smart creatures[17] wrote, ... it's written literally that, what is divisible, gets divided and what's not divisible, it gets sold, just that, … that's probably going to mean a, one, as you call it, a huge tax generating fact and this will have extremely damaging consequences, you understand, so, like this, I promised to explode, I didn't promise to explode anything, Richard and Claire <u>wrote a crazy structure that forces us to explode things if we were to perform as it is on paper, and you asked to do it</u>" (Emphasis by underlining added).

The 2023 Settlement Agreement

51. If, as I believe, the 2021 PNA was drafted without much if any controversy, the same cannot be said about the 2023 Settlement Agreement.

52. As referenced above (§21), there are in fact two versions of the 2023 Settlement Agreement, one signed by the parties and dated 9 April 2023, and one signed by the parties and dated 1 June 2023.

53. In order to determine whether, and if so to what extent, the 2023 Settlement Agreement should be upheld, it is necessary for me to rehearse the chronology of events leading up to (and beyond) the signing (twice over) of the 2023 Settlement Agreement in a little detail. I do so with the assistance of records of the contemporaneous communications between the parties (WhatsApp messages, transcribed voice messages, texts and e-mails), and to some extent from the parties' recollections. Counsel have relied on selections of the contemporaneous messages, both acknowledging the risk that in referencing isolated comments, messages or short exchanges (i.e., 'island hopping') this is unlikely to do justice to the whole. Accordingly, during the period in which I reserved judgment, and at the specific invitation of Mr Oliver KC, I read the entire run of

[17] This is a reference to the parties' solicitors: Richard Hogwood (H) and Claire Gordon (W)

messages filed (there were undoubtedly more messages which passed between them on other matters).

54. As mentioned above, the parties separated in early August 2022. While the husband initially (11 August 2022) proposed to the wife that there be a straight division of the assets[18], it took little time for him to repent of that approach, telling the wife only a few weeks later (31 August 2022) that if they executed the 2021 PNA it would "ruin everything" (a point which he repeated in subsequent messages) and offered her the chance "to execute a <u>different</u> agreement from the one we have signed" (emphasis by underlining added). He told her that he believed that the wife "want[s] to destroy any trace of what we've done"… "you want to destroy it". The wife urged him (31 August 2022) not to 'pressurise' her to decide on future division without understanding what was available for distribution.

55. Relations between the parties sadly deteriorated, and within only a matter of weeks of the separation (1 September 2022), the husband spoke of "… heading to become enemies… it's downhill too fast… this has everything to turn into a war… looks more like war than success". The wife responded at the time (and generally), I find, in a calm and conciliatory manner, encouraging the husband to accept that things would be alright ("Everything's going to work, husband. Soothe yourself, please"). The wife gave oral evidence about this exchange of messages; she told me that "I never wanted to be his enemy. He was my best friend. I told my husband he was my best adviser, I always admired him, and I still admire him. So I felt alone without my friend". Indeed, during September 2022 she wrote to him proposing reconciliation. On 26 September 2022 (having just been served with the divorce application), the husband wrote again applying emotional pressure to the wife:

> "You still have to face another 60 years of life and you have to face all the people who know us with this story on your back".

56. The wife told me that this made her "feel guilty". On that same day, in a voice message, I note that she said to the husband:

> "… since we separated, since you left the house, I always felt <u>insecure</u> because at first it was those <u>threats</u>, right, to end, to <u>explode everything</u>, you're going to be left with nothing, you're going to have to work at [indiscernible]". (I find, from the oral evidence, that the indiscernible word was 'Tescos') (emphasis by underlining added).

57. The wife told me that during many of her discussions with the husband in the period after the separation prior, and indeed subsequent, to the signing of the 2023 Settlement Agreement the husband threatened to 'explode' the trusts; she understood by this that the accumulated family assets would be removed from the trusts and would then be significantly diminished by punitive tax charges, the parties would be left with very little, "and that because we did not have enough money to pay the taxes that would trigger, we would go bankrupt". There are many other examples of the wife referring

[18] He said that "the basics are simple" (i.e., in terms of division), "if you want we sit down today and separate everything …. I want to show you the assets so you can decide what you want".

to the husband's threat to "explode the structure if the post nup (sic.) were executed". She told me in her oral evidence that at this point she "was desperate and trying to find a solution". Indeed, so deeply embedded was the term 'explode' in the lexicon of this dispute that the 2023 Settlement Agreement itself contains the phrase:

> "For the sake of clarity, [the husband] shall not have the right to explode the Structure or to create difficulties so that the provisions herein are not applied"
>
> (In the original: "… [the husband] nao tera o direito de explodir a Estrutura…"). (Emphasis by underlining added).

58. During September 2022, the husband's business partner, BB, became involved for a short time to assist as an intermediary between the parties; the husband described him as a 'bridge' between the two. Although he has filed no formal evidence in this application, I have seen multiple exchanges of message between the wife and BB. From those it is apparent that he shared the husband's view that the wife's English solicitor was an unwelcome member of the wife's support team. He described Ms Gordon as "an opportunist" who "has come in to take a % of your money and destroy your family's life"; later [4 October 2022], BB told the wife that he wanted to "get that lawyer [Ms Gordon] out of the negotiation. She won't leave unless you give that order". Unhelpfully, BB gave the wife ostensibly erroneous advice to the effect that the English Court would automatically freeze the couple's assets after a period of time following the divorce, which appears to have had an impact on her. While the wife felt that at least in part the involvement of BB had been helpful[19], she nonetheless otherwise described[20] the conversations with him as "stressful to (sic.) the extreme". I note that at one time BB told the wife that he would need to present the wife's 'case' concerning the division of marital assets to the husband "nicely"; this suggests that even a close friend and colleague of the husband knew that he needed to deploy well-honed diplomacy in approaching the husband on this sensitive topic.

59. Sometime in late-September or early-October, as BB's role was coming to an end, one or other of the parties contacted EE a lawyer in Country A and mediator (the name had been suggested by the husband and BB), requesting mediation. It is not clear precisely if or when the wife actually met with EE. In a letter dated 19 October 2022, she set out her proposed terms of reference for his engagement and explained that she and the husband had their "English lawyers already to advise us in the background on the legal side as needed", and did not favour a third English lawyer being involved. She explained that she wished for financial disclosure from the husband on Form E "…so that it is easy and efficient for them [i.e., Richard Hogwood from Stewarts, Claire Gordon from Farrers] to provide us respectively with advice as and when we wish it, rather than making things more complicated". The husband told me in his oral evidence that his contact with EE was limited to a 15-minute video call. EE's role was in the event short-lived. By the end of the day on 19 October 2022, EE wrote to the wife ending the retainer. He expressly rejected the idea that the parties' English lawyers be involved in the mediation, as this would make "dialogue impossible and unproductive", however he appeared to accept that the final agreement would be subject to "revision"

[19] The wife recorded in a message to the husband on 7 October 2022 that she believed that BB had "helped a lot, he put us on the trails again, but now I think he got very emotionally involved".
[20] Message: 6 October 2022

by the respective lawyers. He had favoured a jointly instructed lawyer to "guarantee the effectiveness, independence and confidentiality of the process", an idea which (he later clarified) had come "exclusively from me".

60. It appears (from the WhatsApp messages) that relations between the parties were at least for some of the time in the autumn reasonably cordial. The wife invited the husband to join the family for part of the Christmas festivities.

61. However, after Christmas 2022, the mood changed and it is evident that the husband became more "impatient"[21]. The husband himself spoke of being "frustrated with the lack of progress" in resolving the financial dispute; he made this known to the wife, in terms (6 January 2023):

> "You have a lawsuit against me [the divorce]. In less than two months we will reach a point of total value destruction. I am asking for a date to disarm this bomb and clearly this is not a priority".

The period of 'two months' in this quote is a reference to the balance of the six month period following the 'triggering' event on 2 September 2022 in line with the 2021 PNA (see Clause 9.3 of the 2021 PNA reproduced at §48(viii) above). The wife warned the husband that she found his conduct "very bitter" and suggested that this would not "make the process easier". He responded with a degree of petulance: "I've decided that I'm not going to bother with this. I'm good to leave it in the hands of lawyers and destroy everything".

62. The evidence reveals (and the wife accepted in her evidence) that she tried to move along the negotiations relating to the division of the assets in the early part of 2023. However, she told me that she felt under pressure because the husband was putting proposals to her orally and demanding her response.

63. On 1 February 2023, the husband made the first of the written proposals to settle the financial issues. By this time, the assets were valued by the husband at $565,516,458, excluding the Company A Restricted Stock Units (RSU). This proposal reflected an imbalance in the distribution of $50 million in the husband's favour. The husband sought to justify receiving the larger fraction by reference to "several different issues" (not all identified) "…including but not limited to the risk of the assets that were left to [the husband]. One of the mapped risks is, for example, the [Country A] legislation relating to the liquidation/bankruptcy of financial institutions in [Country A]". This first draft of the proposals contained the following introductory direction to the wife:

> "*** Please, when you have a different belief, write your belief. When you have a different proposal, write the proposal you understand as fair."

This version also contained these paragraphs[22]:

[21] Mr Oliver used this term to describe his client's mood in this period.

[22] It is possible that these paragraphs were contained in the 1 February 2023 version. The versions in the supplemental bundle are not dated, and not clear.

> "- Once this document is passed into English using language appropriate for the understanding of the PARTIES' attorneys, the PARTIES undertake to sign the acknowledgement that the translation is satisfactory and then the parties may discuss this proposal with their attorneys.
>
> As soon as the PARTIES, after guidance/interactions with their attorneys are ok to sign, the definitive[23] agreement is signed and sent for validation by the English court" (Emphasis by underlining added).

64. The wife considered the husband's proposal for the first time on or about 17 February 2023. She responded to the husband:

> "The Post Nup agreement should be complied with to the detriment of any interference from business partners, as this is an agreement between a couple, man and woman. What we will do with the consequences is the responsibility of each of us. Business partners have never been involved in our Post Nup. By our agreement, no one should have a larger portion than the other. What should be in focus is the financial security of our dependents … Why would you have more than 50M more than me? What justifies this?".

The wife was emphatic at the time that this proposal was not acceptable: "If you write an agreement that I agree is fair, I sign, if not, I will not sign, there is nothing to think about". She asked: "What is my time worth? How much is my trapped life worth? How much is my mental health worth? … We're just going to split it up and that's it, end that torture right away!!". The husband responded by telling the wife that he did not "have time for this" and that the alternative would take "five years" to sort out (a threat which he repeated in exchanges on this day: "[i]f you prefer 5 years of fight and destruction of assets, the decision is yours. Everything that happens will be documented"). She replied: "I swear to God that there are days that I would rather disappear, die, disappear! I never thought I was going to go through this in my life! I didn't sow this to be reaping it now!". Later she added: "This issue of the division of money is killing me, in the real sense of the thing. It didn't have to be like that! What a terrible nightmare!!!" She told the husband: "[t]his agreement will never work. Better leave with the lawyers to preserve our relationship. This does not need to take more than 1 month"; he retorted: "I guarantee it will take more than five years".

65. Mr Oliver argues that the wife's reactions to this first proposal (which I have recited in the paragraph above) are not those "… of someone who had been cowed, bullied, or subjugated. There is no wavering", and he suggests that this undermines the wife's case that she was placed under undue pressure. I deal with undue pressure and related issues later; but I record for present purposes that undue pressure is not generally identifiable by an isolated exchange, event, interaction, or moment in time. More often than not, undue pressure is the result of the build-up of persistent and attritional conduct over a period of time which ultimately erodes the target person's freewill.

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[23] Note the use of the word 'definitive' here, in place of 'initial' in the signed version.

66. WhatsApp and text messages continued to pass between the parties. I find that the wife was largely conciliatory, or certainly attempting to be so, though her messages show that she was becoming worn down by the exercise of trying to resolve the issues. The husband's tone was, by contrast I find, irritable and peevish; several times he referred to the wife choosing "five years of fight" through lawyers if she did not accept the terms of the agreement.

67. Illustrative of the wife's vulnerability in this period is a message (in an extended exchange on 17 February 2023: see also §64 above) in which she says:

> "… I don't want to fight with you! I'm suffering a lot!!! You don't imagine how I have to be strong to raise 3 children 90% of the time alone, organise an immense work, take a college in another language, take care of my health because I can't eat enough, try to have healthy habits, deal with anxiety, not have a reliable adult to talk about, not have a chance to go out to meet someone new, because I can't bring anyone at home, not have someone to hug. I NO LONGER HAVE THE STRENGTH!!! … I am full of being quashed and not having my voice heard!" (Capitals in the original).

68. In his messages to the wife, the husband emphasised to the wife more than once that he believed that she was getting a better deal from the agreement than she would receive in court, and would fare better in the deal than him.

69. It is an agreed fact that on 19 February 2023 the husband visited the wife at her rented home; the parties do not agree what was said. The wife's case is that the husband threatened to cancel the high quality specification of the renovations, and complete the refurbishment of Property 1 as cheaply as possible; he accepts that he told her that Property 1 may need to be sold. It is agreed that both parties 'lost their composure'[24]; the wife's recollection is that the couple rowed in front of the children:

> "… our conversation turned into argument in which he told me that doing what I wanted would destroy everything and I screamed at him to get out of my house. I felt exhausted and wanted the nightmare to end".

The husband inauspiciously claims that it was in this heated exchange that the parties reached agreement as to the basis of division of the marital assets. Despite the comments outlined above, the wife accepted in her oral evidence that in that meeting she had agreed the 'core' of the deal, but that it would be still subject to approval by lawyers.

70. On the following day (20 February 2023), the husband sent to the wife a further (and materially different) set of written (bullet-point) proposals under cover of a message: "here is the backbone of what I understand you agree to". The new version (20 February) did not explicitly contain or reproduce the introductory paragraphs (see §63

[24] The husband's phraseology.

above); the husband had set out in this new draft only the essential elements of the terms which he understood the wife was prepared to accept.

71. It is accepted that on 21 February 2023, the parties told the children that they had reached agreement about the finances.

72. On 22 February 2023, the husband sent the bullet points to AA for her to convert into an agreement. To recap, AA is a lawyer; she is a colleague and friend of the husband who has worked for one of Company C's subsidiaries for many years; through her work with the husband she had become friendly with the wife. AA prepared a draft version of the agreement in Portuguese and on the following day, the husband sent it to the wife.

73. The introductory section of this version contained a paragraph which contemplated a two-stage process of involvement by lawyers: the engagement of an agreed lawyer to convert the agreement into terms which would be recognisable in English law, and then submission for 'approval' by each parties' own lawyers (though in the wife's case not the solicitor who was so obviously deeply disliked by the husband: see below). In the original, the Portuguese reads as follows:

> "Apos a assinatura deste termo inicial, as partes irão contratar um advogado de comum acordo para (i) analisar a exequibilidade dos termos aqui descritos e (ii) reescrever o acordado em termos que sejam compreensíveis pela legislação inglesa. O documento resultante desse trabalho será apresentado para homologação pelos advogados das partes, sendo certo que [the wife] concorda em não contratar a advogada Claire Gordon para tal homologação" (Emphasis by underlining added).

74. In English translation it reads as follows:

> "Upon execution of this initial term, the parties will engage a mutually agreed-upon attorney to (i) review the enforceability of the terms described herein and (ii) rewrite that agreed upon in terms that are understandable by English law. The document resulting from this work will be submitted for approval by the parties' attorneys, and [the wife] agrees not to hire attorney Claire Gordon for such approval" (Emphasis by underlining added).

I shall refer to this second stage (i.e., following the work of the 'agreed-upon attorney': the passage underlined in the extract above) as the 'English lawyer review clause'. This paragraph had resonance with the introductory paragraphs of the first draft (see §63 above). Notwithstanding the iterations of the agreement passing between the parties over the following weeks, this paragraph (i.e., the English lawyer review clause) survived intact with no amendments and was still in place when the parties both signed the 2023 Settlement Agreement on 9 April 2023.

75. The wife described her understanding of the above clauses in her first witness statement (4 July 2024):

> "… it was my understanding that anything signed between us was only a first step in our discussions and would then require both (a) a meeting with an independent lawyer who would act for us both; and (b) that we each take guidance from our own lawyers, and that only once we had each received that advice and provided we were still prepared to move forwards, would the "definitive agreement" be signed and "sent for validation by the English court.""

76. The wife responded to the proposals set out in this document. There was a clause which provided for the husband to manage 100% of the investments "without any interference (sic.) from the wife" (emphasis added). The wife annotated this clause with a lengthy response; it was written entirely in capital letters reflecting, it seems, her extreme upset and frustration. I do not propose to reproduce her comments here, but she referenced again the husband's threat to 'explode' the trusts; she accused him of threatening to remove the children from her care; she alleged that he had threatened to leave her bankrupt, requiring her to sell everything. Revealingly she spoke of the daily shadow of the "fear" of the "threats" which the husband had made to her, and that he had "clearly" denied that she had made any contribution to the family. It was a highly emotional and ostensibly desperate plea.

77. I am satisfied that both parties were actively engaged in the discussions, clarifications and (to a very limited extent) negotiations in the final throes of drafting of the 2023 Settlement Agreement prior to April 2023; this was all done through iterations achieved in a 'live' format; the wife raised no substantive challenge to the structure of the settlement.

78. On 8 March 2023, the husband sent AA a revised version of the agreement, which incorporated all of the changes which had been made up to that point. The husband appears to have left it to the wife and AA to work up the final draft.

79. By early April, the husband accepts that he "was getting increasingly frustrated that the agreement was not finalised"[25] and he told the wife this. AA was charged by the husband with brokering the final deal. On 4 April 2023, the wife sent AA a message asking about the share ownership; this revealed – even at this stage – a lack of proper understanding of the arrangement[26]. In her response, AA did not mention the existence and/or relevance of the trust[27]. On 8 April AA contacted the wife to inform her that the husband "is having fits that the agreement is not signed" (emphasis by underlining added). The wife replied to say that she was not "going to keep taking his pressure … I'm not going to take it anymore with him pestering me!" (emphasis by underlining added), and would not answer his question about signing. Mid-morning on Sunday 9 April (Easter Sunday), the husband sought two further substantive changes to the agreement[28]; the wife did not agree to them, but plainly felt pressured: she told AA: "he's tightening the belt because I didn't sign. He is pushing me! I know, it was like this

[25] Husband's witness statement 2.7.24 §61
[26] "… what shares would be my own and which ones would be [the husband's]. Would this be divided nominally or would it be the total amount divided equally?"
[27] "Everything belongs to you both!"
[28] "(i) he wants to be able to withdraw his compensation; and (ii) he wants to change his monthly compensation to GBP 100,000 per month, updated year over year to reflect purchasing power."

all my life. I can't stand it anymore…" (emphasis by underlining added). Later that day, the 2023 Settlement Agreement was signed by the parties.

80. The contemporaneous records reveal that within twenty minutes of the wife signing the agreement, AA and the wife started to consider changes to it, specifically to address the budget for the refurbishment of Property 3. AA suggested to the wife that rather than seek to amend the signed agreement, this altered provision could find its way into the English language version of the agreement which was to follow; she suggested: "let's do it this way, so we don't re-open this [version]".

81. The final draft of the Portuguese language version of the 2023 Settlement Agreement (9 April 2023) opens with confirmation that the text reflects the terms and principles agreed between the wife and husband "regarding the assets for the conclusion of their divorce proceedings". There follows the paragraph which includes the English lawyer review clause. It is notable that in the first two paragraphs, the agreement is referred to as an "initial" proposal and then as an "initial term", which contrasts with the husband's earlier proposal which had contemplated the parties reaching a 'definitive' agreement after they had received 'guidance' and 'interactions' with the parties' attorneys (see §63 above).

82. Key provisions of the finalised Portuguese language version of the 2023 Settlement Agreement signed in its English translation on 9 April 2023 are:

    i) An initial deposit of $30,000,000 into an individual account of the wife and $30,000,000 into an individual account of the husband ("Initial Deposit");

    ii) "After the above deposit, the parties may, by mutual agreement, request additional withdrawals from the framework, at which time a withdrawal of the same amount will be authorised for the other party";

    iii) Monthly payments of $200,000 to each party; such sum to be reviewed annually based on the wife's and the husband's current expenses; the expectation was that this would reduce so as to maintain the bulk of resources within the framework for the protection of the heirs;

    iv) The beneficiaries of the trust were identified as including the husband, the wife and the three children of the family;

    v) There was provision for the parties to take exclusive use of particular property; so the wife was to have exclusive 'use' of Property 1, and the husband of Property 2. There would be shared use of the Country A properties;

    vi) The husband was to "manage all investments" in the framework "without any interference (sic.) from [the wife]"; there will be two annual meetings each year so that the wife can be informed of the "evolution of equity and investments", and then "if a third-party expert, in good faith, attests that the husband has not been doing a good job for three consecutive years, it is hereby established that the husband and the wife will have the right to appoint a new person to play such a role, without this indication damaging the decisions agreed herein";

vii) The husband is to be "compensated" for the work he does; "the fixed, annual amount to be paid by the wife to the husband in return for the administration of the resources will be 1% of the total investments managed (considering the wife's half). In addition, 20% of what exceeds the SOFR (Secured Overnight Financing Rate) + 2% will be charged";

viii) "[The wife] and [the husband] agree that part of their wealth will continue to be used for charitable and philanthropic purposes, pursuant to and in the form of what was practiced prior to the separation of the couple";

83. The parties then agreed to ask AA to translate the April Portuguese language version of the agreement into English so that they could instruct English solicitors to turn the agreement into a consent order to be approved by the English court. In April and May 2023, AA worked on a draft of the 2023 Settlement Agreement in the English language. She told me that she used an AI translating tool; her evidence was that "the substance of the financial agreement… remained unchanged". The wife communicated with the husband on 8 May telling him that:

> "She, [AA], told me that no lawyer is agreeing to put our agreement into English, so she said that she herself was rewriting in English and we agreed to have her send this text to Claire and Richard to rewrite, without changing, so that we can sign and go into court."

84. However, while AA was engaged in drafting the English language version of the agreement, the husband asked her (he accepts) to remove the embargo on Claire Gordon (Farrers) having any role in the agreement (i.e., the Portuguese language version includes the phrase: "[the wife] agrees not to hire attorney Claire Gordon for such approval": see §74 above) in order (he told me) to "move things along". AA in fact removed the whole paragraph relating to the involvement of the English lawyers; AA confirmed to me that when corresponding later with the wife she did not draw attention to the fact that the English lawyer review clause had been removed from the signed agreement in its entirety. AA told me (in her oral evidence):

> "I accept I did not mention to her, because I didn't thought (sic.) it would be a big issue… I did not really understood that removing this sentence would be a recognition of myself trying to do anything that could jeopardise her…. I accept that I did not mention it…. I did not think that it was a big issue… I did not mention, not on purpose, but I did not mention… I do think it's still not, to be honest".

85. AA told me (as she told the wife at the time) that the only differences of substance between the Portuguese language version (9 April 2023) and the new English language version had been identified on the new document in red typescript; those differences related to child care and division of the children's time, and dispute resolution and governing law. She messaged the wife and told her that the amendments were in red. In her oral evidence she said:

> "I just put some random wording on childcare… Random, like I put some random legal words about childcare and about legal -- about law; governing law".

86. In place of the paragraph which included the English lawyer review clause the following appeared:

> "This text reflects the terms and principles agreed between [the wife] and [the husband] regarding the assets to complete their divorce proceedings. The initial proposal was written by [the husband] and later commented on by [the wife]. After some meetings and reflections, both parties understand that the terms used here reflect the actual manifestation of their wills. Both parties also agree that no further disclosures are required".

This paragraph was *not* in red typescript notwithstanding that it was self-evidently a material change from the 9 April 2023 Portuguese language version. It will be seen that AA had added the final clause to the paragraph above ("Both parties also agree that no further disclosures are required"); the wife's case, which I accept[29], is that this was not drawn to her attention nor did she agree it. Mr Oliver is right to point out that the wife accepted in cross-examination that she had read the June 2023 English language version before she signed it. However, as I listened to the wife give oral evidence at trial and on my re-reading of extracts of the transcripts, I was left far from sure that the wife was always genuinely and unconditionally assenting to what were often lengthy and detailed propositions put to her in cross-examination (sometimes multiple propositions were put in one question) particularly when she replied in short, simple, one-word answers.

87. To be clear, the English language version of the 2023 Settlement Agreement did not contain in any respect any form of English lawyer review clause which had been contained in the Portuguese language original.

88. On 31 May, AA wrote to the wife:

> "I'm sorry to bother you with this, but I was wondering if you'd looked into this - <u>[the husband]'s going into explosive mode soon</u> and I wanted to avoid it lol". (Emphasis by underlining added).

Although AA was not asked at the hearing about her use of the word 'explosive', her account chimes with the husband's own description of his impatience and frustration at the slowness of the process; later in the exchanges of message between AA and the wife, I noted how AA (one of the husband's most trusted employees) had described how she had received "a huge earful" from the husband[30] which had "really upset" her. She told the wife that "[the husband] doesn't trust me any more" (26 June 2023), and had later "distanced" her from the issues as between the husband and wife (11 August 2023).

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[29] In particular because of the wife's later requests for disclosure.

[30] In a separate translation in the papers, it is said "I have just had the crap beaten out of me by[the husband], I'm really upset…" [26.6.23]

89. On 1 June, the wife called AA and (as in April) asked again how she would know which were her shares and which were the husband's following execution of the agreement; she added: "I'm confused, sorry! Reading this makes me feel anxious and I'm shaking". AA explained to her

> "… there would be no '[the wife]'s shares' and '[the husbands]'s shares'; instead the shares would be assets of the trust, of which they would both be beneficiaries".

The fact that the wife was asking this question (again) at this stage strongly suggests that she did not fully appreciate the structure of the agreement or its implications for her.

90. On 1 June 2023, both parties signed the new English language version of the 2023 Settlement Agreement.

91. On 23 June 2023, AA wrote to the solicitors for the parties wishing "to discuss the next steps regarding the economic settlement arrangement, as outlined in the 'head of terms' agreed upon between [the wife] and [the husband]".

92. The wife's messages to the husband following the signing of the English language version of the agreement appear to show that she did not believe that a concluded deal had been reached. For example, on 26 June 2023 she wrote to the husband requesting his financial disclosure:

> "…we have a … 50, 50, which you are refusing to sign, you made another agreement and I agreed, now if you want to do all this without giving money information, where the money is, it will get more difficult, okay? … all I wanted most in my life was that this divorce had already been signed years ago … Until I have the financial information, what shares belong to who, etc., etc., there is no way to evolve and you know that… <u>The agreement backbone is great, but the information needs to be clear.</u> Claire is not an inconsequential lawyer, <u>she will not advise me to sign an agreement where the information is not clear, or rather, non-existent</u>, because we do not know anything about what my part is and I am still signing that I cannot question this!". (Emphasis added).

The wife plainly contemplated another stage in this process, involving English lawyers, before the agreement was finalised.

93. Interestingly, in his reply the husband did *not* assert that the parties *had* reached a concluded deal in April or June, but indicated that the wife now had choices:

> "… you need to choose what you want, if you want one... split fifty-fifty, let's split fifty-fifty, but you have to call your lawyer and ask to split fifty-fifty, but then there's no agreement, you understand, you take care of your things, I take care of mine, just that., now, we go to a conclusion, you choose, you want fifty-fifty? You're going to have half the

> shares, of the listed companies of the Central Bank, okay, you understand, just that you have to make a decision and say, you say this to your lawyer, you say, 'I want half the companies, I want half the companies and half the money', you have to say this to her, then she commands Richard, you understand? But we have to move, you understand? … The only thing I want is to end the divorce deal, so, man, whether it's fighting, whether it's splitting, fifty-fifty, whether it's agreement, I want, I don't give a shit, I just want to move, just that you have to tell the girl[31] what you want, you understand, call the girl, tell her what you want, you understand, tell her anything, you understand, it's... anything, just tell her something, because I want to move".

He took the same line when he communicated with her on 21 July: "You have all the alternatives in your hand. Its up to you to do what you want". Once again, it is plain that he was not insisting on adhering to the 2023 Settlement Agreement.

101. On 26 June, the wife contacted AA, explaining that she did not know how much money she had received under the 2023 Settlement Agreement, and how the arrangements would work:

> "Can't I know how much I have? That's surreal, [AA]! I don't have access to any information, the trust doesn't send me anything, he doesn't tell me anything, it's not a matter of trust, I just want to know where I am, how to handle it and how to evaluate investments. How will I be able to assess if he is doing a good job if I don't even know how much he is investing?"

AA revealingly told her:

> "It's not that he doesn't want to show you, …. It's just that if we go down the road of agreement, we'd already have to say in the agreement what isn't in the structure, anyway. Asking shows him that you don't trust him."

102. Later that month, the husband visited the wife and was "very frustrated" and said that he planned to live at Property 1. The wife told me that he had said that under the April 2023 document the wife would live in Property 1, but because they no longer had an agreement, he would be living there instead. He again repeated the suggestion that if the parties were to divide everything 50/50 then she would become the owner of many businesses and that she would risk arrest in many countries because of problems with their central banks.

103. Soon after these discussions, in which the husband had put the future occupation / ownership of Property 1 in issue, the wife indicated her willingness to finalise the financial arrangements in accordance with the 2023 Settlement Agreement; she instructed Farrers to "rewrite the agreement in formal language… even without the

[31] i.e. Claire Gordon

numbers". Claire Gordon was away from the office at this time, but Elizabeth Biggs (Farrers) advised the wife as follows (the extracts which follow are reproduced from screenshots sent by the wife to the husband):

> "…we probably need to wait to get the information first - make sure it is everything we need, nothing missing and no big questions to come out of it before we start drafting. I wouldn't want to incur costs for you making a start in a document too early which then has to be changed in light of further information / getting into the detail... as and when we have a full agreement on the figures and the terms we will draft a comprehensive document detailing it all." (Emphasis by underlining added)

The husband replied:

> "…she [the solicitor] has no intention of going with the agreement we had, that was exactly what I thought… I intend to split everything fifty-fifty, it's... so, I don't see any sense for... they're probably looking to find a way to negotiate, etc. and so on, but there's no negotiation … clearly she has no intention of proceeding with the agreement we signed".

104. On 21 July, the wife wrote to the husband complaining about him halting the renovation work on Property 1 referring to it as "the house that I will live in!" (i.e., apparently reliant on that aspect of the 2023 Settlement Agreement); the husband replied "your lawyer made it clear that there is no agreement … I really want to realise my dream of having a 25m pool at home". Indeed, in his witness statement in these proceedings he said: "I did not want to continue the works to [the wife]'s specification… whilst the treatment of Property 1 following our divorce was still unresolved" (emphasis by underlining added). I am satisfied that from the evidence the husband was using the future ownership of Property 1 as leverage to persuade the wife to honour the 2023 Settlement Agreement; he knew how much it meant to her to remain at Property 1. After all, she had said as much to the husband:

> "I and the children are spending the whole year planning a house to our own taste, with every detail and now you come and say you want the house to be yours? Why? I have a whole story with that house, I liked it, I chose it, I said that house would be the last one in my life and so on".

This is echoed in her witness statement:

> "[The husband] sought again to use Property 1 to apply pressure on me to give in to him. I do recall that he called me to "remind me" that if I did not sign the agreement then he would not give me the money to finish the Property 1 project. By this time I would start to shake every time I saw [the husband]'s name come up on my phone".

105. During the summer, I find that the husband pursued other tacks to make the wife regret her alleged repudiation of the 2023 Settlement Agreement: on 21 July he wrote to her advising her of the difficulties she would experience of being under 'Central Bank control' in a number of countries[32] if she owned assets (shareholdings) within those countries; he further accused her of splitting up the children's heritage adding "[y]ou will have a lifetime to explain this to the children." The wife recognised these as the husband's attempts at "blackmail" and accused him of the same referencing also the husband's "advantage" in deploying his financial superiority.

106. On 24 July 2023, in light of the husband's decision to halt the work on Property 1, the wife said that she could no longer trust him and confirmed that she did not feel confident to leave her life decisions in his hands (i.e., running the trusts under the 2023 Settlement Agreement):

> "As much as you say that you have good intentions, that you will be my "investor employee" forever, etc., if one day you wake up in bad mood you simply cut my money because you think I am not making good use, for example, and until I get it back it will be a life of wearing out again! …. You're the same as the spoiled boy who owns the ball: if I can't play with it I don't give the ball! How insane that is! I never imagined that you were capable of so much torture to someone's head! … And what's worse is that I know that you can be even worse, I just didn't imagine you were going to take me as an enemy!".

107. On 27 July, the wife complained to the husband that he was "leaving [her] with no choices because [he has] the power and autonomy of money", and was much affected by the fact that he was claiming to want to live in Property 1, which he knew would upset her, and it did. On 28 July 2023 Farrers wrote to Stewarts to confirm that the works on Property 1 needed to be completed. On 8 August 2023, Stewarts on behalf of the husband replied, sending two letters to Farrers on that day. In the first, they indicated that a round table meeting should take place in order to resolve the finances "as amicably and cost effectively as possible", supported by the "detailed asset schedule" (no mention was made of the 2023 Settlement Agreement) and in the second, that "[m]uch will inevitably turn on whether either of the parties ultimately will retain [Property 1] or whether it will be sold".

108. A letter from Stewarts followed on 6 September in which they said (in relation to Property 1) that "the cost of the improvements over and above the value added to the property will ultimately need to be borne by the party that retains and occupies the property, which we note has not yet been agreed". On 7 September 2023, the Form A was issued.

109. It appears that by this stage the husband realised that if the dispute went to court the 2023 Settlement Agreement would not be likely to withstand judicial scrutiny: I note that he told the wife: "the judge, when he sees that there is a fight, he's not going to let us share things, he's going to say that everyone has to have their own" (26 September

[32] He lists them: "Country D, Country E, UK, Country F, Country G, Country H, Country I, Country C, Country J…"

2023). Shortly thereafter, he told the wife that she could choose which of the agreements to enforce:

> "… it's A or B … you choose one or the other but you have to decide… it's the post-nup (sic.) or it's the April agreement, you have to choose".

110. At a round table meeting on 17 October 2023 the husband took a similar line: he questioned the need for any disclosure at all given the "clear rules" set out in the 2021 PNA: "we have clear rules to define, to divide right - what is divisible we divide, what is not we sell. It's easy", adding later: "in both cases [2021 PNA or 2023 Settlement Agreement] all the rules are clear, so we just need to execute it… is it Plan A or Plan B then we get into a room and we execute. It's simple." In his closing submission[33], Mr Oliver argued that "Plan A was the 2023 Settlement. Plan B was going to Court. [The husband] never meant (or said) that Plan B was the 2021 PNA". I reject Mr Oliver's construction of the language used by the husband. The context is clear that the husband was presenting a choice between the two agreements:

i) "… we get into a room and we execute" (a 'room', no mention of a court);

ii) "… we have clear rules to define, to divide right - what is divisible we divide what is not, we sell. It's easy" (this is an obvious reference to the 2021 PNA).

If there was any doubt about what the husband meant, it is put beyond doubt by what he said to the wife shortly thereafter (on 24 October), namely that she was to "choose an agreement and instruct your lawyer". Thus, once again he was offering her the choice either to 'execute' either the 2021 PNA or the 2023 Settlement Agreement.

111. No steps were taken to implement the terms of the 2023 Settlement Agreement. The husband changed solicitors in November 2023. On 18 December 2023, he issued his notice to show cause why the court should not give effect to the 2023 Settlement Agreement.

Findings re: creation of the 2021 PNA and the 2023 Settlement Agreement

112. My findings in relation to these two agreements are informed to some extent by the documents (which I have reviewed reasonably extensively in the passage above, and further below) and also by my assessment of the parties themselves. In making my assessment of the parties, I bear in mind that neither was giving evidence in their first language (Portuguese); they are reasonably fluent in English, but the flow of evidence was occasionally interrupted to facilitate explanation.

113. The wife is quietly spoken and, in my assessment, somewhat self-effacing. I sensed from her manner in court, and indeed from the WhatsApp and other communications which I reviewed, that she is someone who generally seeks to avoid conflict, but can nonetheless stand up for herself. In the autumn of 2022 and early 2023 she appeared to be upset by the then recent separation from the husband and worn down by the complex and bitter legal process in which the parties were quickly engaged; the separation and post-separation communications caused her to feel "insecure" (a word she used several

[33] Para.74 Closing Submission

times in her communications with the husband) and "controlled"[34]. From soon after the separation she was diagnosed by her general practitioner with anxiety and depression (the husband accepts that the wife had suffered from chronic anxiety from prior to the birth of XX, and otherwise suffered "highs and lows"), and was prescribed anti-depressants. In her evidence she described herself as isolated and vulnerable in England; she spoke of being "cornered"[35], and "trapped"[36]. All of this chimed with her presentation in court. The breakdown of the marriage has, I find, caused her considerable upset, and she described to me how she mourned the loss of the companionship and friendship of the husband who during the marriage she had trusted implicitly; her grief was obvious to me even now. I did not detect that the husband shared her sorrow.

114. Over the years, the wife has demonstrated her capabilities in the workplace; she has a strong work-ethic. She described how she started work when aged 14. She was employed in diverse environments before starting a family with the husband; in the early days of the marriage, she contributed financially – even if modestly – to the marriage when the husband's businesses were fledgling. The wife has a first degree in business administration and has worked in the music industry, a bank, recruitment, construction, and for British American Tobacco prior to 2007 when first pregnant. I find that, after the early days, she did not involve herself in the husband's businesses as she dedicated herself to the care of the children. She accepts that the husband hid nothing from her. Since the parties' separation the wife has revealed determination and ambition to forge a new life as a single woman, and I discerned both steeliness, resourcefulness, and excitement at having set up her own businesses in the autumn of 2023.

115. The husband is by contrast a naturally confident man, who seemed at relative ease in the witness box, largely unfazed by the legal process, though at times discomfited by having to answer for his actions. He repeatedly told me how he had achieved success in his business life through making and retaining personal relationships; personability and conviviality appear to be among his strengths, and I sensed that he was used to getting his own way through a mixture of charm and gritty determination. He was never more animated in his evidence than when discussing his businesses, his work associates and protégés, and his investments.

116. He is a self-assured man, who I find both at work and at home could at times be overbearing and controlling (the wife at one point said that she felt 'suffocated and dominated' during the marriage, and also "controlled" – see §113 above); I find that he would be quick to temper and bullying. He was prone to 'having fits' (§79 above), and had an "explosive mode" (§88 above). It is notable that AA spoke of being upset by him, after he had given her 'an earful' or beaten 'the crap' out of her (see §91 [footnote] above); he could be irritable and occasionally intolerant if he did not get his own way.

117. He plainly derives much satisfaction from his philanthropy; he is indeed very generous to charities financially. Although he was keen to point out that his professional life had been built on trust, I sensed that this was matched by hard work, tenacity and drive.

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[34] [24.7.23]: "not having autonomy in your life and having life controlled by someone else after so many years of fighting for a marriage to work is extremely frustrating and stressful"
[35] "in a corner" (Oral evidence)
[36] "How much is my trapped life worth?" (17.2.23)

Surprisingly, he told me that he did not read e-mails, nor contracts; indeed it seemed likely that he had not read or digested the terms of the 2021 PNA until many months or even years later, and notably took little part in the final drafting of the terms of the 2023 Settlement Agreement entrusting the same to AA. He told the wife (in relation to the 2021 PNA) "I signed what you created" [31.8.22], and only much later seemed to realise the terms of what he had signed up to: "Richard and Claire wrote a crazy structure" [26.9.23] (see §50 above), as if this was news to him then. He was keen to impress on me what an honourable man he was, and that his word was his bond.

118. The husband was a great deal less at ease or assured when answering the questions about his conduct towards his wife and in the negotiations leading to the 2023 Settlement Agreement; in that regard he had a tendency to avoid the question or answer at length with a range of tangential information, showing little or no real appreciation of or insight into the impact of some of his conduct upon her.

119. It will be apparent from my comments above that I find that that there is, and has been for probably many years, a power imbalance within the relationship, corresponding to the parties' different levels of self-confidence: as I have mentioned above, the husband is considerably the more assertive and more confident of the two, with an 'explosive' streak. I find that the wife relied throughout their marriage on the husband's understanding and management of the family's finances and so when he repeatedly warned her of disastrous consequences of adhering to the 2021 PNA, she believed him. What the parties nonetheless share in *equal* measure is their love for their three children, of that I have no doubt; both have urged on me, in reaching my conclusions on this application, as I indeed I must – per section 25(1) and (3) MCA 1973 – to give first consideration to the welfare of the next and successive generations of the family.

120. I turn now to the agreements themselves.

2021 PNA

121. I find that the 2021 PNA was negotiated and drafted appropriately and expertly, giving effect to the joint instructions of the parties at the time. Both parties had the benefit of independent legal advice. It is accepted by both parties that its terms reflected, essentially, the community of property regime from which they had chosen to remove themselves. That the husband retrospectively doubted the wisdom of its terms is not a reason for not accepting that he was content with it at the time and/or its fairness. There are powerful reasons to give significant weight to the 2021 PNA in a largely unchanged form. It was clear from the e-mail from Macfarlanes which launched the exercise which led to the creation of the 2021 PNA (quoted at §45 above) that the husband wished to "ensure that [the wife] receives half their combined assets on a divorce – so she is essentially giving up [Country A] law rights (which may imply joint ownership) for English contractual rights (which don't)" (see again §45 above). It is agreed that this is what is colloquially known as a 'sharing case', and such a case is more likely than a 'needs' or 'contribution' case to pass the test of 'fairness' (see *Radmacher* at [75], quoted at §42(v) above, and [82]).

2023 Settlement Agreement

122. The 2023 Settlement Agreement requires more detailed attention. I consider this aspect of the evidence by asking the following six questions:

i) Was the 2023 Settlement Agreement a concluded agreement on 9 April 2023? Or at the latest on 1 June 2023? (as argued by the husband);

ii) Is the 2023 Settlement Agreement effectively a form of implementation or execution of the 2021 PNA (as argued by the husband)?

iii) Was the wife subjected to undue pressure to agree and sign the 2023 Settlement Agreement (as argued by the wife)?

iv) After April / June 2023, was the 2023 Settlement Agreement regarded by the parties as a *Xydhias* agreement?

v) How does the 2023 Settlement Agreement square with the husband's open proposals now? What if anything does this say about the 2023 Settlement Agreement?

vi) Would it be just and fair to hold the parties to the 2023 Settlement Agreement?

123. I take each point in turn.

(i) ***Was there a concluded agreement in April 2023 or June 2023?***

124. In the original draft of the proposed agreement the husband outlined the process of achieving what he described as the 'definitive' agreement to resolve the division of finances. The route to this outcome was clear: the 'definitive agreement' would only be signed *after* a process in which the parties had had "discussions", "guidance" and "interactions" with their independent lawyers ("with their attorneys") (I referred to this earlier as the English lawyer review clause). Materially, and by contrast, the 9 April 2023 Portuguese language version of the 2023 Settlement Agreement was expressed to be an 'initial' term which reflects the "manifestation of their wishes". In this respect, I find that the 9 April Portuguese language version of the agreement lacked the character of a finalised agreement in contrast to what the husband had proposed to the wife when the first outline draft had been prepared. The 1 June English language version of the agreement did not correct this.

125. It is argued by Mr Bishop that the two clauses in the 9 April version of the 2023 Settlement Agreement which contemplated the engagement of a single lawyer and then the approval of the parties' own lawyers were *conditions precedent* to the effective and enforceable nature of the 2023 Settlement Agreement. It is the wife's case that until approval was signified by each party's lawyers, there was no agreement. The wife's written evidence (statement) in this regard was:

> "It was my clear understanding throughout these discussions that what we were signing would be subject to advice from our respective English lawyers and that, once we had had that advice, either of us could withdraw from the agreement. Alternatively, if, having had that advice we both wanted to proceed with the new agreement, we would then move forward to prepare a binding agreement that we would ask the English courts to turn into a final order. As the pre-amble

> says, the document will be 'submitted for approval' by our lawyers. This was vital reassurance for me".

The wife confirmed this in her oral evidence, in her cross-examination: "we were talking about this agreement like a draft, and for me it was part of the process. The second step would be talking to my lawyer and discuss… ask for advice… some advice about is it fair, is it not fair…".

126. The husband contends that these were not conditions precedent to the agreement at all, but (at best) mere 'double checking' steps, and no more than (in his words) 'formal papering' or 'formatting' of the agreement. The husband argued that it was not contemplated that the parties would receive any advice from their lawyers as to the merits of the agreement after they had signed it. The limited role afforded to the lawyers was merely to 'rubber stamp' or 'homologate' the proposal, hence the use of the word (in the original) 'homologação'.

127. A significant (actually, disproportionate) and unexpected amount of time at the hearing was spent considering the word 'homologação' from the 9 April Portuguese version; the word had been placed under the spotlight for the first time in this dispute by the Position Statement filed by Mr Oliver and Ms Kisser on behalf of the husband only two working days before this final hearing. I say 'unexpected' because the husband's case throughout[37] appears to have been that the agreement needed to go through an 'approval' process by the English lawyers; it was the husband who had initially proposed (as I have referenced above) that both parties would engage in "discussions", "guidance" and "interactions" with their English lawyers before completing the deal. The husband's case at trial altered, to the effect that the parties' independent English lawyers were simply to be involved in 'rubber stamping' the agreement, and that is why the word 'homologação' had been used. At no point in the case management phase of the case had I been asked to consider the instruction of a linguistic expert to advise on the interpretation of the word 'homologação'; the wife's case is that she understood it to mean, in context, "after we have advice from our lawyers, we would put this agreement to be approved by the lawyers" (oral evidence).

128. There is no dispute that neither of the two steps (identified in the opening paragraph of the Portuguese version of the agreement) which I have identified at §74 above was actually taken; specifically, no lawyer was engaged to convert the agreement into an enforceable English order, and no independent legal 'approval' upon its terms (let alone "discussions", "guidance" and "interactions") was offered to the husband or the wife. I am unpersuaded that the parties had truly signed up to (or *believed* that they had signed up to) a process which involved a mere 'rubber stamping' of the terms agreed without the active engagement of lawyers, and in this respect I reject the husband's eleventh-hour suggestion that the parties had deliberately chosen a process in which the lawyers would simply 'nod through' the agreement notwithstanding its profound implications for their long-standing and no doubt highly-valued clients. The two introductory clauses involving lawyers were in my finding conditions precedent to the agreement, and neither were met.

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[37] There are multiple references in the translated documents and in the husband's written evidence to the term 'approval' in this context.

129. The issue of whether there was a completed settlement agreement in the spring of 2023 is, as it happens, further complicated by the fact that the June 2023 English language version of the 2023 Settlement Agreement was in a number of respects different from its 9 April Portuguese language counterpart. The husband was wrong in my judgment to maintain that there were no "substantive changes" made to the document before it was reproduced in English, save for "some standard further wording". AA had told the wife that all changes were said to be in red script, but this was not true. The two safeguards re: lawyer's involvement (identified above) had been removed; their removal had not been signalled in red, and it is accepted that this was not drawn to the wife's attention. As I have mentioned above, there were other differences too: including the insertion of a provision which expressed implicit satisfaction as to the level of financial disclosure (yet the wife immediately sought financial disclosure after the purported agreement), a new clause concerning the care of the children and the division of time and new clauses concerning dispute resolution and jurisdiction. In short, in my judgment, these were *material* differences. AA revealed her partiality to the husband's case, when confirming in oral evidence that she did not believe that she had removed any of the wife's rights through her deletion of the clauses pertaining to English lawyer review, and adding (as I have mentioned) the unadvertised clause about further disclosure.

130. Finally, the 2023 Settlement Agreement contained a provision that: "Completion of the Letter of Wishes review is an essential condition for finalising the divorce settlement." The husband sent the wife a draft Letter of Wishes (23 February 2023). At no time did the wife draft one.

131. For the reasons set out above, I am satisfied that the 9 April 2023 Portuguese language version of the 2023 Settlement Agreement was not a complete and concluded agreement. The conditions precedent were not met. In its later iteration, new terms and altered terms were included some of which were not drawn to the attention of the wife. The English language version, signed by the parties, could not and did not reflect an agreement on which both parties were *ad idem* – that is to say, that at that point there was no true meeting of their minds as to its core terms. On this ground alone, I would not have upheld the 2023 Settlement Agreement in either of its forms.

(ii) *Is the 2023 Settlement Agreement an implementation of the 2021 PNA?*

132. It is the husband's case that the 2023 Settlement Agreement did not replace the 2021 PNA, but was (and is) effectively an implementation or 'manifestation' of the same, created pursuant to the "unless otherwise agreed in writing" proviso in the 2021 PNA. His written statement includes the following comments:

> "Given the vagueness of the 2021 PNA, subsequently, after our separation, [the wife] and I agreed to resolve the specific division of our assets in accordance with the April 2023 Settlement Agreement… The April 2023 Settlement Agreement was the practical manifestation of the 2021 PNA….";
>
> "… [it] superseded, and implemented, the 2021 PNA… is in fact just the logical conclusion of the 2021 PNA as it deals with the specifics of what exactly should happen to our

> assets, whilst ensuring an equivalence between [the wife] and me. The April 2023 Settlement Agreement does not contradict the 2021 PNA, it is the practical manifestation and application of the 2021 PNA's open-ended terms";
>
> "[The wife] and I expressly agreed to resolve the specific division of our assets in accordance with the April 2023 Settlement Agreement, which resulted from and replaced the 2021 PNA . It was signed on 9 April in Portuguese and again on 1 June in English. The April 2023 Settlement Agreement was effectively the detailed implementation of the 2021 PNA".

133. This was distilled by Mr Oliver in his closing submissions to the assertion that the husband's: "… route seeks implementation of that which the PNA expressly envisaged and provided for"[38].

134. The husband's description of the 2023 Settlement Agreement as a 'manifestation' or 'implementation' of the 2021 PNA is, in my finding, simply not sustainable. As I have earlier said, the 2021 PNA contemplated a straight and simple division of the marital assets to achieve a 50/50 split of the same, and in default of agreement as to the distribution of assets a sale of the same – with the proceeds of sale becoming part of the 'divisible property' and divided equally. The 2021 PNA expressly provided (Clause 18) that it "… shall only be varied by a document in writing executed as a deed by both parties" (emphasis by underlining added).

135. The 2023 Settlement Agreement proposed a *wholly* different structure containing numerous materially different provisions: the 2023 Settlement Agreement restricted both parties' access to the divisible property, given that the vast majority of the assets would be placed into the trusts in respect of which the parties would be merely beneficiaries; the husband would retain an effective veto over the wife's ability to make any further withdrawals from the trust and she would be dependent upon him to manage the assets. The husband would be likely to benefit not insubstantially (by way of management and performance fees) from his role as manager of the trust. Thus, although other provisions contemplated further advances of capital, this was not assured; in the meanwhile, the husband would be paid to manage the funds, and it would be extremely difficult for the wife (in my finding) to displace him from that role. This was all markedly different from the 2021 PNA. The 2023 Settlement Agreement was on any view a significant 'variation' of the terms of the 2021 PNA and as such it could only be achieved effectively by deed. The 2023 Settlement Agreement was not at any time executed "as a deed", and could not therefore be effective to vary the 2021 PNA. I reject the husband's case in this second respect.

136. Further and finally, I should add that I am not convinced that the husband really believes his own narrative when he claims that the 2023 Settlement Agreement is an 'implementation' of the 2021 PNA:

    i) When the parties first separated, the husband sought to engage the wife in discussion to give her the chance "to execute a different agreement from the one

[38] Para.2

we have signed" (31 August 2022) (see §55 above), not an implementation of the same;

ii) As I have already mentioned, he later described the 2021 PNA as 'crazy' and sought to persuade the wife the 2021 PNA would be financially ruinous (my word, not his) to them;

iii) He later offered the wife to take either option/plan 'A' or option/plan 'B', which I have already found meant *either* the 2021 PNA *or* the 2023 Settlement Agreement (not the court) and this in itself underlines the fact that he recognised that there were fundamental differences between the two agreements;

iv) In his section 25 statement, the husband states that the wife now seeks "an outcome which is entirely contrary to the agreement which we reached in April 2023", yet her case is essentially based on the structure and philosophy of the 2021 PNA.

(iii) ***Was the wife subjected to undue pressure to complete the 2023 Settlement Agreement?***

137. It is the wife's case that she was placed under undue pressure by the husband when discussing/negotiating and then signing the 2023 Settlement Agreement on 9 April 2023 and then again on 1 June 2023; to succeed in such a claim, the wife must demonstrate not just that she was subjected to 'undue pressure' from him but that also her will was 'overborne' (*NA v MA* §41 above).

138. In this regard, I have specifically considered the nature of the relationship between the parties, both generally and at the material time; the wife's vulnerability post-separation; and the wife's dependence financially and emotionally upon her husband: see *NA v MA* at §41 and *Radmacher* at §42 above. I have asked myself whether the husband has exploited or sought to exploit "a dominant position to secure an unreasonable advantage" over the wife (per Ormrod LJ in *Edgar v Edgar* see §39 above). There is no doubt (indeed the husband accepts) that contact between the parties in the ten months between August 2022 and June 2023 (and beyond) was at times "fractious", though I accept that fractiousness would not be nearly enough to create this sense of undue pressure. My review of the contemporaneous messages leaves me in no doubt that in the period under review (September 2022 – June 2023), the wife was in a desperate emotional state (see *Radmacher* at [72]: §42 above); the WhatsApp and other messages also reveal the steps taken by the husband to exploit his dominant position in the relationship to secure an unfair advantage over the wife (see again *Radmacher* at [71]: §42 above).

139. I address this issue in more detail in the paragraphs which follow under the following heads: (a) context, (b) scare tactics, (c) lack of prior legal scrutiny, and (d) ostracism of the wife's lawyer.

140. *Context*: I have already described the power imbalance in the parties' relationship, including the wife's dependence on her husband. The Supreme Court in *Radmacher* was clear (at [72], see §42 above) that the 'emotional state' of either or both of the parties to a nuptial agreement at the material time is relevant to my evaluation. In the period after the separation of the parties, I accept that the wife was depressed,

"insecure" (see §56 and §113 above) and suffering anxiety attacks; I find that she was vulnerable and isolated in England. Her messages to the husband and others speak of her loneliness and joylessness. One indicator of how she felt can be found in the message to the husband: "I'd rather disappear, die, vanish. I DON'T HAVE THE STRENGTH TO TALK ABOUT THIS!" (17 February 2023) (capitals in the original). About a month after the separation, she proposed reconciliation, a suggestion which in my judgment was borne of loneliness and not because she genuinely wished to resume the marriage. I accept her evidence that in relation to the division of assets she "… felt overwhelmed, worn down and so simply went along with what [the husband] wanted. … [the husband] is a man who knows what he wants and how to get it". I was struck by the wife's message to AA on the morning of the signing of the agreement in which she referred to the husband as "tightening the belt" and "pushing" her, ultimately declaring that she could not "stand it anymore" (see §79 above). I find that the husband was impatient for resolution, frustrated at the delay, and testy with the wife when she questioned his proposals, even when she had reason to do so[39]. I find that his frustration and volatility showed and was felt by the wife; it was felt also by AA who complained of receiving an 'earful' from the husband and her "upset" that she had had the 'crap beaten out of her by him'. The husband's messaging was, as I have earlier indicated, at times petulant. I find that the husband exploited the wife's vulnerability and relative isolation in England, intimidated her with his threats of dire consequences if she did not sign up to his proposals, and in this way took wholly unfair advantage of her.

141. *Scare tactics*: Second, I find that the husband deployed a number of tactics to frighten the wife into agreeing with his proposals for financial settlement in 2022-2023. Under his opening proposal he would have benefited from a $50 million dollar larger share than her; either this was designed to rattle the wife, or the husband was thoughtless as to the consequence upon her of his proposal. Either way, she was unsettled by it. At times throughout the negotiations, I find that he repeatedly presented a doomsday scenario, threatening to 'explode'[40] the trusts by which – as the husband intended – the wife understood that the family assets would be removed from the trust and would be wiped out by taxation. I reject the husband's denial that he had threatened to 'explode the trusts' (per his statement of evidence). The husband further threatened her with 'five years' of 'fight' / litigation if she did not agree with his proposal; I am satisfied that he threatened to take the children away from her (as she alleges), and emotionally blackmailed her by advising her that if the 2021 PNA were to be implemented this would have a negative effect on the children, and that she would be blamed by them for denying them their dynastic inheritance. He encouraged the wife to believe that the family would become "bankrupt" if she sought to adhere to the 2021 PNA, and she would end up working on the tills at Tescos; he was quick to speak of 'war' between them and call out the hostilities. I find that, cumulatively, these scare tactics had a significant impact on the wife, on her self-confidence, and on her free will.

142. *No prior legal scrutiny*: Independent and objective legal scrutiny is an essential safeguard to fairness where parties are seeking to achieve a negotiated settlement of a financial dispute – particularly one of this magnitude. I am satisfied that the husband consciously took steps to keep the lawyers on both sides away (as far as possible) from the negotiations until he believed that there was a signed deal. In a number of

[39] The spreadsheets sent to the wife by the husband over the year following their separation showed radically different values [of up to $1.5bn] of their assets.
[40] The term generally used was "explode" but I note that in September 2023 he also used the term "implode".

exchanges of message after their separation, the husband made clear to the wife his view that the financial agreement had to be reached between them *before* lawyers became involved. Early in the negotiations, on 26 September 2022, he spoke in terms of there being "[a] deal [to be] reached and then get the lawyer involved". Later in the negotiations, on 16 January 2023, he told the wife that he would "send [her] the agreement first", as it did not "make sense to generate cost [of lawyers] if you don't agree". He confirmed this approach in a voice message he left with her two days later (18 January 2023):

> ".. I'm writing the document, you have to read the document, if you read the document, agree to the document, then we have to schedule a meeting with this [neutral] lawyer to… write the document, understand? no... it makes no sense for us to talk to any lawyer if we do not have a document that we agree to" (Emphasis by underlining added).

143. He accepted that in January 2023 he had told the wife that "it was best to reach an overall agreement before we spoke to a neutral lawyer" (emphasis added). It appears that the husband has a relatively low opinion of most lawyers (except, it appears, his current legal team) even describing his own previously instructed English solicitor as "thick" and "mongoloid". More pertinently, he recognised that lawyers would be likely to interfere with, and ultimately frustrate, his objectives: "if the deal is led by the lawyers… this will not be the best for our kids as part of the lawyer's conversation". He feared that the structure of his proposal would not ultimately withstand judicial scrutiny (§109 above).

144. It seems reasonably clear from the contemporaneous correspondence that the wife had limited understanding of the implications of the proposed agreement (see above: §89, her last minute queries to AA), and less than complete "information that is material to his or her decision"; I bear in mind in these regards the cautions expressed by the majority of the Supreme Court in *Radmacher* at [68] and [69] (see §42 above).

145. *Ostracising wife's lawyer*: Fourthly, I am satisfied that the husband specifically and deliberately sought to isolate the wife from her own trusted lawyer, and sought to drive a wedge between them for his own advantage. The husband knew or reasonably suspected that Ms Gordon offered the wife not just legal advice but a degree of emotional support too. His communications in 2022-2023 showed nothing but contempt for Ms Gordon, avowing that he would never speak with her "not even dead"; he further threatened the wife that: "if the thing goes to Claire [Gordon] there will be many implications" (unspecified), and that "when Claire enters the field, this proposal for an agreement is no longer possible. I'll immediately cut off communication with you". Even when the wife sought to explain to the husband that:

> "Claire acts like a lawyer, trying to defend me, and she... wants the information, she wants the numbers, she wants to make sure that I'm not being ripped off, she's a lawyer, it's her job",

the husband replied:

> "… so Claire is declining to progress with the process, and, some... I'm not an English lawyer, but some things are so basic, that I can't believe she's so stupid, ok… if she's wanting to protect herself as a lawyer, she's getting a way to destroy your life,… I don't know if she's doing it out of evil, I don't know if you're the one who's directing her, but it's going to destroy your life, ok, because everything I do, you're going to have to do, so, like this, man, I can't believe anything you say, and, and, she doesn't want to move on with the process". (Emphasis by underlining added).

More than once the husband referred to Ms Gordon as a 'bad character' lawyer, and suggested (to the wife) that she was untrustworthy: "I'm sorry but either she's stealing [from] you or you guys are setting up something", and later "she may have abused her trust to misappropriate your GBP" (both comments are taken from communications on 9 May 2023).

146. I am satisfied that, as the husband intended, this had the effect of increasing the wife's sense of vulnerability at the risk of losing her main source of legal and to some degree emotional support at this crucial time. It is likely that she was taking advice and receiving some services in respect of the divorce in the period 2022-2023, given that the divorce application was issued in this period[41]; this support was under direct threat.

147. The husband knew or reasonably believed in my finding that if the wife showed the 2023 Settlement Agreement to Ms Gordon, the wife would be advised against confirming it. He feared that the parties would be held to the 2021 PNA and/or a conventional sharing outcome:

> "… if you have to open the agreements to Claire [Ms Gordon], we're going to split fifty-fifty… if it's on that path, I don't, man, like, I'm not going to take care of a penny of yours, I'm not going to take care of a penny, is fifty-fifty, you take your half, I take my half and it's over … the only possible agreement with Claire is the fifty-fifty, and you're going to take care of your things, you understand,".

148. The husband was cross-examined about these exchanges; he told me that he was "not ashamed" of these comments about Ms Gordon. He disputed that he had bullied the wife, and contested the proposition that his remarks were intended to unsettle the wife or would have this effect. He also appeared to be indifferent to the fact that these messages were inconsistent with his written evidence in which he indicated that he "…was content for [the wife] to continue taking legal advice on the agreement behind the scenes (Claire Gordon at Farrer was on the record in respect of the divorce)".

149. I should make clear that there is no evidence before me that Ms Claire Gordon (Farrers) has acted within this litigation (and/or before the litigation commenced i.e., when she was first instructed by the wife on respect of the 2021 PNA) other than with integrity,

[41] Also invoices of c.£71,000 were rendered by Farrers which covered this period.

and (so far as I am in a position to assess it) in accordance with her client's best interests. I can find no proper basis for the husband's immoderate and vindictive views of Ms Gordon, and it was wrong of him to seek to exclude Ms Gordon from the discussions about the settlement. I find that he recognised in Ms Gordon a dedicated and conscientious lawyer who would in all likelihood appropriately and diligently protect her client's interests. In that regard, the husband saw her as an obstacle to his objectives.

150. *Conclusion on undue pressure*: I accept that in better times the wife would have the emotional resources to be able to stand up for herself, and I further accept that in limited ways she sought to negotiate the terms of the 2023 Settlement Agreement in good faith. I find that she genuinely wanted to reach a solution with the husband; I find that she was persuaded by the husband to his way of thinking and for a period she appeared accepting of the 'core' of the husband's proposal, even though she was not altogether clear (because the husband did not make it clear to her) of the extent of the parties' resources.

151. Mr Oliver fairly points to the fact that the wife actively engaged in the process of negotiation, and made proposals along the way[42]. He referred to her not "without an eye for detail" who could spot typographical errors. However, I find that in the period from the divorce application up to June 2023, the wife was, in truth, doing no more than trying to make the best of a situation which I am satisfied she found to be traumatic and in which she found herself placed under sustained and intense pressure from the husband and his scare tactics. In the whole of the period in which the negotiations were taking place she was, I find, both isolated and anxious. She may well have scrutinised the document for its terms, seeking to improve on them to protect herself, but that does not detract from the fact that she saw her situation as 'torture'; I find that she felt threatened by the husband, and I accept her evidence when she said that she felt 'cornered', 'insecure', 'trapped' and 'controlled' by him in this period.

152. I am satisfied, from all that I have read and heard, that the wife was ultimately placed in a position of obvious disadvantage, without the ability to exercise any real self-determination or free will in relation to the negotiations in 2022-2023 on the division of marital assets. I find that the husband threatened to scale back the renovations to, and/or sell, Property 1 and that he would remove the children from her care. These threats were designed to upset the wife dreadfully. I am further satisfied that the husband sought to frighten the wife by telling her that he would 'explode' the trusts, and that consequently the family would become bankrupt. She believed him on all counts just mentioned. All of these threats were real; the husband knew that they would trigger enormous anxiety and fear in the wife; and he was right, they did. I reject the husband's case that both parties entered into the 2023 Settlement Agreement voluntarily and with a full appreciation of its implications. I am satisfied that over the course of the nine months from separation to the signing of the 2023 Settlement Agreement, the wife was put under increasing undue pressure to such an extent that her will to agree a division of the family assets was worn away, and she ended up, in the manner described by Baron J in *NA v MA*, 'overborne'. For this reason alone I would not uphold the 2023 Settlement Agreement.

[42] There is a useful table which illustrates his point at [43] of his closing submissions.

(iv) *Was the 2023 Settlement Agreement a Xydhias agreement?*

153. The case of *Xydhias v Xydhias* [1998] EWCA Civ 1966; [1999] 2 All ER 386 remains the benchmark authority by which the court assesses whether an accord has been reached between parties in the context of contested financial remedy litigation. In this regard, "the judge is entitled to exercise a broad discretion to determine whether the parties have agreed to settle" (per Thorpe LJ). In that case, Thorpe LJ (with whom the other members of the court agreed) was keen to ensure that the "antics" of a litigant who wished to escape from a deal should not lead to unnecessary litigation "on the ground that some point of drafting, detail, or implementation had not been clearly resolved", adding that "[o]rdinarily heads of agreement signed by the parties or a clear exchange of solicitors letters will establish the consensus".

154. In this case, there is clear evidence that following the signing of the 2023 Settlement Agreement the husband did not in fact regard himself or the wife as bound by its terms. For instance in the month following the signing of the June 2023 English language version of the agreement, he corresponded with the wife and asked "why do you think the house[43] is yours and not mine?", which was of course inconsistent with the terms of the 2023 Settlement Agreement under which Property 1 was to be owned by neither of them, but available for the wife's (not the husband's) exclusive occupation. Later in September 2023, the husband's then-appointed solicitor wrote to the wife's solicitor in these terms:

> "Whilst [the husband] will meet the costs required for the completion of the works [to Property 1], the cost of the improvements over and above the value added to the property will ultimately need to be borne by the party that retains and occupies the property, which we note has not yet been agreed" (emphasis by underlining added).

Yet, I repeat, under the terms of the 2023 Settlement Agreement, the property was to be retained for the wife's sole use.

155. As I outlined above, in the period after June 2023 the husband repeatedly offered the wife to settle the dispute on the basis of either 'option A' or 'option B'. I have in mind for example the voice note which he left for the wife on 26 September 2023 in which he said this:

> "… the issue is very simple, you have to make a choice that's simple, it's A or B, either you want [indiscernible] or you want the April deal, there is not a third option, you understand, there's no negotiation, you choose one or the other, but you have to decide, you understand".

He told the wife on same day (26 September 2023) "you're going to have to choose with Claire which path you want, you understand, is... if you want to split fifty-fifty or if you want the agreement". (In passing, I noted from the husband's messages that he occasionally addressed the wife in this way: "you're going to have to…." which I find was his way of seeking to pressurise her and control the way she made her decisions).

[43] The context is clear that when the husband refers to the 'house' he is referring to Property 1.

It will be recalled that he adopted the same approach in the round table meeting with the lawyers on 17 October 2023: "is it Plan A or Plan B, then we get into a room and we execute. It's simple". Notably he was not saying in the voice note or in the round table meeting that the parties had reached a concluded agreement in April or June 2023.

156. I remind myself of Munby J's words in *X v X (Y and Z intervening)* (§40 above) that the court should carefully consider "the extent to which the parties themselves attached importance to [the purported agreement] and the extent to which the parties themselves have acted upon it". I find that, by his words and actions in the months after June 2023, the husband did not attach the kind of importance to the 2023 Settlement Agreement as he does now, and did not act upon it.

(v) *The 2023 Settlement Agreement, and the husband's open proposals*.

157. Even though the husband has, by reason of his notice to show cause, invited me to uphold the 2023 Settlement Agreement, his open proposals are, I find, materially different. Mr Oliver says that the structure of the open proposals "achieves the same thing" as the 2023 Settlement Agreement, and argues that the philosophy of the two is the same; he argues that aspects of the mechanics have had to change because of the Government's 2024 budget, and that his open proposals offer a "simplified route" to achieve the 2023 Settlement Agreement.

158. I set out the material differences between the two proposals in the table below:

2023 Settlement Agreement	**Husband's Open Proposals (06.12.24)**
Outright capital: $30 million	Outright capital: $130 million
Parties to be beneficiaries of trusts containing about £450 million	Parties irrevocably excluded from trusts containing £250 million (after payments to the parties). Both parties to be protectors of the trusts, in a protector committee. (That the wife ceases to be a beneficiary of the family trusts under the open proposals represents in my judgment a *significant* repudiation of the structure of the 2023 Settlement Agreement).
Annual periodical payments of $2.4 million but subject to annual review (likely reduction after the first year)	A capitalised periodical payment is included within the $130 million in the sum of $63 million. The capitalisation calculation produces a figure a little over £50.5 million or c.$65 million.
Parties may seek a further distribution of capital	No more capital available but $20.5 million has been added into the $130 million to reflect the loss of a chance to seek a further capital sum and acquisition of additional assets under the 2023 Settlement Agreement

Parties may seek priority use of additionally acquired assets	(See above)
Parties' homes inside trust: exclusive use provision	Parties' homes outside trust: outright transfer
No tax fund outside trust	A dedicated tax fund (outside of the trust) is to be created onshore. The required fund is said to be £12.3 million (initially put at $31.2 million).
No further capital payments unless agreed	Parties each to receive half the proceeds of sale of Property 2, Property 4 plus land, Property 7, Property 8, and Property 9 (to be sold by 5 April 2028)

159. The differences outlined above illustrate the way in which the husband's case before me was puzzlingly inconsistent. To some extent I recognise that by his open proposal he was endeavouring to respond to some of the obvious misgivings which had been expressed by the wife about aspects of the 2023 Settlement Agreement when it was being discussed – i.e., the vulnerability of the periodical payments to downward variation was addressed by capitalisation at the full rate; the uncertainty of further advances was addressed by a built-in advance. I also recognise that there are of course some obvious common features between the 2023 Settlement Agreement and the husband's open proposals. But in my judgment the 2023 Settlement Agreement and the husband's open proposals are essentially different proposals.

160. I am therefore unconvinced that the open proposals reflect the 2023 Settlement Agreement as argued by Mr Oliver. That the husband advocates for a different outcome from the one (embodied in the earlier agreement) which he urges me to uphold demonstrates an incurable lack of coherence in his arguments.

(vi) ***Would it be just and fair to hold the parties to the 2023 Settlement Agreement?***

161. The structure of the 2023 Settlement Agreement would have represented an unconventional outcome for the distribution of marital assets following a marriage of this length (or at all). Had the parties – properly advised by independent lawyers – both agreed upon this structure and outcome, I would have been slow to interfere.

162. However, for the reasons which I have set out in response to the five questions in this section immediately above, it plainly would not be 'just and fair' to hold the wife to the 2023 Settlement Agreement in either of its iterations (April or June), and I shall not do so. In short, I am satisfied that if there was a concluded agreement at all, which I reject (see my reasons at (i) and (iv) above), it was not an 'implementation' or manifestation of the 2021 PNA (see (ii)); insofar as it was a variation of the 2021 PNA, it was not achieved by any document executed as a deed as Clause 18 of the 2021 PNA required. The agreement was, in any event in my judgment, procured by the exercise of undue influence by the husband upon the wife (see (iii) above). Moreover, I cannot see how it would now be just and fair to hold the parties to the (somewhat inchoate) terms of the 2023 Settlement Agreement (or agreements, plural) when as it happens neither party wishes me to adopt them; the husband's open proposal is in my judgment materially different from the 2023 Settlement Agreement (see (v) above). Neither party appeared

to regard the 2023 Settlement Agreement as a concluded agreement at the time and neither of them behaved in the weeks and months thereafter as if they were bound by it.

The resources of the family

Company C

163. Company C is the husband's principal commercial interest at present; he is a Board Member and one of the founding directors of Company C Services Limited. He told me that " Company C is very much my creation and focus". In relation to its position in the financial remedy dispute, there are two issues which require my determination:

i) What value to attribute to this (currently) loss-making private company;

ii) The liquidity of the husband's interests and whether the husband's interest/shares in Company C could or should be transferred to the wife.

As to the second point, the husband has indicated strong opposition to the transfer of Company C shares to the wife, and argues that there are practical impediments to achieving this satisfactorily. I discuss each in turn.

Valuing Company C

164. The well-known and well-respected Single Joint Expert in forensic accounting instructed in this case, Mark Bezant, observes that the valuation of loss-making companies such as Company C is difficult, a point amply acknowledged by legal authority. I approach Mr Bezant's opinion with the familiar passage from the judgment of Lewison LJ in *Versteegh v Versteegh* [2018] EWCA Civ 1050 at [185] in mind:

> "The valuation of private companies is a matter of no little difficulty. In *H v H* [2008] EWHC 935 (Fam), [2008] 2 FLR 2092 Moylan J said at [5] that "valuations of shares in private companies are among the most fragile valuations which can be obtained." The reasons for this are many. In the first place there is likely to be no obvious market for a private company. Second, even where valuers use the same method of valuation they are likely to produce widely differing results. Third, the profitability of private companies may be volatile, such that a snap shot valuation at a particular date may give an unfair picture. Fourth, the difference in quality between a value attributed to a private company on the basis of opinion evidence and a sum in hard cash is obvious. Fifth, the acid test of any valuation is exposure to the real market, which is simply not possible in the case of a private company where no one suggests that it should be sold. Moylan J is not a lone voice in this respect: see *A v A* [2004] EWHC 2818 (Fam), [2006] 2 FLR 115 at [61]-[62]; *D v D* [2007] EWHC 278 (Fam) (both decisions of Charles J)."

165. Moylan LJ repeated and emphasised this point later in the same year, in *Martin v Martin* [2018] EWCA Civ 2866 at [92]: "valuations of private companies can be fragile and need to be treated with caution. Further, it accords with long-established guidance and, I would add, financial reality."

166. Company C has grown significantly since it was founded in 2019, but it has never made a profit; there is a "material possibility" (Bezant) that the company will become sustainably profitable in the future and it therefore has an 'enterprise value'[44]. There is typically a wide range of indicators of value of a company such as Company C, and significant judgment is required. As Mostyn J said of 'enterprise values' in *E v L* [2020] EWFC 60 at [54]:

> "A valuation is therefore no more than a guess, admittedly an educated and informed guess, about a hypothetical future (albeit proximate) event. That future proximate event is the fictitious purchase of the thing being valued by a bona fide purchaser at arm's length who is fully informed of all relevant facts and matters".

167. In his first report (dated 2 August 2024) Mr Bezant expressed the view that the value of the entire share capital of Company C was €565 million (as at 31 July 2024), and that the husband's shareholding was worth approximately €11.2 million (direct shareholding) and approximately €95.6 million (indirect shareholding) (€106.8 million aggregate). By the time of his second report (13 January 2025) he had revised those figures downwards to €538 million for the entire share capital, €20.5 million for the husband's direct shareholding[45], and €81.2 million for the indirect shareholding (€101.7 million aggregate). He explained the reductions in overall value of the business by reference to a decrease in the enterprise value, and a decrease in Company C's cash balance.

168. Significantly, Mr Bezant has valued Company C at 94% less than the fundraising value in November 2021. As Company C's technology is the husband's area of expertise, it is where his investments have been focussed; it is the husband's case that the fall in Company C's value is replicated by the fall in the value of Company A and many other of the husband's investments[46]. I discuss this further below.

Liquidity of the husband's interests in Company C

169. The husband has interests in Company C in three respects: (i) non-voting shares in his own name, (ii) voting shares owned by Company D (and he in turn owns c.57.2% of the shares in Company D Class A), and (iii) non-voting shares owned by Company I (Company I has made various investments, of which Company C is one; Company D has a c.32% interest in Company I via Company D Class E, and the husband owns 100% of the Company D Class E shares). Overall, the husband owns (directly and

[44] "… otherwise, Company C will continue to be loss-making indefinitely and its enterprise value would be nil or close to nil" (Bezant).

[45] The husband had previously been holding shares on behalf of a third party, now his own. By the same token, some of the husband's interest in Company D Class A has been transferred to the third party, such that the husband's interest in Company D Class A has decreased to 57.20628%. The overall effect is neutral, the husband now holds directly some of the shares which he previously held indirectly.

[46] I note that Company A floated on the Nasdaq and that the current share price is c.28.6% of the price at floatation.

indirectly) approximately 19% of the total shares in Company C (based on its current share capital).

170. The husband's interest in Company C is illiquid; that illiquidity will of course need to be taken into account when considering how his interest is taken into account in a division of the marital assets overall (see below), particularly given that there is no obvious mechanism for the husband to make an early exit from Company C. Liquidity is unlikely to be achieved in the short term through the payment of dividends, or share buy-backs, by Company C. The husband's shareholding, I accept, may only be realisable/realised by a sale of the company. Mr Bishop suggested in opening that the sale of Company C was a "realistic option", adding that "if [the husband] doesn't want to be burdened with that risk in illiquidity, let Company C be sold and both parties take half of it". But Mr Bezant has expressed a somewhat pessimistic forecast (in answer to the wife's specific *rule 25.10 FPR 2010 / Daniels v Walker* questions) about "when an exit may be feasible", advising that there are "material uncertainties" about this. In particular, I accept Mr Bezant's view that:

> "In my opinion, the [husband] is most likely to achieve liquidity from his shareholding in Company C via a sale of the entire company in the future, for example to a trade buyer or financial buyer, or via an initial public offering. However, the timing of such a sale and the amount that the [husband] may receive, is uncertain" (August 2024: first report).

And that:

> "As regards a potential time frame for an exit event for Company C, there remain material uncertainties as regards Company C's future performance and it is difficult to estimate when an exit may be feasible. It will depend in part on the appetite of potential acquirers of the business. I note that control of Company C is held jointly by the three founders of the company, including the Respondent, so the timing of an exit will also be driven in part by their plans and objectives. In this regard, the Respondent has explained that he currently has no plans to exit his investment". (September 2024: written answers to questions).

171. The husband is clear that there are no current plans to sell Company C; there are no interested purchasers of the business or his shareholding; the other two founders have given no indication of an appetite for sale.

172. It is the husband's further case that any *in specie* transfer of Company C shares to the wife would be likely to trigger complex pre-emption and similar provisions within the Company C corporate documentation (the Company C Shareholders Agreement (SHA) and the Company C Memorandum and Articles of Association). Any such *in specie* transfer to a non-spouse would trigger pre-emption and co-sale rights contained in section 2 of the SHA; it would be a tall order to achieve a complete waiver of section 2. The wife does not accept this, and submits that the husband could use the carve-out provisions within the SHA, though as the final order in divorce has now been applied and granted the pre-emption issue may well arise in any event. Given that any such

transfer would be taking place at a nil value, I accept that this may well create significant problems; it is possible that other shareholders would seek to exercise their pre-emption rights to match the nil transfer price. It is further reasonable to assume that the other shareholders will be unenthusiastic about the wife having the shares; the recently-created voting agreement may cause additional difficulties in relation to transfer.

173. I also bear in mind the husband's reluctance to part with shares in a company which he has conceived and nurtured; the company has not yet achieved profitable maturity, but I accept that he is directly involved in steering it carefully and capably through its corporate adolescence.

The assets for distribution (disputed items)

174. It has proved necessary for me to make some determinations as to disputed values of individual assets. Computation is of course an important precursor to distribution[47].

175. It is the wife's case that the aggregate value of the assets for distribution at this hearing is £544,562,692. The husband proposes an aggregate figure of £463,836,045.

176. I have been helpfully provided with an updated (i.e., headed 'Post-Week One', following the evidence and final negotiations between the parties) composite schedule of assets, where the limited matters in dispute are highlighted. Where I refer to the 'Composite Schedule' in the paragraphs of this judgment below, I am referring to this updated document.

177. Neither party has thought it appropriate to provide me with expert or other suitable evidence[48] to resolve the disputed valuations (save in relation to Property 3) and/or the discrepancies in the values of the shareholdings referred to below, and I have therefore had to do my best on the information provided. In [Table 1] below, the fourth column ('Difference') represents the difference in values between the parties on the contentious items; the figures in the fifth (far right-hand) column (under 'Judgment') are the figures which I have settled upon for the purposes of my judgment for the reasons which are set out in the paragraphs which follow:

[Table 1]: Schedule of disputed items from asset schedule with Judge's determinations

Item	Wife	Husband	Difference[49]	**Judgment**
Property 3	£14,220,000	£7,524,287	(£6,695,743)	**£7,524,287**
Cryptocurrency	£6,425,533	£1,655	(£6,424,238)	**£1,655**

[47] *Charman v Charman* [2007] EWCA Civ 503; [2007] 1 FLR 1246, per Sir Mark Potter P giving the judgment of the court at [67].

[48] The husband has offered some rationale for the discounted values of the shareholdings, reflecting the sector's value drops since 2021/22 but this is unsupported (save, he would argue, for the SJE report on Company C insofar as it has wider relevance) and general assertion.

[49] I have set out these figures in this column to show how the husband's figure would impact on the wife's suggested computation of the overall quantum of assets to be distributed. Where this shows up as a positive figure, it does not impact on the overall calculation.

Item	Wife	Husband	Difference[49]	**Judgment**
Company A RSUs (restricted stock unit)	£4,832,950	0	(£4,832,950)	**0**
Add back the Philanthropic commitment to 'Charity A' (spent)	£1,337,500	0	(£1,337,500)	**0**
Philanthropic commitment to 'Charity A' (due)	0	(£6,452,500)	£6,452,500	**0**
Philanthropic commitment to School A (due)	0	(£4,697,000)	£4,697,000	**(£3,000,000)**
Add back gift to the husband's sister (to purchase a home for the husband's mother)	£2,331,727	0	(£2,331,727)	**0**
Company J	£13,366,845	£812,228	(£12,554,617)	**£13,366,845**
Company K	£5,235,812	£309,437	(£4,926,375[50])	**£5,235,812**
Company M, via Company L	£358,096	£179,048	(£179,048)	**£358,096**
Company N, via Company L	£156,171	£78,085	(£78,085)	**£156,171**
Morgan Stanley	£257,446	0	(£257,446)	**£257,446**
Company O	£211,391	0	(£211,391)	**£211,391**
Bombardier (private jet)	£12,407,181	£11,489,585	(£917,596)	**£12,407,181**
Barclays	£651,999	0	(£651,999)	**£651,999**
Company P	£13,775,532	£3,109,008	(£10,666,523)	**£13,775,532**
Company Q	£2,366,687	£473,337	(£1,893,349)	**£2,366,687**
Company R	£826,247	£140,462	(£685,785)	**£826,247**
Company S	£1,322,720	£1,121,682	(£201,038)	**£1,322,720**
Company T	£4,835,919	£2,417,960	(£2,417,960)	**£4,835,919**

[50] The figures for Company K are the aggregate of those in lines 210 and 224 of the Composite Schedule

Item	Wife	Husband	Difference[49]	**Judgment**
Tax	0	£12,313,797	(£12,313,797)	**0**

178. *Property 3*: As I have mentioned above, the Property 3, was acquired by the husband in January 2023 for £8 million. This is a forty acre site with planning permission for the redevelopment (and/or possibly the demolition and rebuilding) of the existing property. The husband estimates that the cost of the building works will be £12.4 - £16.4 million (said by Mr Deckker to be "high for a project of this type and even the lower end … could be considered excessive"), with an additional £2 million for design, architecture and project management. The husband has already paid £8 million to the developers on account of the costs. All of these sums are said to be exclusive of VAT on the basis that VAT would not be payable on a rebuild. The finished vacant possession market value is estimated to be £16.5 million. Mr Deckker therefore opines (based on the lower end of the rebuild costs) that a straight line residual value would therefore be negligible (c.£20,000).

179. Mr Deckker has alternatively proposed that the refurbishment / rebuild costs could be achieved for a sum in the region of £7.5 million; if this figure is adopted then a straight-line residual value of £6,715,000 is revealed as the proposed market value for these purposes. The wife's legal team, in its opening position, contended for this figure for the purposes of the asset schedule. Mr Deckker's evidence (as a whole) is unchallenged.

180. The husband told me that he regarded it as unfair that the wife was inviting me to accept that rebuild/refurbishment costs for Property 3 should be one-half of the costs of refurbishing Property 1. He told me that he is "really, really, really disappointed" that the wife has taken this line in relation to this issue.

181. It seems highly likely that the husband will spend a sum in the region of £16.5 million (albeit that this is opined to be 'excessive') in refurbishing or rebuilding the home at Property 3; this would be in line with the disproportionate sums which he approved should be spent on the redevelopment of Property 1 during the marriage, from which the wife will – by my order – directly and exclusively benefit for the long term. There is no doubt that as a matter of accounting, the parties will have financially lost 'hand over fist' in the purchase and development of their homes. But I accept the husband's argument in this regard, and determine that he should be entitled to the same level of extravagance as the wife in the re-development of his home. I will assume a balance sheet sum of c.£7.5 million for Property 3 (as per the Composite Schedule), rather than the c.£14.2 million advocated by the wife in her final submissions.

182. *Cryptocurrency*: The husband had valued his cryptocurrency holdings at $8.267 million in January 2025 (£6,425,533). This valuation was provided in accordance with §30 of my directions order dated 30 October 2024. Mr Oliver contends that the parties had agreed that they would adopt up-to-date / live values for currency / FX rates and quoted investments as at 5 March 2025. Therefore, by letter dated 4 March 2025, the husband's solicitors provided evidence that the cryptocurrency investments had plummeted in value and were now worth only c.$1,655. It appears that the husband holds only bitcoin and that in fact the "reason for the losses is because trades were made on a leveraged basis [the cryptocurrency being used as the leverage], which provided for automatic sales to repay debt". It is said that the husband was leveraging to an extreme level, and this is why the loss was so extreme and so quick.

183. I am unclear whether an agreement had been reached between the parties as to the updated values of currency / FX rates and quoted investments for this hearing; I have seen no record of such an agreement, and I was not asked to approve one. Mr Bishop appeared to disavow any suggestion of an agreement, but nonetheless did provide me with updated valuations of certain quoted investments.

184. For obvious reasons, I disapprove of non-compliance with the directions of the court, and deprecate the unauthorised and unsolicited service and filing of evidence[51], particularly late in the day and without agreement; I am not sure whether this has actually happened here. Anomalous results can arise if the values of some items are updated but not others[52]. Be that as it may, I propose to accept the husband's current figure for the cryptocurrency for the following reasons: (a) on the husband's figures set out in his solicitor's letter of 4 March, I cannot ignore that what was once a valuable asset on the balance sheet is now scoring a negligible value; (b) the wife has given certain updated valuations of her own; and (c) I am aware that the wife wishes to rely on other updating evidence provided by the husband contained in the same letter from Withers (i.e., in relation to the transfer of the shares from Family Office A to Company G – see below). I do not consider that either party should be allowed to cherry-pick some updated evidence and not other.

185. *Company A RSUs (restricted stock unit)*: These RSUs (676,613) were issued to the husband in 2023 (post-separation) as consideration for a non-compete agreement. These have an indicative value for the purposes of this hearing of c.£4.833 million if they could be sold now, but they plainly cannot. It is the husband's case that they have no current value. The husband says that the wife has no entitlement to share in them any more than she could share in his pay for work done by him for competitors had he not been remunerated not to do so; he also maintains that they are post-separation assets. The wife seeks cash in lieu of half of the current value of the RSUs on the basis that the benefits to the husband derive from a company formed during the marriage, and pertain to a specific period when the parties were married (2014-2022); this is not plainly a new (post-separation) endeavour. Alternatively she would accept a 50% share of the RSUs on a deferred basis (i.e., when they fall in) or a lump sum equivalent. In short, as the RSUs have been granted to the husband prior to the final hearing, she says that they should be brought into the mix.

186. I can take this shortly. While I accept that the RSUs arose from the husband's work during the marriage, I am unpersuaded that the wife should benefit from them in the distribution of marital assets for the following reasons:

i) they were not granted to the husband until two years after the parties separated,

ii) the RSUs do not vest until September 2028 (that is to say, some six years after the separation);

iii) the RSUs will only vest if the husband honours the agreement;

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[51] I rely in this regard on *WX v HX* [2021] EWFC 14 @ [38]: Roberts J: "The valuation date which was agreed for these purposes was intended to reflect contemporaneous value whilst eliminating all the problems caused by constantly evolving asset schedules in the run-up to a final hearing".

[52] I was told that the value of Company A shares had risen significantly since the agreed date of valuation, which would have a material impact on the asset schedule, for instance.

iv) it is unclear what the RSUs will be worth at the moment at which they fall in.

187. *Philanthropic commitment to 'Charity A'*: The husband maintains that he is committed to making philanthropic contributions in the future as a continuation of the parties' long-shared joint philosophy on charitable giving, with a particular focus on education. Charity A specialises in computer science and programming, delivering programmes under the auspices of Charity B (an education charity). Since its creation in 2013, Charity A has expanded across several countries; the husband and wife were the key sponsors for their operation in Country D and the only sponsor for their London operation. The husband is now also involved with a linked project focussed on secondary education (rather than tertiary, which is Charity A's current focus). This is still in development.

188. It is the husband's case that Charity B was added as a beneficiary to the trust in 2021 (when the parties were married) and he asserts that it does not behove the wife well now to renege on the commitment which she then made. In December 2021, it appears that the husband committed to advance up to £9 million to Charity B "as needed, based on the charity's cashflow requirements". It is reasonably clear that the pledges to Charity A/B have significantly increased during the period covered by this litigation.

189. The wife does not subscribe to such a high level of philanthropy, at least for this particular beneficiary and particularly at this time; she argues that if the husband wishes to commit the sort of figures discussed (the husband has now indicated a figure approaching £6.5 million), it is a matter for him, and he can do so after the distribution of marital assets.

190. I take the view that the sums already spent as charitable donations to Charity A/B should not be added back into the asset schedule (£1,337,500) given that they were committed and paid during the marriage. Even though Charity A/B was added as a beneficiary to the First Family Trust in 2021 (when the wife was protector of the charity), I take the view that circumstances have materially changed since that time, and that the future charitable giving (which the husband has apparently pledged) to this beneficiary is a matter now exclusively for the husband. Moreover, the scale of the gifting has increased significantly, and ostensibly without the wife's knowledge or agreement (her name does not appear on the relevant documentation showing the increased donations). I detected from the husband's evidence that he broadly accepted that he would now accept responsibility for the future donations if the wife no longer wished to participate in this particular act of charity.

191. *Philanthropic commitment to School A*: As with Charity A/B, the philanthropic beneficence to School A has grown exponentially in recent times. When the husband filed his Form E, this stood at £1.5 million. By October 2024, the figure stood at £4.67 million (although it was not clear that this was exclusively to benefit School A). The wife accepts that certain commitments were made to School A – to fund a Ukrainian refugee for seven years of education (this would be likely to be c.£400,000 alone), and towards the development of a new building. I draw a distinction between the commitments made to Charity A and those made to School A; the two older children of the family attend School A, and in the fullness of time it may be that ZX will follow. I take the view that this is family benevolence for which all members (parents and children) can derive some personal satisfaction, and that therefore a sum which I shall

assess at £3 million should be deducted from the assets before distribution to reflect an element of joint future bequests which the husband says he has pledged.

192. *Gift to the husband's sister*: The husband gifted his sister $3 million in March 2023, so that a property could be purchased for their mother. The husband proposes that this sum should not be added back into the calculation of assets available for distribution; the wife argues that it should be added back into the fund for distribution. The husband alludes in general terms to payments which the parties made to the wife's family in the past (for which he does not seek an account); although this is vague, it has the ring of truth. Although the husband made this gift post-separation without (so far as I can tell) any consultation with the wife, I propose to discount it from the assets for distribution, and not to add it back. On any view, this was not a reckless depletion of marital funds.

193. *Company J, Company K, Company P, Company Q, Company R*: Company J is based in Amsterdam; the husband is an investor and offers general assistance to the company. Company J is said (by the husband) to be similar to Company C (it does "pretty much the same stuff (sic.) that we do at Company C") though it is (he says) "more fragile". After the husband's investment (2020/21), the "valuation [of the business] grew… it sky-rocketed". The husband applies a 94% discount to the current statement of value on the asserted basis that the business is comparable to Company C, and this is the discount which Mr Bezant has applied to Company C. I reject the husband's overly-generalised and wholly unempirical approach to the discounting of the value of shares in a company which may have similarities to but is nonetheless different from Company C, and in respect of which I have no expert evidence.

194. The husband has applied the same approach to all of the companies listed in the introduction to the paragraph immediately above. As to Company K, he simply adopted a "same industry, same principle" approach, asserting that as the wife had not challenged the discounts applied in the early stages of this case, she should not be able to do so now. But I can no more confidently rely in this case on the husband's "greater knowledge of the sector"[53] than I can the wife's assumption that the position has not changed significantly since the last fundraising round. Company P is plainly a company on the 'up'; the husband's investment has risen from $4 million to $17.7 million; the husband argues that it would be artificial to uplift the value of Company P on the basis of 'on paper' gains that are unlikely ever to be realised, and suggests that the interest should be valued "at cost". Company Q has been discounted by 80% on the basis that it is comparable to another publicly quoted company whose share price has been falling. There is really no evidence to support this approach. I cannot accept that it would be appropriate, as the husband contends, for me to apply the same broad brush discount in respect of either of these companies. The husband's evidence about Company R is that "Company R's revenue is similar to Company C's, but it has negative margin and a high cash burn rate. An estimated value of $700m is more reasonable, and the resulting discount has been applied to the value noted on the statement". I regret that I cannot accept his self-serving explanation for such a significant discount.

195. I propose to accept the wife's valuations for the companies listed; insofar as these valuations are themselves "fragile" (in *Versteegh* terms), an appropriate way of

[53] Para.105(g) of the husband's Closing Submissions

addressing this is for the wife to take 50% of certain of these shares, and that therefore the parties will share the benefit (or otherwise) from their true worth.

196. *Family Office A: Class 1, Company M via Company L; Company N; Company T.* Since the private FDR, the husband has simply halved the value of these shareholdings for the purposes of his asset schedule, on the basis that the underlying investments had been realised (although this is not consistent with his oral evidence). In relation to Company N, the arbitrary 50% reduction was said to be because the investment was not performing well. There was no evidence of this.

197. The husband told me in oral evidence that there would be a significant problem with the transfer of shares in Family Office A which is a family office (comprising three individuals); the husband's evidence is that he "was only able to invest because they personally invited me given my reputation in the industry"; he added that he and BB are the only two "invited to this club". He said that it would be "a dishonour" to impose the wife as a shareholder onto this family. He makes the same point in relation to Company H. The 50% discount in respect of Company T, Company N and Company M is new since the private FDR (four months' earlier), and has been applied by the husband simply because he does not believe that the figure earlier given is 'realistic'; the husband's case is not evidence-based, and I cannot confidently or appropriately rely on his arbitrary assertions. I reject them.

198. Moreover, it is clear that in order to take advantage of the opportunity to rebase assets prior to the new tax year, and given the upcoming changes to the non-dom regime, the husband has transferred three assets from Company L managed share transfers and placed them with Company G. There was no opposition from Family Office A. Withers observed in the letter disclosing this transaction: "if the court determines that these assets should be transferred to [the wife], your client will benefit from the stepped-up base-cost which has been achieved by this transaction".

199. *Company U via the First Family Trust*. The husband claims to retain the investment in full, because – he says – he has been advising the company post-separation. It is nonetheless a business which was founded during the marriage and should in my judgment be considered within the schedule of assets.

200. *Bombardier (jet depreciation)*: The parties have applied a 10% depreciation to the jet. The husband's lawyers have applied two years' depreciation, whereas the wife's lawyers have applied a *pro rata* (18 months) depreciation as two years have not yet passed since it was purchased. The husband explains that the "plane will likely take a year to sell" and in the meantime, it will continue to depreciate in value. Thus, (he maintains) it is entirely appropriate to provide for an additional six months of depreciation at least. It seems appropriate to me to adopt the wife's approach on the basis that the depreciation should be assessed as at the 'snapshot' date which has been taken for the valuation of all assets in accordance with my direction.

201. *Tax*: The husband discounts the overall asset schedule by $17.27m (£12.3 million). This arises because it may be that the Foreign Income and Gains (FIGs) liability realised on the disposal of the Company B offshore funds in 2018/19 and 2019/20 when the husband was UK resident (of up to £102,614,978) will need to be "cleansed" by the payment of 12% tax (i.e. £12.31 million) by January 2028. It is the husband's case that this is the reasonable best estimate of the likely liability, and that this sum should

therefore be set aside. It is the wife's case that the husband has exaggerated the likely tax liability, and that some of the taxable pre-2020 FIGs could be regarded as having been cleansed prior to April 2025 by the payment of the cash sum of $95 million outside of the UK (which could then be used by her to spend in the UK without tax arising after the final order of divorce). The wife proposes that each party should undertake to bear one-half of the tax liability as it arises out of their share.

202. I deal with this more fully in the next section of the judgment below. For present purposes it should be noted that, on the arguments, I prefer the approach of the wife.

Tax issues

203. There are now three main issues arising in relation to tax arising on these facts:

i) Whether the tax due on the pre-2020 Foreign Income Gains (FIGs) (£12.3 million) can be avoided or reduced, and specifically whether that sum should be held in escrow;

ii) Whether there are advantages of retaining trusts for IHT or other tax purposes;

iii) Whether the husband should be required to give indemnities to the wife in respect of the retention of the trusts, and whether the wife should have the benefit of indemnities from the husband.

Before considering these, let me first set the scene.

Agreed context: tax

204. The husband and wife are both domiciled outside the UK and, as I have earlier mentioned, are nationals of Country A; neither has become deemed domiciled for UK tax purposes. They first became UK tax resident on 27th August 2018. The husband, but not the wife, became non-UK resident for one complete UK tax year in 20/21 and a split year until 16th April 2021. The husband has been UK tax resident since then and the wife has been UK tax resident throughout (i.e. since August 2018). Up to this point, both the husband and the wife have claimed the remittance basis of taxation in their respective tax returns so are not paying tax on their unremitted Foreign Income and Gains ('FIGs'). One of the complications in the case (from a tax perspective) is that the husband redeemed units in his Bahamian offshore investment fund (Company B) while he was UK resident; these gains in 2018/19 and 2019/20 of c.£102.6 million are potentially taxable on remittance. The husband considers that the FIGs arising from these sales cannot be traced and that it would not be proportionate or cost-efficient to try to do so.

205. The wife's legal team sought clarification of the wife's tax position upon the resolution of the financial remedy dispute using HMRC's Clearance and Counteraction Team non-statutory clearance procedure. The main query arose in relation to the tax treatment of the Offshore Income Gains (OIGs) which had been generated in 2020/21 whilst the husband was still non-UK resident, and whether the wife would be liable for tax upon them when brought onshore. To recap, while he was abroad in Country B, the husband transferred the 2020/21 OIGs into the two trusts, partially by way of a gift and partially by way of sale for an IOU which was left outstanding. HMRC has confirmed that

"based on the information provided, HMRC would not consider half of [the husband]'s foreign income and gains are assessable on [the wife]. The foreign income and gains would appear to be [the husband]'s and HMRC would treat them as arising to him".

206. It is agreed that the tax position changed for both parties on 6th April 2025. From that date their domicile ceased to be a relevant factor for most UK tax purposes, and while they are UK resident, the starting point is that they will be taxed on an arising basis i.e. on all their worldwide personal income and gains. The "remittance basis" of taxation (payment of UK tax only on the gains that are brought into the UK, subject to an annual charge of either £30,000 or £60,000) was abolished from 6 April 2025.

207. In the recent past, the husband has been able to require repayment of the debts due from the First Family Trust and the Second Family Trust to fund the family's living expenses without paying tax, on the basis that the funds provided to the Trusts were made out of clean capital from gains realised when the husband was non-UK resident. From 6 April the husband as the settlor of any trusts will be charged on all gains generated by such trusts whether or not he receives them, even if excluded, if his children or grandchildren can benefit. He will broadly be charged on any income generated by the trusts if either he or any spouse of his can benefit.

208. Notably, under the tax regime post 6 April 2025, trust protections end, although losses realised before April 2025 can be carried forward and set against future trust gains realised after April 2025; therefore the husband will not pay tax on any future gains in the trusts if they have not been collapsed, unless and until all brought forward and current year losses have been used (and trust losses eligible for future use are currently estimated at £364 million). This may be useful to him, if he chooses to retain the trusts in existence for his own use.

209. Another significant change to the law post-6 April 2025 is that inheritance tax ('IHT') chargeability will be determined by reference to the concept of long-term residence in the UK (in effect ten years of UK residence) rather than domicile. The wife will become a long-term UK resident for IHT purposes from 6 April 2028. After that date, any trust where she is settlor will be subject to charges at 6% every ten years and an IHT charge at 40% on her death if she reserves a benefit in the trust property. The husband will become long-term resident in 2029[54].

i) Should the sum of £12.3 million be held in escrow?

210. I have set the scene for this dispute above. It is agreed between the parties that the tax liability will be in the region of £12.3 million; this tax liability (or the bulk of it) arises in relation to the redemption of the offshore fund (Company B) by the husband in the two years prior to April 2020 (when he was a UK resident), realising offshore income gains (OIGs) disclosed as being £102,614,978. Ordinarily these gains would be taxed at up to 45%.

[54] They will be long-term UK residents once they have been UK resident for 10 out of 20 tax years, and <u>will remain so</u> for a period of up to 10 years after they have ceased to be UK resident.

211. Under the Finance Act 2025, the husband can in fact choose to designate the pre-2020 OIGs as eligible for the temporary repatriation facility and pay 12% instead of 45% on it (thus it is easy to see the basis on which the £12.3 million figure has been calculated).

212. The point of difference between the parties is that the husband contends that the figure of £12.3 million will (Mr Marre referred to it as a "practical certainty") fall due and that it is therefore prudent to set this sum aside now. The wife (through Ms Chamberlain) does not agree; she points (a) to an amendment to the Finance Act 2025 at its report stage, which has attempted to allow the pre-2020 remitted funds to remain as clean capital, and (b) to the fact that the husband can reasonably be expected in practice to retain funds not paid to the wife for overseas investment and expenditure; he does not need to make that choice now (he has until January 2028). If he does not remit all the £102.6 million then the tax liability of £12.3 million is reduced. The husband does not share the wife's approach to (or understanding of) the legislation (as yet untested, of course) and in any event cannot identify the FIGs[55]. The wife believes that the FIGs must be identifiable at least in part, and is willing to commit to paying one-half of whatever *actual* tax liability arises (which, for the reasons outlined, she believes to be less than the £12.3 million).

213. It is agreed that there is no CGT on any disposal of assets currently owned by the husband as he has sufficient losses to offset the gains. It is also agreed that if the Trusts were to be retained, the Trust losses of £364m could be carried forward and used to avoid or reduce the CGT on future increases in value of the Trust assets.

214. The wife proposes that any tax liability should be met as/when it arises on an equal basis (effectively, a reverse contingent lump sum). According to Mr Marre there would be three problems with this approach:

    i) It only makes sense if there is any doubt about the £12.3 million;

    ii) This stores up trouble; it ties the parties together – and the likely dispute about whether he has mitigated his tax; there will be many issues which could be kicked down the road;

    iii) The payment is capable of creating a tax charge. She would have to discharge a liability in the UK for his benefit and this would create a remittance basis charge here.

215. I am not satisfied that it is necessary to carve out the £12.3 million from the assets for distribution at this stage as I accept the wife's case that this may be an over-estimate. I am unpersuaded by Mr Marre's points in §214 above, and accept the wife's proposal that any tax liability arising in the future should be addressed by me making an order which imposes on her the obligation to pay a lump sum (subject to a maximum figure representing one-half of the £12.31 million) contingent upon the demand made by HMRC.

ii) Tax benefits from the trusts?

[55] The wife claims that the taxable FIGs are represented by the Company H limited partnership interest and the new Class E shares in Company B which H received in exchange for the same and that it therefore seems clear that the Pre-2020 Unremitted Funds were kept separate from those FIGs realised in 20/21 or remitted then.

216. It is reasonably clear that there were three reasons why the trusts were set up in the first place:

i) Wealth preservation;

ii) Tax advantages;

iii) For the benefit of the children.

217. Mr Marre argues that the trusts ought to remain in place for all three reasons. Specifically, in relation to tax, the husband will be able to offset significant losses to the assets in the trust (or significantly reduce his exposure) against future gains. Mr Marre argues that there are IHT benefits too.

218. In fact, as I have earlier mentioned when discussing the parties' open proposals (§37 and footnote 12), Macfarlanes (the firm which has been advising the husband on his tax affairs for some years) has given specific advice on this. It proposes that the trusts be wound up (§1.7) (9 July 2024):

> "… the ownership of assets through the Trusts is no longer practical as it carries an additional UK inheritance tax burden of up to 6% of the value of Trust Assets which would not otherwise arise if assets were in [the husband] and [the wife's] personal use".

219. Macfarlanes suggest three alternatives: Corporate Solution, Nominee Solution, and the Partnership Solution. It is said that prior to the implementation of any of the above options, it is assumed that the Trusts would be terminated (which could be done in a manner which would preserve the clean capital currently available to the parties by means of a repayment of the loans followed by a distribution of any residual assets held in the Trusts prior to 6 April 2025) to ensure that the remittance basis of taxation would apply to such distribution.

220. I deal further with the issue of preservation of the trusts below.

iii) Indemnities

221. The wife seeks indemnities from the husband for potential future tax liabilities related to the trusts. Her case is that the letter to HMRC in November 2024 was expressly predicated (in the full knowledge of the husband and his legal team) on the basis that the family trusts would be wound up by April 2025; the letter did not deal with the position of wife as settlor. The wife claims that if the trusts are now retained for the convenience and future tax planning of the husband (so he can, for instance, shelter up to £364 million of future gains realised on the trust assets) it is perfectly reasonable for her to receive an indemnity in respect of any future taxes or costs of enquiry which could arise (insofar as they affect her) as a result of the setting up or continuation of the family trusts. The husband is more sanguine; he argues that the clearance request made to HMRC was not predicated on the Trusts' being wound up and HMRC's reply binds them whether or not the Trusts are wound up.

222. The risk of HMRC coming back on this is, I agree with the husband, remote. But I am satisfied that he should be required to indemnify the wife in the event that HMRC, in the event, take a different view.

The section 25 exercise; the 2021 PNA and the 2023 Settlement Agreement

223. Having reviewed and resolved the issues which have arisen in this case in some detail, I now, eventually, turn to the provisions of section 25 of the Matrimonial Causes Act 1973 ('MCA 1973'), as amended, in deciding what financial remedy orders to make pursuant to sections 23 and 24 (ibid.). Whatever the parties purported to agree, the ultimate discretion lies with me, and in that regard it is my duty to have regard to all the circumstances of the case, giving first consideration to the welfare, while a minor, of XX, YX, and ZX. I pay further regard, again as I am statutorily obliged, to the range of matters set out in section 25(2) of the MCA 1973.

224. Specifically, I have taken into account that this was a seventeen year marriage, and that both parties are still in their late-forties, with a reasonably long life-expectancy and career opportunities; the enormous wealth for distribution now was all accumulated within the marriage, and I am satisfied that *both* parties contributed meaningfully as a marital partnership to its accrual for the benefit of the family as a whole. The parties have plainly enjoyed, and continue to enjoy, a luxurious standard of living; as far as I know, they both plan to continue to live in the UK, at least until the conclusion of the children's education.

225. This is a sharing case, and the parties agree that it would be fair for them to have an equal share of the assets (or as the husband described it, 'equivalence'). This was expressly contemplated by the parties in 2021; equality in the division of assets should only be departed from for good reason, and, subject to the liquidity arguments below, there is in my judgment no good reason here (no one argues against this). The parties also share a common intention to ensure that the assets generated in the marriage should be preserved in significant measure to benefit the next generation; it is my intention that both parties should indeed be enabled to preserve such of their assets as they wish for the next generation, providing financially for their children, as they individually see fit.

226. As earlier indicated I am not bound to give effect to either of the nuptial agreements, the 2021 PNA or the 2023 Settlement Agreement. It is my independent duty to review the arrangements agreed between the parties and to evaluate them in the light of my statutory duties. Of course, I am obliged to give weight to the agreements (either or both of them) as I consider to be appropriate, depending largely on the facts of the case (as I have found them to be) surrounding their creation.

227. It will be apparent from all that I have said, and following the dicta of Ormrod LJ in *Edgar v Edgar* in my search for a 'just result' that:

    i) I find no reason not to give broad effect to the 2021 PNA;

    ii) I have explained in considerable detail already (§122 to §162) why the subsequent 2023 Settlement Agreement cannot be upheld and should not be given effect. It has proved to be of little, if any, relevance to me in the determination of this claim.

In the next section of this judgment I expand further on why I do not favour the husband's proposal to retain the family trusts as the 'backbone' of any order (as they were of the 2023 Settlement Agreements).

Clean break; section 25A; the Family Trusts

228. Section 25A MCA 1973 imposes on me a duty to consider whether it would be appropriate to exercise the powers under the MCA 1973 so that the financial obligations of each of these parties towards the other will be terminated as soon after the making of the order as I consider to be just and reasonable. There is no doubt in my mind that, faithful to that statutory obligation outlined above, I should make an order which terminates the obligations of each party to the other as soon as possible, and therefore to achieve a 'clean break' between them. This is a paradigm case for a clean break order. There are plainly ample resources with which to achieve such an outcome and from my observations at court over the course of the hearing, it is clear that the relationship between the parties is poor and they should not be bound financially together in the future to any degree more than is necessary.

229. The 2023 Settlement Agreement and the husband's open proposals both fail, in my judgment, to deliver on the expectation of a clean break between the parties. The husband proposed, under both scenarios, that the parties would need to co-operate for the foreseeable future as protectors of the Family Trusts. I am in fact wholly unconvinced by the merits of the trust structure as the means by which I should resolve this financial remedy dispute for four main reasons:

i) The trust structure would bind the parties as co-protectors for the foreseeable future; they would, *inter alia*, need to be involved in distribution of assets of the trust, and the appointment of trustees; given the state of the parents' relationship, this would be a wholly inauspicious arrangement;

ii) The maintenance of the trusts would involve the parties in co-operating in arranging repeated valuations of private companies at not inconsiderable expense for the purposes of tax computations; they would need to co-operate with the compliance requirements of HMRC every ten years; this would be equally ill-starred;

iii) The husband would benefit from not insubstantial fees for managing the trusts; I am wholly unpersuaded that the parties would ever be able to implement without rancour the provision by which the husband's management of the trust accounts could be challenged. He proposes that "if [he] is held not to have been performing sufficiently well as investment manager for three consecutive years, he can be replaced." But this would in my judgment simply provide another opportunity for conflict. The evidence shows that the parties have not been able to co-operate over relatively straightforward issues: payment of a lump sum on an interim basis; use of trust funds for the wife's legal costs notwithstanding the extensive withdrawals made by the husband for his own (and other) expenses; even, in recent weeks, it appears[56] the arrangements for ZX's birthday party. I was struck by the wife's comment that "[i]f [the husband] and I cannot cooperate

[56] I heard no cross-examination on the point, but the fact that the wife raises this suggests that the arrangements created conflict.

in respect of a… birthday party, I do not see how we can possibly cooperate as custodian of a trust holding assets worth hundreds of millions of pounds, as [the husband's] proposal envisions";

iv) The tax regime of the trusts (which will incur a certain liability of 0.6% tax per annum on the value of the property retained in the trust) is arguably less favourable than other IHT avoidance schemes. There are other ways of achieving tax efficiency by means of the inherent spouse exemption (if either remarry) or family investment companies. One further common way of reducing the ordinary 40% IHT burden is for the parties to take out (relatively cheap) life insurance policy (written in trust for the children) in the event of their early deaths. Moreover,

a) the parties may leave the UK well before they become long-term UK residents and their estates may never be subject to IHT;

b) once he is a long-term UK resident, the husband cannot benefit from the trusts if he wants to avoid an additional charge of 40% (as well as the 6% charges) on his death;

c) in any event, an exit charge would apply (5.85%) on distributions to beneficiaries, and

d) there will be an exit charge if the husband leaves the UK and ceases to be a long-term UK resident.

230. While it has not greatly influenced my decision, I was also troubled to note that the husband had in fact proposed a new form of trust in which the wife would have significantly less control as protector; she would indeed cease to be the sole protector (there would be a protector committee[57]). Moreover, under the new trust, the husband's future children (and there is already one further child from his new relationship) would be included automatically at the expense of the children of the family.

231. Mr Bishop referred to the proposal for the allocation of the majority of the marital assets into the family trusts as 'eccentric', 'unconventional' and even 'unprecedented'. Mr Oliver does not appear to disagree that he is arguing for an 'unusual' outcome ("how unusual it is says less about the merit of the outcome and more about the unusual nature of the case… No two cases are the same, and different cases are dealt with differently."[58]). As I said earlier (§161) I would be tempted to endorse an 'unusual' outcome only if I considered that it was fair and just, and faithful to the statutory imperatives of the MCA 1973, but in that regard I am wholly unpersuaded that it would be appropriate to place the majority of the marital assets in a trust structure, permanently and irrevocably out of the parties reach, contemplated by the husband's open proposals.

Conclusion

[57] The wife could actually be outvoted on any decision, as the protector committee can act by majority by clause 13.3 of the deed of amendment. This is very different from the current trusts where the wife is the sole protector.
[58] Para.85 and 86 of the husband's Closing Submissions.

232. Fairness and justice for these parties will be achieved in this case through a straightforward division and distribution of the marital assets.

233. I propose to order that this be achieved through the transfer of some identified assets (i.e., property and shares *in specie*), supplemented by a balancing lump sum payment. I approach the case on the basis that the parties are entitled to a broadly equal share of the marital assets, but fairness will require me to apply a modest discount to the wife's share to reflect the imbalance of liquidity of the assets in the hands of the parties through my order.

234. The outcome summarised in §§232-233 above corresponds closely (if not exactly) with the common intentions of the parties to achieve parity and/or 'equivalence' between themselves. It is broadly in line with the community of property regime into which they were married in Country A. It is consistent with (even if not completely correspondent to) the 2021 PNA, which I am satisfied that they both freely negotiated when extricating themselves, for sound reasons, from the community of property regime; I remind myself that the parties had agreed in 2021 that the PNA would be "determinative" as to the division of their assets in the event of the breakdown of their marriage (see §47 above), and as *Radmacher* makes clear ([52]/[75]), if parties have made a post-nuptial agreement there is no reason why they should not be entitled to enforce it. It gives due respect to the 'very important' factor of the parties' agreement in considering what is the just and fair outcome (see Munby J in *X v X*, at §40 above). It is consonant with, and reflective of, the contributions which each made to the marriage over a number of years. It represents, in my judgment, an orthodox and appropriate application of the sharing principle. A broadly equal division of the assets will most completely and neatly achieve the financial clean break to which both parties are entitled, to which both aspire, and from which each should benefit. I am sorry that the personal differences of the parties, underscored by perhaps more fundamental ideological approaches to the division and preservation of their assets, has not made this outcome possible by negotiation.

235. Inevitably the outcome ordained by this judgment will not represent absolute equality contemplated by the 2021 PNA, given the imprecision of valuations in many respects on which it depends[59]. Moreover, I consider it right to make an adjustment to the apportionment to reflect the distribution of liquid and illiquid assets between the husband and wife (see §238-241 and §246-247 below). For completeness' sake, let me make clear that I do not consider it either necessary or desirable to incorporate the 'sale in default of agreement' provisions of the 2021 PNA when neither party argues for this, and it is in fact unnecessary.

236. By endorsing the essential philosophy of the 2021 PNA, each party will hereafter be enabled to exercise self-determination about how their assets should be utilised which I regard as important. They are, in my judgment, entitled, as they embark on the next phase of their lives, to have the freedom to spend, use or invest their respective shares as they separately may think fit. They ought to have autonomy to make individual

[59] I am conscious that "a snap shot valuation at a particular date may give an unfair picture" (Lewison LJ in *Versteegh* at [185]).

choices about tax-free lifetime giving so as to mitigate any tax liabilities which arise on death[60].

237. I accept that one of the superficially attractive features of the husband's open proposal was that both parties would emerge from this litigation with a lump sum which could be achieved from wholly liquid assets, leaving the essentially illiquid assets housed within the trusts. As I have said earlier (§161) had the wife freely accepted the husband's open proposal, with the benefit of independent legal advice, I would have been slow to interfere. But she did not freely agree the arrangement in 2023, and does not now accept the open proposal. I do not regard it as either appropriate or fair (quite apart from it being an unconventional outcome) that I should conclude these proceedings in such a way as to impose on the parties a scheme which denies them access to a sizeable section of the marital assets, notwithstanding this superficially attractive feature.

238. A division of the marital assets in line with the approach which I adopt in this case, and which I have summarised above, necessitates the altogether more challenging exercise of apportioning the liquid and illiquid assets between the parties; inevitably this leads to some imbalance in the quality of the parties' respective allocations, particularly as (see §244 below) I take the view that the wife's share of the assets should not include any of the husband's shareholding in Company C. I have already referred to this as a 'sharing' case, and am conscious that "sharing is achieved by a fair division of both the copper-bottomed assets and the illiquid and risk-laden assets" (*Wells v Wells* [2002] EWCA Civ 476; [2002] 2 FLR 97 at [24][61]). I accept that it would be an 'unfair division' if the wife benefited from relative financial certainty through retaining/receiving the vast majority of the risk-free (liquid) assets, leaving the husband to face significant financial uncertainties associated with the illiquid assets; his minority shareholding in Company C is (as discussed above) not a truly saleable asset at the moment, and may not be so for some considerable time.

239. In *Martin v Martin* (from which I have already quoted at §165 above) at [93]/[94], Moylan LJ discussed the approach which I should adopt in this way:

> "… even when the court is able to fix a value [of a private company] this does not mean that that value has the same weight as the value of other assets such as, say, the matrimonial home. The court has to assess the weight which can be placed on the value even when using a fixed value for the purposes of determining what award to make. This applies both to the amount and to the structure of the award, issues which are interconnected, so that the overall allocation of the parties' assets by application of the sharing principle also effects a fair balance of risk and illiquidity between the parties …. there is a "difference in quality"[62] between a value attributed to a private company and other assets. This is a

[60] "… fairness is everyone deciding where to apply it, spend, invest, donate, save, whatever it is, everyone has the right to decide what to do with the money, because from now on we are on different paths": message to husband on 17.2.23)

[61] And see also *Versteegh v Versteegh*, Lewison LJ at [185]

[62] Quoting Lewison LJ in *Versteegh v Versteegh*

> relevant factor when the court is determining how to distribute the assets between the parties to achieve a fair outcome" (Emphasis by underlining added).

240. Moylan LJ elsewhere referred in the same section of his judgment[63] to the need for the court to eschew a strict mathematical approach when assessing what weight to place on a particular valuation but to undertake a "broad evaluative exercise". The extent of the departure from strict equality will always depend upon the individual facts of the given case; discounts of 30%, even up to 45%, have been applied[64]. In *E v L*, Mostyn J described this discounting process as necessarily a subjective evaluation, but it is one which should be arrived at "following a broad, discretionary, analysis of fairness" (see his judgment at [97]). It seems to me that in assessing a discount from the wife's share I ought to take into account that a sizeable quantity of the illiquid assets to be retained by the husband are in a private company which has in fact never made a profit; on the other hand, I also take into account that it is his clear preference to retain these illiquid assets, even though the wife was willing to share the risk. Separately, I have cautioned myself in this case against the risk of double accounting – i.e., applying a discount to the value of the asset on the basis of its illiquidity, and then further adjusting downwards the allocation of assets in favour of the wife. That said I do not detect in Mr Bezant's valuation of Company C that he has imposed a significant, or indeed any, discount to reflect illiquidity of the husband's shareholding so far as that is relevant for the purposes of matrimonial distribution.

241. Mr Bishop and Mr Oliver have both provided 'liquidity' tables. They appear to agree that on the wife's figures for the value of the assets, and on the wife's open proposal (i.e. 50/50 division), the husband would be left with 81% of the illiquid assets and 37% of the liquid assets after payment of the relevant balancing lump sum to the wife. Mr Oliver further submits that had the wife succeeded on her open proposal on her figures, her award would have reflected receipt by her of 89% of the liquid assets, and 11% of the illiquid assets. Given that my award is structurally in line with the wife's open proposal (although I have not agreed with her in respect of all of the valuations of the disputed items from the asset schedule), there is little reason to believe that the distribution of liquid/illiquid assets will be markedly different from the figures outlined by counsel.

242. What should be the shape of the order itself?

243. I propose to make property transfer orders in relation to Property 1 and Property 4. The wife and children deserve to have the security of the home (Property 1) which they have grown to love, and in which the family have invested significantly both financially and emotionally. I will also make orders for *in specie* transfer of shares in a limited number of the companies to the wife; in this way, she will take the risks and/or may enjoy the benefits of those in the same way as the husband. The husband told me that he does not oppose *in specie* transfers of shares as such, but he has only limited (if any) control or influence on others whose co-operation is required. Insofar as the shares prove not to be readily transferable, or indeed prove not to be transferable at all, (for example, because the consent and approval of the General Partners of Family Office A is not

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[63] *Martin v Martin*, again at [93]

[64] I here refer *inter alia* to *HO v TL* [2023] EWFC 215 at [23], *Chai v Peng* [2017] EWHC 792 (Fam) at [140], *E v L* [2021] EWFC 60

achievable), then I will provide the husband with the choice either to sell the shares and account to the wife for the net sale price, or to pay the wife a sum which reflects the net value of the shares.

244. I do *not* consider that the wife should take any portion of the husband's shareholding in Company C as part of her financial award, and I do not propose to incorporate this into the structure of the award. The husband has indicated his opposition to this outcome at an emotional and a practical level; I accept and respect his case that " Company C is very much my creation and focus". Moreover, I accept that the mechanism for any transfer of shares would be complex, practically cumbersome and potentially expensive. Furthermore, I am satisfied that it would not be right, in the spirit of section 25A MCA 1973, to bind these parties closely together, through continued joint shareholding in the husband's main business, Company C.

245. I proceed on the basis that the wife will retain the cash in her own name, and her businesses.

246. The balance of the wife's award will therefore be made up of a cash lump sum. Mr Bishop argued that this balancing sum should bring the wife to a straight 50% of the marital assets. Mr Bishop did not address me on whether a discount should be appropriate, and if so in what measure. Mr Oliver submitted that there should be a "significant discount"[65] but did not articulate precisely what that should be. Having undertaken a 'broad evaluation' of the relevant material applying a balancing "discretionary, analysis of fairness", I have taken the view that it would be appropriate to impose a modest discount on the wife's award. In many cases the discount would be applied to the illiquid assets in the overall computation; a fair result is nonetheless achieved in the instant case by applying the discount to the cash lump sum element of the award to the wife. I propose to impose a discount of 15% on that sum which in my judgment appropriately reflects the fact that the husband will be taking the majority of the risk-laden assets through my order and meets the justice of the case as a whole.

247. This will have the overall effect that the wife will receive assets and cash in the aggregate sum of **£230,778,588** which is approximately **44.4%** of the marital assets which I have valued (as it happens much closer to the wife's figure than the husband's) at **£519,940,563**. After the transfer of property and shares, I calculate the balancing payment to be **£165,419,598.20**. The wife will of course need to give credit for the $95,000,000[66] which the husband has already paid to the wife on account of this award, offshore, following the hearing on 21 March 2025.

Order

248. The structure of the order which I propose to make will be broadly in line with that which was presented part-way through the hearing by leading and junior counsel on

[65] Closing submissions para.166

[66] I will leave it to the parties to agree the currency conversion rate, which is to be applied to the sum on 23 May 2025 (date of hand down of judgment). In default of agreement (and I have received submissions on this point which I have considered), I direct that the rate shall be deemed to be the average of the exchange rates offered on **23 May 2025** at 11am by HSBC, Barclays, and Lloyds Banks. My reason? Until the wife had sight of this judgment, it was reasonable that she did not contemplate exchanging the $95 million sum into sterling.

behalf of the wife. For the reasons set out above, my order should reflect the following conclusions.

249. First, I shall direct the husband to transfer to the wife forthwith (and in any event by 4pm on 27 June 2025[67]) all his legal and beneficial interest in each of the following assets (on the basis that, in each case, the costs of the transfers shall be borne equally by the parties):

a. Property 1, subject to the Property 1 Mortgage;

b. Property 4 and the Land at Property 4.

250. The wife shall transfer to the husband forthwith (and in any event by 4pm on 27 June 2025[68]) all her legal and beneficial interest in each of the following assets (on the basis that, in each case, the costs of the transfers shall be borne equally by the parties):

i) Property 5;

ii) Property 6.

251. The husband will be released from the Property 1 mortgage once the wife has received her lump sum.

252. Secondly, I shall direct the husband to transfer forthwith to the wife all his legal and beneficial interest in his shareholding in Company F. This owns Property 7 and some investments.

253. Thirdly, the wife is to receive a portion of her award by the transfer to her of shares *in specie*; I am satisfied, having regard to the recent transfers to the Bahamian Holdco which is owned 100% by the husband (Company G), and separately from the Macfarlanes memo (July 2024), that this is achievable. I shall require the husband to transfer 50% of his legal and beneficial interest in the shares / investments in the 'Schedule A investments' and 100% of his legal and beneficial interest in the shares / investments in the 'Schedule B investments'; these schedules of shareholdings are those set out by the wife's legal team in the draft order which they circulated on 13 March 2025. The wife may of course elect to have the shares identified above to be transferred to a third party nominated by her. If the husband fails to perform the necessary transaction to give effect to my order by 27 June 2025[69], for whatever reason, then the asset should be sold in line with the 2021 PNA and the husband shall pay the wife the sum which is attributed to each shareholding in line with the schedule of assets. Alternatively, he may pay the wife a lump sum which reflects the net value.

254. The wife will obviously retain the Company E Businesses.

255. This leaves then the cash lump sum award. The balancing payment before discount is £194,611,292. After applying the 15% discount to the lump sum element, the award is **£165,419,598.20.** The husband shall pay this sum to the wife by 4pm on 27 June 2025,

[67] I have suggested this date as a default. If the parties agree a different date, so much the better. If there are real issues about 27 June, then I will receive short, focused submissions on this.
[68] See footnote 67
[69] See footnote 67

less the $95,000,000 which the husband has already paid to the wife, following the hearing. The sum shall be paid into an account in the wife's sole name situated onshore or offshore as she chooses. The sums can be raised from the trusts. This is clean money (repayment of loans to the husband) and therefore largely[70] protected from the incidence of tax.

256. For the reasons set out above, I have rejected the husband's proposal that the parties should set up a specific tax escrow account to house the contingency fund to satisfy the possible tax liability arising from the FIGs. Having heard detailed submissions by specialist tax counsel, I was left unpersuaded that the liability will in the final analysis necessarily be as great as £12.3 million. This was expressed to be a worst-case tax scenario (or a "reasonable best estimate of the tax that will need to be paid"[71]) based on nearly £103 million of taxable foreign income/gains, and it may be, for example, that the payment made to the wife of $95 million at the end of March 2025 will have been effective in using taxable pre-2020 FIGs, cleaning any FIG for the wife's benefit without tax downside. The wife is willing to honour her obligation to meet her share of the tax due, if any, on the 2018/19 and the 2019/20 OIGs of £102.6 million, by means of a reverse contingent lump sum order, and that is the mechanism which I propose to adopt. I should make it clear for the record that it will not be open to the wife's lawyers (and/or tax advisers) to start arguing at the point at which this contingent lump sum falls due that the husband has not taken all appropriate steps to mitigate his liability to HMRC; the demand for payment by HMRC will be met by the husband, and the wife will be responsible for one-half (subject to the cap at c.£6.2 million: see below). Overall, I am satisfied that this mechanism will offer the parties greater flexibility in their financial planning, and ensures that the parties only need to pay out those sums which HMRC calculates as owing.

257. Accordingly, I shall direct the wife to pay to the husband a lump sum or lump sums (such amount not in any event to exceed £6,156,898.50) equivalent to 50% of such sums as the husband shall have paid to HMRC on or before 31 January 2028 in respect of the FIGS liability in relation to the OIGs of £102.6 million. Payment by the wife shall be made within the later of 28 days of production by the husband of (a) the relevant assessment or other demand for payment by HMRC and (b) documentary evidence of the payment being made by the husband. I am conscious of the dispute between tax counsel for the husband and wife about the operation of the Temporary Repatriation Facility ('TRF'). While I hope that this can be resolved by agreement, I will allow further submissions on this post-judgment, if the TRF application remains unresolved.

258. The parties agree that they should share equally the costs of the children of the family's school fees and extras appearing on the school bills at such schools as the children shall from time to time attend by agreement between the parties or in default of agreement by order of the court until the completion, in each case, of that child's secondary education.

259. Undertakings will be required to ensure the efficient and expeditious exclusion of the wife as a beneficiary of the Family Trusts and her resignation as protector of each of the Trusts; also the husband will be required to indemnify the wife and her personal representatives from any capital gains tax or inheritance tax for which the wife becomes

[70] Possible exception in relation to some of the funds in Second Family Trust.
[71] Agreed tax note: 6 March 2025, [3.1.2]

liable as a result of HMRC successfully contending that she is the settlor of the Trusts or otherwise liable to taxes in respect of the settled property or property owned by companies or other entities in which the settlement directly or indirectly is interested, but only to the extent that such taxes arise in respect of periods on or after the hand down of this judgment; any interest surcharges and penalties that may arise in respect of the post-judgment taxes; and any costs that the wife may incur in respect of dealing with HMRC contending that the post-judgment taxes arise (whether or not HMRC are successful in such contention).

260. If either of the parties fail to pay all or any part of the sums owing by reason of my order by the date or dates for payment specified, simple interest shall accrue on the remaining balance of the sums due at the rate applicable for the time being to a High Court judgment debt.

261. The order I make shall be expressed to be in full and final satisfaction of the parties' claims for income; capital (that is payments of lump sums, transfers of property and variations of settlements); in respect of each other's pensions; in respect of the contents of the property interests and personal belongings; in respect of legal costs including those of the divorce proceedings; against each other's estate on death; and all other claims of any nature which one may have against the other as a result of their marriage either in England and Wales or in any other jurisdiction.

262. This litigation has plainly been bruising and unpleasant for both of these parties; the children I am sure have been affected. I hope that the family as a whole will now be able to draw a line under the disputes which have characterised the breakdown of the marriage, and move on.

263. That is my judgment.

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[Table 1]

(Asset schedule: Figures from the Composite Schedule: **Wife's presentation)**

J	Property 1(net)	9,996,500
H	Property 2	4,553,000
J	Property 5	1,755,700
H	Property 8	2,158,250
H	Property 9	4,268,000
H	Property 3	14,220,000
J	Property 4 (and adjoining plot)	1,541,832
J	Property 6	41,631
H	Bank accounts & investments	19,944,339[72]
H	Artwork & debentures	557,050
H	Loans to The First Family Trust	131,372,946
H	Loan to The Second Family Trust	64,372,905
H	Vehicles	150,000
H	Company A RSUs	4,832,950
H	Addback of sums gifted to Charity A	1,337,500
H	Sums gifted to sister	2,331,727
H	Liabilities	(1,159,512)
W	Wife's funds	5,836,690
J	Joint funds	23,976
H	Company C	17,190,610
H	Company D	84,095,672
H	Company L	154,713,778
H	Company V	246,193
H	Company W	11,259
H	Company B	298,406
H	Company O	211,391
H	Company X	0
H	Company Y	39,640
H	Company Z	12,800,963
W	Company E 1	196,029
W	Company E 2	1,000
W	Company E 3	84,269
J	Company F	6,458,858
H	Company C pension	79,140
	TOTAL	**£544,562,692**
	The First Family Trust (see above)	*131,372,946*
	The Second Family Trust (see above)	*64,372,905*

[72] This is my computation of the sums in the rows [50-81] of the Composite Schedule (excel spreadsheet) and therefore includes the cryptocurrencies

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[Table 2]

(Asset schedule: Figures from the Composite Schedule: **Judge's determination of values)**

J	Property 1 (net)	**9,996,500**
H	Property 2	**4,553,000**
J	Property 5	**1,755,700**
H	Property 8	**2,158,250**
H	Property 9	**4,268,000**
H	Property 3	**7,524,287**
J	Property 4 (and adjoining plot)	**1,541,832**
J	Property 6	**41,631**
H	Bank accounts & investments	**13,520,100**[73]
H	Artwork & debentures	**557,050**
H	Loans to The First Family Trust	**131,372,946**
H	Loan to The Second Family Trust	**64,372,905**
H	Vehicles	**150,000**
H	Company A RSUs	**0**
	Sums gifted to School A	**(3,000,000)**
H	Addback of sums gifted to Charity A	**0**
H	Sums gifted to sister	**0**
H	Liabilities	**(1,159,512)**
W	Wife's funds	**5,836,690**
J	Joint funds	**23,976**
H	Company C	**17,190,610**
H	Company D	**84,095,672**
H	Company L	**154,713,778**
H	Company V	**246,193**
H	Company W	**11,259**
H	Company B	**298,406**
H	Company O	**211,391**
H	Company X	**0**
H	Company Y	**39,640**
H	Company Z	**12,800,963**
W	Company E 1	**196,029**
W	Company E 2	**1,000**
W	Company E 3	**84,269**
J	Company F	**6,458,858**
H	Company C pension	**79,140**
	TOTAL	**£519,940,563**
	The First Family Trust	***131,372,946***
	The Second Family Trust	***64,372,905***

[73] Adopting husband's valuation of the cryptocurrency

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[Table 3]

Judge's award

	One half of the assets	**259,970,282**
J	Property 1 (net)	9,996,500
J	Property 4	1,541,832
J	Property 4 (adjoining plot)	205,433
J	Company F	6,458,858
W	Company E 1	196,029
W	Company E 2	1,000
W	Company E 3	84,269
J	One half of joint funds	11,988
W	Wife's funds	5,836,690
H	One half of artwork & debentures	278,525
	Sub-total	**24,611,124**
H	50% of the 'A' investments	38,930,876
H	100% of the 'B' investments	1,816,990
	Sub-total	**40,747,866**
	Combined sub-totals	**65,358,990**
	Balancing payment before discount	194,611,292
	15% discount from the balancing payment (liquidity)	(29,191,693.80)
	Balancing payment after 15% discount	**165,419,598.20**
	Overall award	**230,778,588**
	Expressed as a %age of the marital assets	**44.39%**

[END]