Neutral Citation Number: [2016] EWHC 911 (Fam)

Case No: FD14F00368

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/04/2016

Before :

MRS JUSTICE ROBERTS

- -

Between :

Z	**Applicant**
- and -	
Z	**First Respondent**
Codan Trust Company Limited	**Second Respondent**
Kopt Development Limited	**Third Respondent**

(APPLICATION FOR FINANCIAL RELIEF AFTER FOREIGN DIVORCE)

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Mr Philip Marshall QC and Mr Dakis Hagen (instructed by **Vardags**) for the **Applicant**
Mr Lewis Marks QC and Miss Katie Cowton (instructed by **Stewarts Law LLP**) for the **First Respondent**
The Second and Third Respondents did not appear and were not represented

Hearing dates: 14th to the 18th March 2016

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Judgment

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Roberts :

A. Introduction

1. This is an application for financial relief after an overseas divorce brought by a former wife under Part III of the Matrimonial and Family Proceedings Act 1984 ("the 1984 Act") pursuant to permission granted by Sir Peter Singer on 28 July 2014. Both parties are Russian nationals. They married in Moscow in 1997 and have three children who are now 18, 17 and 15 years old. In August 2004, some seven years into the marriage, the family moved to London. They lived in rented accommodation at various addresses until August 2007 when a substantial property in Kensington was purchased for the family's occupation.

2. That property, the Kensington house, is owned by a company called Kopt Development Limited ("Kopt") which is in turn owned by a Bermudan Trust called the BMT Trust which was settled by the respondent's father, Dr Z, in 2005. It has been the family home to the wife and the three children for the past seven and a half years. Over the course of a full year, substantial renovations were undertaken prior to the applicant and the children moving in during September 2008. It appears that the marriage was in difficulties by this point and it is agreed that, by 1st September 2008, the parties had separated. The respondent[1] never lived at the property although he has been supporting the continuing occupation of the applicant and the children by paying the rent (£156,000 per annum) which arises as a result of a tenancy agreement into which the applicant has entered with Kopt. As a matter of underlying reality, she says that this tenancy is a simple fiction which is part and parcel of the structure which the court should acknowledge as little more than a well-recognised device of non-domiciled status being used to achieve a tax effective structure in which to hold property.

3. In November 2008, after eleven years of marriage, the respondent issued divorce proceedings in Russia. Whilst the applicant later attempted to engage the jurisdiction of the English court by issuing her own petition in London, the Russian court made an order for the dissolution of the marriage on 21 January 2009. Seven months later, the Presnensky District Court of the City of Moscow approved a financial agreement into which the parties had entered. Its terms were converted into a formal court order. That order, dated 11 August 2009, provided the wife with c.US$10 million. It is relied on by the respondent as a full and final disposal of all and any financial claims which the applicant has or had arising out of their marriage. On his case, it brings into operation what an English court would recognise as a clean break in relation to both her capital and income claims. Of particular significance in relation to the facts of this case, it is the respondent's case that the Russian order precludes any further claims she may have in relation to either spousal maintenance or a variation of any trust or post-nuptial settlement pursuant to section 24(1)(c) of the Matrimonial Causes Act 1973.

[1] Although the husband in this case is the first respondent, it will be convenient to refer to him in this judgment as "the respondent" since the second and third respondents did not take any part in the proceedings and were not represented at the Stage I hearing.

4. The application for permission to apply for financial relief after an overseas divorce was issued on 23 July 2014. At that stage, the applicant was represented by Mr Mark Harper at Withers LLP. The respondent was represented, by Manches in the English proceedings and by Speechly Bircham when the applicant commenced proceedings under Part III in 2014. The respondent instructed Stewarts Law in January 2015. Having secured the necessary permission, the applicant issued her substantive application on 5 August 2014. Later that month, the respondent applied to set aside that permission. On 31 October 2014 Sir Paul Coleridge permitted the application to proceed on the basis that further consideration could be given to the respondent's set aside application at a First Appointment. That took place on 29 April 2015 when provision was made for the reception of expert evidence in relation to Russian law, but the respondent's application to set aside permission was again deferred.

5. In November 2015, the matter came before Moylan J. By that stage, both parties had filed evidence. The applicant's claim extended to the property (the Kensington House), a second property (an apartment in London W8) and a sum of just over £8 million in order to meet her future needs. She had disclosed resources in her own name worth £4.7 million which represented the balance of the property and cash she had retained under the Russian order. The respondent's Form E disclosed assets worth some £40 million. All bar some £5 million was held within a number of different trusts, one of which was the BMT Trust which was, and is, the ultimate owner of the Kensington House. The trustee of the BMT Trust is Codan Trust Company Limited ("Codan"), a professional offshore trust corporation. Much of this wealth was said to be unavailable to the respondent as a beneficiary until the death of his father, Dr Z, who was then 82 years old.

6. Moylan J made orders relating to the provision of limited information about the trust structures including provision for inspection of various trust documents.

7. Following an unsuccessful attempt to resolve matters at a Financial Dispute Resolution hearing, the matter came before me on 15 December 2015 for a pre-trial review. This was my first involvement with the case. By this stage the Part III application had been listed for a seven day hearing before me commencing on 14 March 2016[2]. The applicant was applying for the joinder of Codan (as trustee of the BMT Trust) and Kopt (as legal owner of the property (the Kensington House)). There were further issues. The first was whether or not the children should be joined as parties because of their status as potential beneficiaries of the BMT Trust. The second was an application for the provision of further information from the single joint expert, Mr Vyacheslavov of Alrud Law. He had been instructed to assist the court with various aspects of Russian law including the extent to which, in the earlier Russian divorce proceedings, the court could have applied English law so as to vary a nuptial trust and, if so, what orders could or would have been made in relation to both a foreign nuptial settlement and any assets held in trust.

[2] That listing had been secured as part of the directions made at the First Appointment on 29 April 2015.

8. At that hearing, the applicant was represented by Mr Philip Marshall QC and Mr Dakis Hagen. Mr Harper remained on board as her English solicitor following his professional move to Hughes Fowler Carruthers. Mr Marshall and Mr Hagen continue to represent the applicant save that they are now instructed by Vardags following the instruction of that firm in January this year (2016).

9. Mr Lewis Marks QC and Miss Katie Cowton, instructed by Lady Ward, continue to represent the respondent, as they have done throughout these proceedings since April 2015.

10. It was conceded by all parties at the pre-trial review that the seven days allotted to the case in March 2016 would be inadequate to deal with all the issues arising out of the applicant's Part III application. Since all were in agreement that the time we had should be used efficiently for the further progress of the case, I agreed that – rather than lose the fixture - the matter could and should be dealt with in two stages so as to make effective use of the allocated court time. Having secured a further four days between 8 and 13 June 2016, it was agreed that this seven day hearing would be used to determine whether, pursuant to s. 16 of the 1984 Act, it would be appropriate for an order to be made under Part III of the 1984 Act ("Stage I"). Subject to the outcome of this hearing, we would move on to Stage II and a determination of which orders should be made under s. 17 of the 1984 Act including any variation of a post-nuptial settlement. For the avoidance of doubt, Stage I was not intended to be (and has not been treated as) a *'knock-out blow'* hearing as described in *Agbaje v Agbaje* [2010] UKSC 13, [2010] 1 AC 628 at 659. I have not been asked to summarily dismiss the applicant's Part III claim. Rather I am being asked to consider on the basis of all the circumstances of the case (and, in particular, the matters set out in section 16 of the 1984 Act[3]), whether it is appropriate to make an English order at all.

11. Codan and Kopt were joined as second and third respondents to the proceedings. Whilst I made provision for the filing of evidence and their attendance at the Stage I hearing, neither has elected to take any part in the proceedings. I do have a letter from Harcus Sinclair, English solicitors representing Codan, the trustees. That letter is dated 10 March 2016 and it contains a helpful exposition of the trustee's position and information about the BMT Trust.

12. I directed that witness statements should be exchanged in order to deal specifically with the matters specified in section 16 of the 1984 Act. Those statements were due

[3] As I shall explain, because of the guidance given in *Agbaje*, I shall necessarily trespass to some extent into the territory of s 18 MFPA 1984.

to be exchanged on 12 February 2016. It is the respondent's case that, when the applicant's statement arrived on 19 February 2016, it cast her case in a completely different light from that which she had previously been advancing. For the first time, she sought to rely on a body of medical evidence in relation to her fragile health and the difficulties which she had been experiencing with the children. She made various allegations against the respondent in respect of undue pressure which she said he had applied in order to persuade her to agree to the terms of the Russian order. She sought to explain the reasons for the delay of some five and a half years between the making of the Russian order and her Part III application. All of these are matters to which I shall return in due course.

13. Before doing so, I propose to deal with the facts and the law which I must apply to the facts as I find them to be.

The Background: the establishment of the trust structure; the current terms of the various trusts; and the manner in which, from time to time, funds have been appointed between the various trusts and paid to the respondent and other family members

14. The applicant is now 45 years old. The respondent is 47. Whilst she continues to live in the Kensington House with the two younger children of the family, the respondent divides his time between homes in Cyprus and Bulgaria. He has remarried since the Russian divorce and has two young children, each of whom has health problems to a varying degree. At one stage during 2013 he had contemplated a move with his new family to the United States in order to access medical treatment for his youngest daughter who has serious heart problems and seemed likely to need a heart transplant. On his case, that potential relocation has a resonance in respect of various decisions which were taken at the time in relation the reorganisation of the family trust structures. He contends that these might have been impacted adversely in terms of the tax consequences of any actual or deemed residence by one of the beneficiaries in the United States.

15. It appears to be common ground that all the wealth in this case has its origins in that created by the respondent's father, Dr Z. He is a highly respected Russian philanthropist who, from a background of scientific research, set up what was to become one of Russia's largest mobile telephone providers. The business was sold in 2000 for approximately $600 million. By 2001, Dr Z's personal wealth was said to be around $182 million. He was keen to use the majority of these funds for philanthropic purposes, in particular the development of science and education in Russia. In 2002 he established the D Foundation, the first family Foundation to secure formal recognition and charitable status in Russia. Until its dissolution in 2015, Dr Z

remained closely involved in the development of the Foundation the administration of which included an independent board of trustees. Its purposes were wholly charitable and the respondent was not a beneficiary.

16. Dr Z retained a comparatively small proportion of his personal wealth for the benefit of himself and his immediate family.

The BMT Trust

17. On 18 February 2005, he settled the BMT Trust, an irrevocable Bermudan settlement. The original trustee was a Bermudan trust company called Priora Management Limited ("Priora"). Codan became the corporate trustee with effect from 15 January 2014. Under the terms of the original trust deed:-

(i) Dr Z, together with the D Foundation, were the two named beneficiaries comprising the discretionary class entitled to benefit under the trust terms.

(ii) Following Dr Z's death, the respondent, his children and his mother (Dr Z's (then) widow, MZ) would become members of the discretionary class.

(iii) In the event of the respondent's death (whether before or after Dr Z's death), there was specific provision carved out of the trust funds for the applicant who was to receive monthly for the rest of her life a sum of $20,000 (or more if the trustees thought it appropriate). That provision amounted, in effect, to the guarantee of a widow's annuity in a sum of not less than $240,000 per annum ("the annuity provision"). Similar provision was made for Dr Z's widow (MZ), albeit in a greater sum.

18. These were the operating terms of the trust at the time of the Russian agreement and order in August 2009. Neither the applicant nor the respondent could then claim formal status as a beneficiary although each had the capacity to become a beneficiary in the event of the respondent's death (in the case of the applicant) and/or Dr Z's death (in the case of the respondent). In addition, the protector had power to add persons to the class of beneficiaries at any time. The shares in Kopt (the legal owner of the two London properties including the family home at the Kensington House) were owned by the BMT Trust. Full disclosure of this structure and the terms of the Trust had been provided to the applicant's English solicitor, Mr Harper, during the currency of the divorce proceedings in Russia and England. He was aware, and must be taken to have advised the applicant, that the trust assets (including the Kensington House and the second London apartment, held through Kopt) were then worth just under $37.8 million. (I have within the written material which was put before the court a summary of the trust assets as at 31 March 2009. This was available to the applicant some months before the Russian agreement was concluded.) She must also be taken to have known that, whilst not a beneficiary at that point in time, the respondent had the potential to benefit from the BMT Trust in the event of his father's death.

The BMT Holding Trust

19. In addition to owning 100% of the shares in Kopt, the BMT Trust owned the shares in a company called BMT Capital Limited. In October 2009, shortly after the Russian court had approved the financial order in those divorce proceedings, Priora (as trustee of the BMT Trust) appointed a substantial tranche of shares in BMT Capital Limited to a new Bermudan trust called the BMT Holding Trust. The beneficiaries of that trust were Dr Z and the D Foundation and, on his death, the respondent and his mother, MZ. Dr Z was identified as the Protector of this new Trust.

20. In February and December 2011, further sums of £535,000 and $7.5 million were appointed out of the BMT Trust to the BMT Holding Trust.

21. In parallel with these arrangements, MZ, the respondent's mother, had her own Bermudan trust, the M Trust, which had been funded by Dr Z. The beneficiaries of this trust were the respondent's parents, the respondent, his children and their mother, the applicant. The applicant had received substantial distributions from this trust during the currency of the marriage. These funds had been used by the family to support their day to day living expenses. This trust was wound up at the end of March 2008 and the funds paid out to MZ.

The LBZ Trust

22. On 7 November 2012 a new Bermudan trust, the LBZ Trust, was set up by the Respondent's mother. The respondent was amongst the class of potential beneficiaries, as was his eldest son and the D Foundation. His mother, as settlor, had injected a sum of c.$22.57 million into that trust which was dissolved in September 2013 by which point almost the entire capital of $21.6 million had been paid out to the respondent. This followed the appointment of $15.2 million which had been made to the respondent from BMT Holding Trust in July 2013 (this is addressed more fully in paragraph 28 below).

The respondent's trusts including the Mezano Trust

23. He has since used these funds to set up five new trusts of his own. Four are specifically for the benefit of his wife, his 8 year old stepson, and his two youngest daughters. The main trust, the Mezano Trust, contains c. £13 million and is the vehicle through which he accepts his lifetime income needs will be met. On his death, the reversionary beneficiaries are his father (if living) or the Z Trust, a philanthropically motivated trust settled by Dr Z which specifically excludes from future benefit any Z family member.

24. In January 2009, some seven months before the conclusion of the Russian proceedings, the applicant's solicitors wrote to the Bermudan attorneys who acted for the trustees of the BMT Trust. That letter was written to put the trustees on notice that, in the context of her (then) ongoing English divorce proceedings, she would be seeking a property adjustment order in respect of the two London properties. Undertakings were sought from the trustees that there would be no changes to the underlying structure of the trust pending the resolution of the financial proceedings. Harcus Sinclair (English solicitors instructed by the trustees) responded pointing out that neither party was currently a beneficiary of the trust.

25. The following month, in February 2009, Withers wrote to Harcus Sinclair enclosing a copy of the summary of the BMT Trust provisions which had been given to the applicant by the Z family's longstanding Russian lawyer. A request was made for disclosure of the underlying trust documents. That letter concluded with formal notice that, in the event that the Russian divorce was finalised before the English proceedings concluded, the applicant intended to make a claim for financial relief under Part III of the 1984 Act. That intention was restated in a further letter later that month.

26. In circumstances to which I shall come, the Russian divorce was finalised on 21 January 2009 and the applicant's appeal against that ruling was dismissed two months later. In April 2009, the English divorce proceedings were dismissed by consent. The financial proceedings in Russia came to an end on 21 August 2009 when the agreement which the parties had reached was converted into a formal 'ruling' or order. The applicant and the children remained in occupation at the Kensington House.

27. In March 2013, some three and a half years later during which it appears Withers had no further involvement in the case, they were re-instructed by the applicant. They wrote to Harcus Sinclair seeking confirmation that no steps had been taken in relation to the BMT Trust which might prejudice the applicant's position. The issue of her "interest in and/or occupation of" the Kensington House was raised as a specific concern together with a further reference to advice which had been given to the applicant that the BMT Trust constituted a nuptial settlement which was capable of variation by the English court. The letter was copied to the respondent, Dr Z and Kopt's lawyers. Harcus Sinclair's response came on 21 March 2013. They stated that there had been no substantive changes to the BMT Trust structure since 2009; that nothing had been done which would prejudice her contingent interest; and that the respondent's interest remained contingent on the death of his father, Dr Z. On behalf of the trustees, she was assured that adequate resources would be retained within the Trust to meet any annuity payment to which she might in future become entitled. In relation to the applicant's security of occupation at the Kensington House, Harcus Sinclair said that her ability to apply to the court for orders in the context of an application for ancillary relief had long since fallen away and that any queries about the tenancy arrangements would need to be addressed to Kopt as her landlord.

28. Some four months later, on 22 July 2013, the trustees of the BMT Holding Trust (which had been settled in October 2009) entered into a Deed of Nomination the effect of which was to add the respondent as a beneficiary during his father's lifetime. At the same time, in addition to the funds he had received at that time from the LBZ Trust (c. $21.6 million), a further sum of $15.2 million was paid out to him in two separate distributions[4]. Thus, by July 2013, the respondent had become the beneficiary of outright appointments which increased his personal assets by some $36.8 million. This is the wealth which underpins his current financial presentation in Form E where he assesses his personal wealth (including his trust assets) to be worth just under £40.5 million. By this point in time, the assets of the BMT Trust had reduced to c.£8.5 million being the value then ascribed to the two London properties (including the Kensington House) owned by Kopt.

[4] The BMT Holding Trust was finally wound up on 25 January 2014 after its holding of 12,201 shares in BMT Capital Limited had been transferred to the BMT Generations Trust.

29. Whilst the detail is irrelevant for the purposes of this judgment, the funds appear to have been moved between the trusts by means of formal Deeds of Appointment. During the marriage and prior to the M Trust being wound up, funds had been paid out to the applicant. At the respondent's request, in November 2005 and March 2006, the applicant had "loaned" funds of $15 million to BMT Capital Limited, a Bermudan company which was an asset of the BMT Trust. Formal loan notes were produced and signed. These provided for repayment with interest. In May 2006, the applicant assigned to the respondent the benefit of what was then outstanding under the terms of the second loan. The cash which the applicant held in 2009 at the time of the Russian divorce agreement (some $5 million) represented the balance of the funds which she had retained. However, the real relevance of these transactions is that they were revealed to the Russian judge during the course of the proceedings in Moscow. The respondent had provided the Russian court with a summary of all the payments which had been credited to the applicant's bank account. These totalled some $34.5 million. It appears that the judge became interested in the provenance of these funds and enquired of their lawyers whether or not the parties had evaded any tax liabilities which were due and payable. It appears to be accepted that there were veiled (if not explicit) threats from the judge to make a formal report to the Russian tax authorities. The applicant says that this only added to the pressure she felt to sign up to the agreement. The respondent, for his part, contends that it was he who stood in the line of judicial fire and not the applicant who threatened to give evidence against him were any enquiry to result from a formal report.

30. There were further changes in the trust structure during 2014 which affected the underlying entitlement of the respondent. On 14 January 2014, there was a change by way of restatement by the trustees of the BMT Trust. The Foundation was removed as a beneficiary leaving Dr Z as the sole beneficiary during his lifetime. On his death, the respondent was to become the life tenant with his children and stepchild amongst the class of residuary beneficiaries. Later that month the BMT Holding Trust was collapsed on the basis that the trust's holding of shares in BMT Capital Limited had by then been transferred to the BMT Generations Trust. It was during the first three months of 2014 that the respondent channelled the majority of the wealth he had received from the BMT Holding Trust and the LBZ Trust into his five independent trust structures.

31. In July 2014, the applicant issued these Part III proceedings which were served by Withers on the respondent on 7 August 2014. Kopt and the trustees of the BMT Trust were put on notice that claims in respect of the two London properties were live and that the applicant had been given permission by the court to proceed. Dr Z's response was to remove his former daughter-in-law as a beneficiary of the BMT Legacy Trust (to which I shall refer in paragraph 35 below). The gift of $930,000 which she would have received on his death was retracted.

32. At the end of that year, on 19 December 2014 – and during the currency of these proceedings – Dr Z was removed as a beneficiary of the BMT Trust and was replaced

by the respondent as the new life tenant and Protector. That entitlement was subject to a specific prohibition expressed in the amending deed which stated that "*during [Dr Z]'s lifetime, no appointments, advancements, payments or other applications of the Trust Fund may be made to or for the benefit of any Beneficiary*". Those changes were formally ratified by the trustees on 28 December 2014.

33. Thus, the respondent's position in relation to the BMT Trust assets in these Part III proceedings has been that, whilst he was not until December 2014 a beneficiary, he is now a beneficiary but is unable to benefit until the death of his father. That was the position which he was maintaining in relation to two further trusts, the BMT Generations Trust and the BMT Legacy Trust which then, together, held assets worth £6.76 million.

The BMT Generations Trust

34. The BMT Generations Trust was established on 20 December 2013. Initially, it provided that the respondent would be entitled to benefit but only in the event of his father's death. This trust has acquired a property in Somerset which the respondent intended to run as a business. (His current wife is a director of the business.) However, on 19 December 2014, Dr Z was removed as a beneficiary and the respondent became the Protector and life tenant of this trust subject to a term that no appointments may be made to him during Dr Z's lifetime.

The BMT Legacy Trust

35. The BMT Legacy Trust was set up on 10 January 2014. This Bermudan trust appears to be the vehicle through which Dr Z intends upon his death to make provision for certain long-standing family employees. By letters of wishes addressed to the trustees, Dr Z requested that specified sums be paid out to various personal assistants and chauffeurs and included provision for a sum of $930,000 to be paid to the applicant (his former daughter-in-law) on his death. That was, on one view, generous provision since by that stage Dr Z was aware of the terms of the divorce settlement concluded in Russia and the provision of the lump sum bequest is separate and distinct from the annuity of $20,000 per month which she will receive under the terms of the BMT Trust in the event of the respondent's death.

36. Much was made during the course of this hearing about the standard of living which the respondent and his present family have been able to enjoy as a result of access to this level of wealth. He owns, or appears to have an interest in, the apartment in Limassol in which he currently lives. He has recently bought a £4 million property in central London. He told me during the course of his oral evidence that his father has sought to impose a cap of $2 million per annum on the wider family's living expenses in order to preserve capital where possible. I heard much about a yacht which is owned by the BMT Generations Trust. It came with a price tag of $4.5 million in

2014 and costs about $1 million a year to run. He told me that the family as a whole used the yacht and contributed pro rata to the expenses.

37. The respondent is not employed in any formal capacity but works without remuneration during part of the week in the "family office" advising on investment strategy. He is also involved in philanthropy and various charitable projects. He is able to indulge the rest of his time (when not with his family) in his hobbies which include motor-racing and flying helicopters. He discloses that he spent in excess of $850,000 on the purchase of his own helicopter some years ago. In his Form E, he stated that his annual expenses were in excess of £1.1 million per annum although this sum includes the provision which he is making for the children and the payment of rent at the Kensington House. Since the conclusion of the Russian financial proceedings in 2009, the respondent has been paying a total of £282,600 per annum in respect of rent, school fees and maintenance for the three children. The parties' elder daughter (who is now 18 years old) is living independently in rented accommodation but is still being supported by her father.

38. All three of the children of this family have experienced health or psychological difficulties of one sort or another and this aspect of the case is one to which I shall return in due course. The applicant seeks to rely on the extent to which both her time and energy were absorbed by these difficulties as one of the reasons for the delay in bringing her claims.

39. She has no resources of her own save for the balance of the funds she retained as a result of the Russian order in 2009. At the time of her Form E in March 2015, she had slightly less than £4.74 million. That figure included the value of two fairly modest London flats which she bought towards the end of 2014 when she sold the Moscow apartment she had retained pursuant to the Russian divorce settlement. She no longer has any property in Russia. She is funding her own and the children's domestic economy at the Kensington House through a combination of the support which she receives from the respondent for the children, the rent she receives from her investment properties and a drawdown of capital. She says her future income needs and those of the children (excluding rent) are just under £500,000 per annum. Her own health has suffered, she claims, as a result of a late miscarriage in 2007. She told me that this litigation has also taken its toll. Realistically, it is difficult to see how she presently has any effective earning capacity, or at least one which would make any significant inroads into outgoings at that level. Whilst both parties have incurred substantial legal costs in these proceedings, I am satisfied that the applicant has had to erode her capital in order to meet those costs in circumstances where the respondent's means are such that his own costs will have had a less significant impact on his discretionary spending patterns.

40. Before turning to consider the terms of the Russian order, I need to say something about the law as it has developed in relation to Part III applications.

The Law

41. Section 16 of the Matrimonial and Family Proceedings Act 1984 provides as follows:-

> (1) Subject to subsection (3)[5], before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in England and Wales, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.
>
> (2) The court shall in particular have regard to the following matters –
>
> (a) the connection which the parties to the marriage have with England and Wales;
> (b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;
> (c) the connection which those parties have with any other country outside England and Wales;
> (d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside England and Wales;
> (e) in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;

[5] Section 16(3) concerns the jurisdiction which may arise under Council Regulation (EC) No 4/2009 and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011. It has no application to these proceedings where the parallel divorce jurisdiction which was engaged was a non-European State.

(f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission;
(g) the availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made;
(h) the extent to which any order under this Part of this Act is likely to be enforceable;
(i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

42. Section 17 of the 1984 Act enables the court to make a range of orders for financial provision and property adjustment, including an order varying a post-nuptial settlement under section 24(1)(c) of the Matrimonial Causes Act 1973: section 17(1)(a)(ii).

43. Section 18 of the 1984 Act lists those matters to which the court is to have regard when it exercises the powers given to it under s 17. Whilst this hearing is confined in its reach to a consideration of whether or not it would be appropriate for an English court to make an order in this particular case, I set out below the provisions of s 18 because the two sections are interrelated to an extent.

44. Section 18 provides as follows:-

(1) In deciding whether to exercise its powers under section 17 above and, if so, in what manner the court shall act in accordance with this section.

(2) The court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(3) As regards the exercise of those powers in relation to a party to the marriage, the court shall in particular have regard to the matters mentioned in section 25(2)(a) to (h) of the 1973 Act and shall be under duties corresponding with those imposed by section 25A(1) and (2) of the 1973 Act where it decides to exercise under section 17 above powers corresponding with the powers referred to in those subsections.

(3A) ……

(4) As regards the exercise of those powers in relation to a child of the family, the court shall in particular have regard to the matters mentioned in section 25(3)(a) to (e) of the 1973 Act.

(5) ……

(6) Where an order has been made by a court outside England and Wales for the making of payments or the transfer of property by a party to the marriage, the court in considering in accordance with this section the financial resources of the other party to the marriage or a child of the family shall have regard to the extent to which that order has been complied with or is likely to be complied with.

(7) …..

45. The seminal authority on the application and interpretation of these sections is the decision of the Supreme Court in *Agbaje v Agbaje* [2010] UKSC 13, [2010] 1 AC 628 at 659. Lord Collins of Mapesbury JSC delivered the judgment of the court which was handed down on 10 March 2010, just less than seven months after the Russian agreement and court order.

46. In relation to the relevance of the section 16(2) factors (Stage 1 of the enquiry), Lord Collins confirmed that it had always been the Law Commission's intention to preserve the possibility of hiving off as a separate issue the 'appropriateness' of the English court separately from, or together with, the matters relevant to the exercise of the court's discretion in deciding whether to exercise its powers and, if so, in what way[6]. That said, as is now clear following *Agbaje*, some of the matters which fall to be considered under s 16 may also be relevant under s 18, and vice versa. In considering the proper approach, Lord Collins said this at [2010] 1 AC 675 to 676:-

[6] The Law Commission for England and Wales produced a Working Paper on *Financial Relief after Foreign Divorce* (Working Paper No 77) (1980) as a result of which Part III of the 1984 was enacted. That this was the Law Commission's intention is clear from the Explanatory Notes which accompanied the draft Bill in relation to what was to become s 16 of the 1984 Act.

"**71** To take up some of the points made in the preceding paragraphs, the proper approach to Part III simply depends on a careful application of sections 16, 17 and 18 in the light of the legislative purpose, which was the alleviation of the adverse consequences of no, or no adequate, financial provision being made by a foreign court in a situation where there were substantial connections with England. There are two, interrelated, duties of the court before making an order under Part III. The first is to consider whether England and Wales is the appropriate venue for the application: section 16(1). The second is to consider whether an order should be made under section 17 having regard to the matters in section 18. There are two reasons why the duties are interrelated. First, neither section 16(2) nor section 18(2)(3) refers to an exhaustive list of matters to be taken into account. Section 16(1) directs the court to have regard to "all the circumstances of the case" and section 16(2) refers the court to certain matters "in particular". Second, some of the matters to be considered under section 16 may be relevant under section 18, and vice versa. An obvious example would be that section 16(2)(e) refers the court to the financial provision which has been made by the foreign court. Plainly that would be relevant under section 18. So also the direction in section 18(6) to the court, in considering the financial resources of a party, to have regard to whether an order of the foreign court has been complied with would plainly be relevant in considering whether England is the appropriate venue.

72 It is not the purpose of Part III to allow a spouse (usually, in current conditions, the wife) with some English connections to make an application in England to take advantage of what may well be the more generous approach in England to financial provision, particularly in so-called big-money cases. There is no condition of exceptionality for the purposes of section 16, but it will not usually be a case for an order under Part III where the wife had a right to apply for financial relief under the foreign law, and an award was made in that foreign country. In such cases, mere disparity between that award and what would be awarded on an English divorce will certainly be insufficient to trigger the application of Part III. Nor is hardship or injustice (much less serious injustice) a condition of the exercise of the jurisdiction, but if either factor is present, it may make it appropriate, in the light of all the circumstances, for an order to be made, and may affect the nature of the provision ordered. Of course, the court will not lightly characterise foreign law, or the order of a foreign court, as unjust.

73 The amount of financial provision will depend on all the circumstances of the case and there is no rule that it should be the minimum amount required to overcome injustice. The following general principles should be applied. First, primary consideration must be given to the welfare of any children of the marriage. This can cut both ways as the children may be being supported by the foreign spouse. Second, it will

> never be appropriate to make an order which gives the claimant more than she or he would have been awarded had all the proceedings taken place within this jurisdiction. Third, where possible the order should have the result that provision is made for the reasonable needs of each spouse. Subject to these principles, the court has a broad discretion. The reasons why it was appropriate for an order to be made in England are among the circumstances to be taken into account in deciding what order should be made. Where the English connections of the case are very strong there may be no reason why the application should not be treated as if it were made in purely English proceedings. The full procedure for granting ancillary relief after an English divorce does not apply in Part III cases. The conditions which can be attached to leave, together with the court's case management powers, can be used to define the issues and to limit the evidence to be filed, as was done by Munby J in this case. This enables the jurisdiction to be tailored to the needs of the individual case, so that the grant of leave does not inevitably trigger a full blown claim for all forms of ancillary relief."

47. Thus, Lord Collins confirmed (para 61) that, whilst not pre-conditions to an order under Part III, both 'hardship' and 'injustice' will be relevant factors for the court to take into consideration under both section 16 and section 18.

The case advanced by the respondent that it is not appropriate for the court to make any order under s 16 MFPA 1984

48. The crux of the respondent's case is that he and the applicant reached a final agreement (embodied in a final Russian order) in respect of a division of the assets which they owned in 2009. That division gave her the more valuable of the two Russian properties which they owned (a flat in central Moscow which she has since sold for $6.2 million). At the time of the agreement, she retained approximately $5 million in cash and other investments which was in excess of his personal savings. Both before and after the date of the Russian agreement, she retained the services of lawyers in London and in Moscow. The agreement represented a full and final settlement between them and was intended as such. The Russian court approved it as such. She was, he contends, negotiating its terms from a position where she was supported by her lawyers and fully informed as to its terms and effect. There was no pressure brought to bear on her in reaching her decision to sign up to its terms and no reason why she should now be allowed to resile from those terms. Whilst he accepts that the order is silent in relation to child support, he relies on the fact that, since 2009, he has continued, and will continue, to provide financial support for the children and to provide a roof over their heads through payment of the rent in respect of the Kensington House.

49. In relation to that property, the respondent rejects any suggestion that the BMT Trust is a nuptial settlement since the Kensington House was never a matrimonial home in the true sense of the word. He contends that the life tenant of the Trust and the only (living) beneficiary during the marriage was Dr Z. Whilst it has been home to the applicant and the children for several years, the marriage had all but broken down by the time that the substantial renovation programme had been completed allowing them to move in in September 2008. He has never slept a single night at the property, a fact which does not appear to be in dispute. On his behalf, Mr Marks and Ms Cowton submit that, even if it had become a matrimonial home (albeit leased), that fact alone could not have 'nuptialised' a trust of which neither party was then a beneficiary nor could the purchase of that property be 'nuptial'. The BMT Trust which provided the funds for the purchase was not a trust in which he was then a beneficiary (although he was a contingent beneficiary) and the tenancy agreement between Kopt and the applicant was, and is, an arm's length commercial arrangement which is evidenced by the fact he has been paying a full commercial rent to support the family's occupation in that property.

50. In April 2015, his solicitors sent to the applicant's solicitors a draft seven year lease in respect of the Kensington House. This lease appears to have been drafted by Farrer & Co on the instructions of Kopt. It is designed to support the proposal which he has made to pay a further seven years' rent in respect of the Kensington House by way of a single accelerated lump sum. That payment will be made to Kopt, as landlord. The applicant and the children will be entitled to remain in occupation of the property at no cost to her and will not be required to vacate until their youngest child's 22nd birthday. It is his case that, with the money she has left, the applicant can then re-house herself in mortgage-free accommodation either in England or in Russia, as she chooses, and meet her daily income needs, although he recognises that her standard of living in future years will suffer as a result of the financial decisions she has made in the last six and a half years.

51. Whilst there may have been a challenge to the 'nuptial' element of the BMT Trust before the start of this hearing, it was conceded by Mr Marks and Miss Cowton in their opening note that a combination of (i) the applicant's residuary annuity under clause 3; (ii) the grant of the tenancy in respect of the Kensington House; and (iii) the respondent's contingent interest on his father's death might be capable of constituting the necessary nuptial element to engage section 24(1)(c) of the Matrimonial Causes Act 1973 at the Stage II hearing.

52. In any event, even if these reasons alone are not sufficient to deny the applicant access to the English court for her substantive Part III claim, the respondent contends that the delay of five or more years between August 2009 and the issue of her proceedings should be reason enough to dismiss the application.

The applicant's response to arguments about the nature of the agreement which was reached in the Russian proceedings; the litigation chronology as it developed in this jurisdiction and in Russia

53. The applicant rejects each element of that case and she has rejected the open proposal which would enable her to remain in the Kensington House under the terms of the new lease. She maintains that the BMT Trust is indeed a nuptial settlement. It was set up during the course of the marriage and she, the respondent and their children are all beneficiaries, albeit that their interests are contingent on the death of Dr Z and (in the applicant's case) the respondent. An extraction of the property from the trust structure by means of a variation of settlement pursuant to section 24(1)(c) of the 1973 Act is squarely within her sights as a target in this litigation.

54. In her first written statement dated 22 July 2014, sworn in support of her application for permission to bring a Part III claim, she makes a number of complaints. First, whilst she accepts that her English solicitors were provided with copies of the underlying Trust documents, she says that her understanding of the Trust structure comes entirely from those documents which were disclosed in 2009. She says that she relied on the letter which Harcus Sinclair had sent to her solicitors in March 2013 which confirmed in terms that there had been no substantive changes to the structure since 2009. Pausing there, it is difficult to see how such reliance might be prayed in aid to support any case in relation to non-disclosure by the respondent <u>at the time of the agreement</u> since it is her state of knowledge in 2009 which is relevant unless she can demonstrate that there was at that point in time a clear plan or intention to enable the respondent to benefit from the trust once the terms of a financial settlement had been finalised.

55. Second, and perhaps more fundamentally, she maintains that there was never any intention to deal with the property at the Kensington House within the Russian proceedings. On her case, her entitlement to seek a variation of the BMT Trust as a post-nuptial settlement was excluded from the intended ambit of both the Russian agreement and the Russian order. She told me that there had been ongoing discussions between the parties about her occupation of the property both before and after August 2009. She had signed a fixed term lease for one year in July 2007 at the time the property was acquired. (For almost the whole of that term, the parties were renting another central London property whilst the renovation work was carried out.) When that lease ran out, there was a period of about a year when there were no formal arrangements in place despite the fact that she and the children had moved into the property in September 2008. The respondent acknowledged that the applicant had raised with him the issue of her future security once the children had grown up and she could no longer remain in the Kensington House. However, he told me that he had never offered her any reassurance that she could remain in the property indefinitely.

56. What I do know is that, on 1 September 2008, at a time when it had become clear that their separation had become permanent, the respondent wrote to the applicant assuring her of his good intentions and his wish to behave honourably. The version of the email which I have in the bundle is the applicant's translation from the original Russian version and it may be that some of the nuance of the original has been lost in translation. It was an email which he had copied to his father, Dr Z. At that stage, he appeared to envisage that their separation and the financial arrangements which would flow from that change of circumstances would remain informal. He was not actively seeking a divorce but said that he would not stand in the way of one if that is what the applicant wished. He confirmed that the children would continue to live with the applicant in London. He pointed to the fact that she then held cash funds of c. $5 million which had emanated from family funds. These she would keep. He contends that those funds were intended to provide her with a measure of financial security if their relationship ended or in the alternative scenario *"should family assets disappear"*. He made an ongoing commitment to pay for the children's education both in their private schools and through university; to pay for medical care; to pay for *"the residence of the children at the Kensington House]"*; together with reasonable expenses for the children's clothes, food and transport. In relation to the family's occupation of the Kensington House, he said this:

> *"Please note. Ella is an integral part of the children's lives, so her accommodation is also guaranteed."*

57. The respondent did not seek to challenge the substance of what he intended to convey in that email. Rather, he relies on it as evidence of their common understanding that he was not offering to procure that accommodation for the family's use once the children had grown and flown. He also emphasises that his undertaking at that stage was to pay for the children's expenses. He was not offering to provide spousal support directly for the applicant.

58. In November 2008, some nine months before the Russian agreement was concluded, the respondent had produced further written proposals for settlement of the applicant's financial claims. Clause 11 of his draft proposal included provision for the applicant and the children to live at the Kensington House on the basis that the respondent would meet the costs of that accommodation, including the payment of rent. In all other respects they would each retain their own property on the basis that the applicant would keep the central Moscow apartment and the respondent would keep the country house. Significantly, there was no specific limitation on the period during which she and the children were to be entitled to remain in the property and no date by which she must vacate although the draft proposal referred to 'minor children'.

59. As I have said earlier in relation to the chronology of developments within the overarching trust structure, in January 2009, the Russian court granted the respondent

a decree of divorce. The applicant appealed that decision. On 19 January 2009, Withers wrote to the Bermudan lawyers acting for the trustees of the BMT Trust asking for disclosure in relation to the trust assets and seeking confirmation that nothing would be done in the interim to change the terms of the trust or reorganise the existing trust structure. The following month, on 6 February 2009, Withers wrote a further letter to the Trustees of the M Trust advertising her intention to make an application for financial relief under Part III of the 1984 Act. There was further correspondence later that month with Harcus Sinclair (solicitors for the BMT Trust) making it clear that, if the Russian divorce was confirmed, the applicant would be proceeding with a claim under Part III. On 13 February 2009, with the applicant's express approval, Withers had written in these terms:-

> "We also put you on notice that, in the event that the Russian divorce is finalised first, our client will be making a claim for ancillary relief under Part III Matrimonial and Family Proceedings Act 1984 which includes the property adjustment order in respect of the Kensington House and [the apartment in London W8] and/or a variation of the BMT and M Trust(s)."

60. When, on 20 February 2009, she issued her Form A in the English divorce proceedings, it included an application for a variation of both the BMT and the M Trusts.

61. It was at that point that Harcus Sinclair provided Withers with the trust documentation to which I have already referred. That documentation related to both Trusts although it was explained that the M Trust had been wound up and no longer existed as a separate entity.

62. On 5 March 2009, the applicant lost her appeal in relation to the Russian divorce proceedings. On 23 March 2009 her Russian lawyers issued a cross-claim on her behalf in the Russian financial proceedings.

63. On 24 March 2009, Harcus Sinclair, solicitors for the trustees of the BMT Trust, wrote to the applicant's solicitor, Mr Harper, alleging that she owed over £90,000 in rent to Kopt. That letter was followed by a further letter on 3 April 2009 in these terms:-

> "The trustee has been and is sympathetic to your client's wish to remain in the Kensington House and has tried to avoid disturbing either her or the children. It is with that in mind that it has not aggressively sought the payment of rent in spite of their entitlement to do so and in spite of that position leaving them vulnerable to the claims of their beneficiaries. The hope of the trustee is that in taking a benign position towards your client it will help to facilitate a

> matrimonial settlement without undue cost and disruption for either your client or for her husband. [Dr Z], the settlor and primary beneficiary of the trust has so far not contested that approach and presumably shares the trustee's wish not to cause unnecessary distress to his daughter-in-law or grandchildren."

Having recorded in that letter the fact that the applicant had by then issued an application within her English divorce proceedings for variation of a post-nuptial settlement in relation to the property, the letter continued with an assurance that:

> "Our client [i.e. the trustee] is prepared to say that there is no intention to sell the Kensington House in the foreseeable future, and your client will plainly be notified and consulted should that change in any way."

64. In the meantime, on 27 March 2009, Dr Z sent to the trustee of the BMT Trust a formal letter of wishes the terms of which he said were intended to be applied to any future trust or trusts which may be established with BMT Trust assets. He explained that the BMT Trust had been established for his benefit and to support his philanthropic mission through the D Foundation. He stated in that letter of wishes that, after his death, any remaining trust assets which were not required for these purposes were to be used as *"an emergency or supplemental fund for the designated beneficiaries …. And not a source for luxury living"*. The letter continued, *"Specifically, following my death assets of the Trust and Future Trusts may be applied by you to meet education, medical care, current living expenses (at a "middle class" level) including housing rent, and providing maintenance to minors (in the event that they do not receive sufficient support from their parents) and generally providing such other support as may be needed to relieve a beneficiary in difficult life economic situations"*.

65. Within a matter of days, on 1 April 2009, the respondent's English solicitors had written to their English counterpart, Withers, confirming the existence of the Russian decree of divorce and inviting the applicant to agree to the dismissal of her English proceedings. That letter included the following paragraph:-

> "Our client provided to your client in August 2008 a sum of £250,000 for the specific purpose of meeting the children's school bills, their general maintenance and the payment of rent. He is also aware that at or about that time your client had savings of approx. $5m. Nevertheless, he will discharge the arrears of rent on the basis that henceforth your client must accept responsibility for discharging it, In addition he will voluntarily pay to your client in respect of each of the children £20,000 per annum, payable monthly in advance and their school fees. …. This voluntary payment may need to be reviewed from time to time and in any event upon any determination by the Russian Court of all and any claims between the parties…"

66. The applicant claims that the sum of £250,000 referred to in that letter was not paid to her for the ongoing support of the children or the payment of rent. The parties had not formally separated and there were no proceedings on foot in either jurisdiction. At that stage, her visa status in the United Kingdom depended upon her retaining a separate 'investor' deposit of $1.5 million in a designated bank account. When the bank notified her that the balance on the account had fallen below the required balance, the respondent had agreed to top up the account in order to keep alive their visa status pending the formal application which she was making on their joint behalves.

67. On 21 August 2009, the same day as the Russian court order was finalised, there was a formal amendment to the original 2007 tenancy agreement. This was signed by one of the directors of Kopt and by the applicant. Under its terms, and having acknowledged that there had been no interruption in her occupation or the payment of rent, the original lease was extended for a further three year period until 15 August 2012. Aside from the latest proposal made by the respondent for a new seven year lease, that is where matters were left in relation to occupation of the Kensington House.

The Russian consent order, preceded by the agreement

68. And so it is to the terms of the Russian order that I now turn.

69. Following the formal assumption of jurisdiction by the Russian court, the applicant's English petition and her Form A were dismissed by consent. By the end of June 2009, the Russian judge had dealt with the case at a sufficient number of hearings to be urging settlement on the parties and had put them on notice of his intentions to consider a report to the domestic Russian tax authorities. The last substantive hearing took place on 30 June 2009. The applicant records in her written evidence that *"at this point I was exhausted from the proceedings in Russia and the parallel proceedings in England"*. In relation to the Kensington House, she said this:-

> "My Russian lawyers never raised an official claim in relation to the Trust assets including the Kensington House on the basis that Russian law does not recognise trusts and that even in the extremely unlikely event that the Court made an order in relation to the Trust assets, I would not have been able to enforce it as there were no international treaties available for enforcement of such an order. If I had tried to bring the trust assets to the attention of the Russian Court I would have had to make applications to foreign jurisdictions for evidence for it to be admissible in Russia, which would have taken a very long time to obtain (if successful). In any event, this would all have been for nothing as the Russian law does not recognise a beneficiary of a trust as

> having the right to any assets (only if the assets are registered in the beneficiary's name).
>
> On advice from my Russian lawyers, I decided to take a guaranteed settlement from the Russian court given the uncertainty I would face in England plus the judge's threats to report us to the tax authorities made me reluctant to keep going with the proceedings. The litigation was fraught with [the respondent's] game playing and the legal fees were mounting up to a level I was struggling to afford. I felt that I had no option but to put an end to the proceedings and secure some financial award. At first [the respondent] refused to participate in the renewed negotiations but once I told him that I would cooperate in the tax investigation which the judge threatened to instigate unless we reached agreement, he produced an amended agreement, now in its third version. We signed the document shortly before the final hearing at which the court approved the agreement in the form of a consent order."

70. In essence, the terms of the agreement provided for each to retain the assets then held in their respective names save that the two properties were divided between them with the applicant retaining the Moscow apartment and two parking spaces allocated to it. Henceforth, neither would have an interest in any asset or income deriving from the other's assets. The agreement was said to be binding in every jurisdiction. It was specifically recorded that each had entered into its terms of their own free will and there had been no duress in the process of reaching agreement. A failure to observe its terms would give rise to a cause of action against the party in breach.

71. There was no provision in the Russian order for the payment of spousal maintenance to the applicant. As she accepts in her written evidence, spousal maintenance is very rarely ordered under Russian law. Further, she states that she was advised by her lawyer not to make a claim for child maintenance because any claim for the children based upon his declared income would have resulted in a lower order than the support which he was then providing on a voluntary basis.

72. The applicant's case is that the terms of the Russian order were designed to deal with a division of the Russian matrimonial property. That was the intention, and no more. She relies on the fact that her claims in respect of the Kensington House and an application under Part III of the 1984 Act in relation to the variation of a nuptial settlement had been advertised by her English solicitors on more than one occasion in the weeks and months leading up the Russian order. Those claims, on her case, have survived what, on their face, appear to be the operative "clean break" provisions in the Russian order.

73. Turning to those specific provisions, I set out below the relevant paragraphs of the Russian order (or "Ruling" as it is referred to in the English translation in the bundle).

> *"1. Any property, including real property, personal property, stock, deposits, shares in capital assets of organizations, financial and other investments,* ***property in trusts*** *and funds in bank accounts acquired during the time of the marriage is the property of that Party in whose name the indicated property was registered."*
>
> [Clauses 2 to 4 dealt with the two Russian properties and personal chattels. They are not relevant for present purposes.]
>
> *"5. [The respondent] and [the applicant] shall independently possess and enjoy the use of their own individual personal property and will not derive any direct or indirect profit, including income, from the property of the other party, or* ***income under property trust management agreements where the beneficiary is the other party****, or shares in the individual personal property of each other under any legal norm found in legislation or any other legal source in effect in any state.*
>
> *6. [The respondent] and [the applicant] each may independently manage their separate personal property, wherever it may be located, and they retain all rights to the sale, donation or alienation on any other basis, lease, pledge or any other disposal of said property, and also to the receipt of all income therefrom, including rental income and profits from the said property without limit, interference or agreement of the other spouse.*
>
> *7. The property that was in possession of each party prior to the marriage, and also the property received by one party during the marriage as a gift, inheritance or under any other unilateral transaction is the property of the respective party."*
>
> [Clauses 8 and 9 dealt with motor vehicles and implementation.]
>
> ***"10. The parties have concluded this agreement as obligatory for them in all countries of the world, wherever they may live, and wherever the property may be located.***
>
> ***11. This agreement will comprehensively regulate all property and financial relationships between the Parties.*** *The invalidity of one or several clauses of this agreement or the factual impracticability of any of its clauses will not affect the validity of the entire Agreement, nor any of its provisions.*
>
> ***12. The Parties sign this amicable agreement under no pressure and not as a result of a confluence of unfortunate circumstances for them, but rather of their free will; they are aware of the significance of their actions, they understand and are under no illusions regarding the content of this***

amicable Agreement, acknowledging the consequences of signing it." [my emphasis]

74. Mr Marks and Miss Cowton submit that:-

(i) on the facts as they then were, the applicant achieved as much in Russia as she would have been likely to achieve had the financial proceedings taken place in England in 2009;

(ii) the fact that she is unable to bring a claim under Part III has no impact upon her ability to apply under Schedule 1 of the Children Act 1989 in respect of provision for the children should she deem that appropriate given the sums which the respondent is already paying; and

(iii) the agreement which preceded the final Russian order (and which mirrored its terms) is a comprehensive post-nuptial agreement negotiated between the parties on the basis of full disclosure and professional legal advice. In these circumstances, and pursuant to the decision of the Supreme Court in *Granatino v Radmacher (formerly Granatino)* [2010] UKSC 42, [2011] 1 AC 534 ('*Radmacher'*), the court should give effect to that agreement and thereby recognise and give proper weight to their personal autonomy and the decision which each took to bring the proceedings to a conclusion. Since the agreement has been fully implemented and purports to be comprehensive as to claims between the parties for themselves, it follows that, for the purposes of section 16 of the 1984 Act, it would not be appropriate for this court to make a further order.

75. On behalf of the respondent, they characterize the present application as a classic 'second bite of the cherry'. That submission arises principally in the context of the expert evidence in this case. According to the report of the single joint expert, under the terms of its domestic Family Code, the Russian court could have applied English matrimonial law to the extent of varying any trusts which were found to be nuptial provided that the parties' place of habitual residence at the time of the proceedings was agreed (or adjudicated) to be England. Provided that there was no express requirement under Russian law and there was nothing to contradict Russian public policy, the Russian court would have applied English law '*where and when applicable to the relevant case'*, according to the expert report of Mr Vyacheslavov. They contend that the failure of the applicant to raise the issue of the trusts with the Russian judge and/or to seek relief by virtue of an application of English law in those proceedings was, and is, a failure which should find reflection in the dismissal of her English Part III application.

76. The final nail in the coffin, on the respondent's case, is the inordinate delay of five and half years which has elapsed between the date of the Russian order and the issue of her Part III application.

77. By way of summary, in paragraph 100 of their opening skeleton argument, Mr Marks and Miss Cowton identify ten separate hurdles which the applicant must overcome before the relief which she seeks can be considered 'appropriate' in the circumstances of this case. I set them out below in bullet point form but otherwise as articulated in that document:-

- All of the wealth in this case is inherited.

- The division of the assets in 2009 gave the applicant the greater share of what there then was to divide between them.

- She knew of the very limited contingent beneficial interest which either of them had in the BMT Trust (the only then existing trust), details of which had been fully disclosed to her.

- She was aware of, and still retains, the valuable benefit of the contingent annuity payable by the trustees in the event of the respondent's death[7].

- The arrangements in Russia were made by consent.

- She was fully advised throughout by Russian and English matrimonial lawyers.

- She elected not to contend for the application of English law in the Russian proceedings.

[7] This annuity was, and is, separate provision from the legacy of $930,000 payable on the death of Dr Z, which legacy was cancelled when she issued her Part III proceedings.

- She was aware of her right to apply for permission to apply for an order under Part III before the Russian order was made.

- She delayed making any application for the next 5½ years despite having advertised an intention to make one even before the Russian order.

- In the event that the proceedings moved to Stage II, the court would, in the absence of any vitiating circumstances, be bound to give effect to the post-nuptial agreement embodied in the Russian consent order.

78. Thus, they contend on behalf of the respondent that her application under Part III is doomed to failure and I should not conclude that *'it would be appropriate for such an order to be made'*.

79. Mr Marshall and Mr Hagen meet that case in this way.

What would have happened in 2009 had the English court been seised of the applicant's financial claims and/or had the Russian court been applying English law ?

80. First, they contend that the present proposal by the respondent, absent any further relief under Part III will leave the applicant in a position of real need if she is obliged to vacate the family home at the Kensington House in seven years' time. By that stage she will be 52 years old and will have insufficient capital to meet her own housing and income needs. She is not in a position to rehouse now because of the various difficulties and needs of their children, each of whom has particular needs at the present time. The terms of the respondent's current offer suggest that he himself recognises that those needs should be met by the ongoing security of remaining in the Kensington House throughout their minority.

81. The effect of the respondent's offer is that she will remain with the children at the Kensington House with all the expense which that will entail whilst at the same time

having to dip into a reducing capital base, the balance of which will ultimately be required to meet not only her future housing needs but also her income needs. By comparison, the respondent now has access to substantial wealth and his current lifestyle of 'yachts and helicopters' will continue unaffected by the passage of time. He will continue to be the beneficiary of his father's largesse just as he was throughout the course of the marriage. Indeed, it was that largesse which supported the very high standard of living which the parties and their children were increasingly able to enjoy throughout their twelve year relationship. Affordability has never been an issue in this case, the respondent having conceded at an earlier hearing before Moylan J that he has assets of at least £40 million and can meet any order which the court might make at the conclusion of these proceedings.

82. Secondly, they submit that the respondent's treatment of the Kensington House over the years of its ownership suggests that, whatever the structure within which it is held, he will in future do with it what he wishes. He has conceded that the property was bought as a home for the family. The only means by which the court can vary or alter that current structure is by means of a variation of a post-nuptial settlement. It is now conceded by Mr Marks that there is probably a sufficiently nuptial element in the structure to engage section 24(1)(c) of the Matrimonial Causes Act 1973 in relation to (i) the applicant's annuity; (ii) the tenancy of the Kensington House; and (iii) the respondent's contingent interest on his father's death..

83. Thirdly, they dispute that in 2009 an English court (and thus a Russian court applying English law) would have made an order in terms of the Russian agreement given the uncertain nature of the applicant's and children's occupation of the Kensington House seen against the background of the totality of the resources which were likely to be available at that time or in the foreseeable future after 2009. Very shortly after the agreement had been converted into a Russian order, a very significant proportion of the assets held within the BMT Trust (but not the two London properties) had been siphoned off into the BMT Holding Trust and, by July 2013, the respondent had received $15.2 million of those trust funds which were appointed to him out of the trust together with a further $21.6 million from the LBZ Trust. They point to the fact that an application of English law would have propelled the welfare of the children to a position of prominence and the court's "first consideration". A fundamental plank of those needs was secure housing with an assurance that the roof over their heads was not at risk because of any future actions which might be taken in relation to the Kensington House by either the respondent or the trustees.

84. In terms of the underlying reality in relation to that property, Mr Marshall and Mr Hagen rely on a number of factors which were not challenged during the course of the evidence. The house was found and chosen by the parties as their family home. They contend that the respondent has been unable to put before the court any evidence that Kopt (the legal owner) had any involvement in the choice of the property which was purchased nor did they seek to place a limit on what could be spent. On their case the

funds which were made available to complete the purchase were "lent" to Kopt by BMT Capital Limited which is now owned by the BMT Generations Trust. Since December 2014, the respondent has been the sole beneficiary of that trust subject only to the current prohibition which prevents him from benefitting during the lifetime of his 82 year old father. For a year after the purchase, the property was the subject of a very extensive remodelling and renovation exercise. The applicant was not challenged in relation to her evidence that the entire house was stripped and "gutted". The parties appear to have had complete *carte blanche* as to the specifications given to the builders. Although Kopt had signed the contract for the work, the respondent was also a signatory and he had written to the applicant in 2007 asking her to ask 'Oleg' to send him the estimates for the redevelopment and design works. His email made it clear that he was 'in the driving seat' so far as authorising and approving this work and wanted to keep on top of the budgets. These are essentially arguments for the Stage II hearing and Mr Marks and Miss Cowton properly remind me that documentary evidence has been produced by the respondent showing Kopt's involvement in the purchase, including the completion statement, the contract for the building work and Kopt bank statements showing how the purchase was funded.

85. Finally, in relation to the Kensington House, they point to what they describe as the "shambles" of the rolling tenancy agreements. The respondent has not sought to advance any evidence in relation to how the first tenancy agreement of 31 July 2007 came into existence nor the basis on which the commercial market rate rent was fixed. When that tenancy expired after twelve months, there was no further contact or communication between the respondent and Kopt. Notional or actual arrears in excess of £90,000 were allowed to build up before there was any suggestion from Kopt in March 2009 that this liability was accruing. It was not until 21 August 2009 (immediately after the making of the Russian order) that a fresh three year tenancy was sent to the applicant. The fact that the agreement was for three years, on the applicant's case, further reinforces her concerns about her security in the property. Her evidence was that she had been discussing what was to happen in relation to the Kensington House directly with the respondent both before and after the Russian agreement and order. He had reassured her at the time that her occupation would be secure at least for so long as the children needed a home and she was an integral part of their care and their lives. When that three year tenancy expired in 2012 no new document was prepared, albeit that she continued to live in the property and he continued to pay the rent. There was no request from Kopt for a new lease. No approach at all was made to the applicant. None of the respondent, trustees or Kopt took any steps to regularise the position and it was not until 2015 in the course of this litigation that the draft seven year lease was presented to the applicant. The respondent's oral evidence was that this step was initiated at that point in time because his lawyers had told him he must "sort it out".

86. There is a further "fiction" to which Mr Marshall and Mr Hagen point in support of their argument that these arrangements are a simple "fig leaf" in respect of the underlying reality of the situation. The rent which the respondent asserts he will pay in respect of the new seven year lease has remained static since 2008. Had this truly

been a commercial arm's length transaction, the rent would have increased substantially over the eight year period which has intervened. Since Kopt is a wholly owned asset of the BMT Trust, any rent which the respondent pays will accumulate for the benefit of the beneficiary of the BMT Trust. That beneficiary has been, since December 2014, the respondent, subject only to the prohibition on his receiving any benefit prior to the death of his father who will be anticipating the celebration of his 90th birthday at the end of the seven year term. This is an arrangement which the applicant described in her evidence as "the carousel".

87. Mr Marshall and Mr Hagen submit that, standing back from this overview of the position, an English court would have been sympathetic to an argument that, had the respondent wanted or needed the property to be transferred from Kopt's name to his own, that step could lawfully have been taken under the terms of the BMT Trust, either by formally adding him to the beneficial class or by transferring it to the M Trust and appointing it out from there. The issue which the trust's solicitors now seek to raise (that the property has to be retained as a trust asset in order to meet any future annuity entitlement which falls in on the respondent's death) has only come about as a result of the stripping out from the BMT Trust of all its other liquid assets.

88. Mr Marks and Miss Cowton contend that none of this matters in the context of the present enquiry into the issues which flow from Stage I. They invite me to look, hypothetically, at what the English court might have done had the applicant initiated her Part III application in the immediate aftermath of the Russian agreement or very shortly thereafter. It is their submission that the English court would have been bound to give effect to that agreement in the light of the circumstances then prevailing. By contrast, on behalf of the applicant and in relation to the respondent's case that, in 2009, the applicant received $2.5 million more than a 50% share of the matrimonial assets and that uplift was adequate recompense for a dismissal of her future maintenance claims, Mr Marshall and Mr Hagen say this.

(i) Within the space of six months between May and November 2005 a sum of $16.3 million was distributed to the applicant from the M Trust (the respondent's mother's trust). Over the course of the next two years or thereabouts, the respondent accepts that just under $4.7 million of that sum had been spent.

(ii) He continued to receive substantial distributions from his father despite the fact that, on his case, he was not a beneficiary of the trust or trusts from which they came.

(iii) His evidence was that his father had sought to impose a cap of $2 million per annum going forward in terms of appropriate "lifestyle" expenditure for the family. This sits unhappily with the contents of his father's letter of wishes and provides a stark context for his contention that the additional $5 million received by the applicant was an adequate *Duxbury* fund for the remainder of her life.

(iv) Had an English court (or a Russian court applying English law) been made aware of these matters (or the likelihood of future benefit flowing out of the trusts to the respondent), it would have given consideration to adjourning the applicant's capital claims. It would certainly not have dismissed her maintenance claims but would have made an order based upon the totality of the 'resources' available to the respondent and the standard of living which the family had enjoyed as a result of his father's 'bounty'. That order would and could have been capitalised at a later stage when, in July 2013, he received a sum of $37 million from the trusts. The existence of that voluntary provision and the likelihood of foreseeable future benefit would have attracted a consideration of the principles set out in *Thomas v Thomas* [1995] 2 FLR 668, CA and *Browne v Browne* [1989] 1 FLR 291, CA given the lavish level at which the respondent (and this family) was being subsidised by his father.

89. These arguments are met with a robust defence from Mr Marks and Miss Cowton who contend that this is all conjecture and speculation as to what might have happened in the future. They submit that, if an English court was dealing with the matter as the assets then stood, it is highly unlikely that the English court would have varied the trust and/or made provision for spousal maintenance. They say that for two specific reasons. First, the BMT Trust, to the extent that it was nuptial, would not have been varied because in 2009 Dr Z was the sole beneficiary during his lifetime. Secondly, the parties reached an agreement which would have been approved by the English court just as it was approved by the Russian court. Two of the reasons which the applicant gave in her written evidence for accepting its terms were the uncertainty of the English proceedings and the difficulties of enforcing English or Russian orders against a Bermudan trust. Thus, if I find that she would not have achieved a greater award in an English court in 2009 than that which she agreed to accept under the terms of the Russian agreement and order (which were identical), that is the end of her claim since *Agbaje* makes it very plain that it will never be appropriate to make an order under Part III which gives the claimant more than that to which she would have been entitled had all the proceedings taken place in this jurisdiction.

90. In my judgment, this interpretation of how matters should be approached for the purposes of the section 16 enquiry is unduly restrictive. The court is given a broad discretion in terms of the reach of its enquiry under Part III of the 1984 Act. I have already referred to the terms of section 16 of the 1984 Act and the approach commended by Lord Collins in *Agbaje*. Even if the terms of the agreement were fair in the light of the then prevailing circumstances, that fact, of itself, is not necessarily a bar to an effective Part III claim provided that the English court considers it "appropriate" in all the circumstances to make an order. The tension here (as so often) lies in the twin objectives of achieving finality in litigation and fairness of outcome in circumstances as they are found to be at the time an application is made. I have to stand back and survey all the circumstances of this case, including the particular factors listed in section 16. Having completed that survey, I am obliged to dismiss the application only in circumstances where I am not satisfied by the conclusion of the case that it would be appropriate to make an order. The financial

benefit which the applicant has already received under the terms of the Russian agreement and order (and, by implication, the inherent fairness or unfairness of that order) will be directly relevant under section 16 (2)(d) and (e). The delay of over five years in bringing her application will also be relevant under section 16(2)(i). So too, on a holistic survey, is the availability in this jurisdiction of property in respect of which an order under section 17 could be made. That section, by specific reference, incorporates section 24(1) of the Matrimonial Causes Act 1973 pursuant to which the court has power under section 24(1)(c) to vary an ante-nuptial or post-nuptial settlement made on them as parties to the marriage.

On its true construction, did the Russian order purport to prohibit future claims in respect of trust property (such as the Kensington House) registered in the name(s) of third parties ?

91. Next, a technical point of construction is taken on behalf of the applicant. This was dealt with by Mr Hagen. He sought to persuade me that the reach of the Russian agreement / order does not extend as far as such interest as the applicant or respondent may have in the Kensington House if the court finds it to be a nuptial settlement. The point arises in this way.

92. The reference in paragraph 1 of the Russian order is declaratory in its effect. It confirms ownership of the various categories of assets (including '*property in trusts'*) to be vested in '*that Party in whose name the indicated property was registered'*. On behalf of the applicant, it is argued that such a provision cannot be construed as having any application to property belonging to Kopt or Priora. In order to bring either of the two London properties owned by these entities into the reach or ambit of paragraph 11 (which declares the agreement to be a comprehensive regulation of all financial claims between the parties), the words *'that Party'* would have to be construed as meaning *'any person – or entity - in the world'*. Mr Hagen submits, with Mr Marshall, that what it does not purport to do is to limit the applicant's claims against a trust or a trust company. Read in this way, her claim against the BMT Trust is a claim which, in form, is parasitic on a divorce but, in substance, is a direct claim against a trust structure or one of more of its constituent parts. Such a claim, on their case, is not captured by the agreement.

93. Further, they argue that even if I find there to be ambiguity in relation to the literal construction and I am driven to fall back on the parties' intentions as reflected in their negotiations and any contemporaneous documentation, I should also conclude that the Kensington House was intended to be dealt with as a completely separate matter. In particular, they point to the fact that an earlier version of the agreement produced by the respondent on 28 November 2008 and sent to the applicant contained a specific reference to the property which was subsequently withdrawn in the final version of the agreement. The relevant clause in the earlier version reads as follows:-

> "11. The Parties agreed that [the applicant] together with minor children shall live in Great Britain (London), to the address: *the Kensington House* [The respondent] shall incur accommodation expenses of [the applicant] and their minor children in common living to the specified address (payment of rent and other, including statutory, payments for using the house and accommodation)."

94. Under English law, expert evidence is admissible in relation to the principles of construction of a foreign document but not in relation to what that document means. The underlying meaning or intent are matters for the judge to determine. In support of this proposition, Mr Hagen relies on the decision of the Privy Council in *Alhamrani v Alhamrani* [2014] UKPC 37 (BVI) at paras 18 to 20.

95. Mr Hagen submits that I have to pay specific regard to the construction of the Russian order. That exercise is governed by Article 431 of the Russian Civil Code which (in translation) reads as follows:-

> "**Article 431 – The interpretation of the Contract**
>
> In the event of the interpretation of the conditions of a contract by a court the literal meaning of the words and expressions contained therein shall be taken into account. The literal meaning of the condition of a contract in the event of its ambiguity shall be established by means of comparing with the other conditions and with the sense of the contract as a whole.
>
> If the rules contained in paragraph one of the present Article do not enable the content of the contract to be determined, the true common will of the parties must be elicited by taking into account the purpose of the contract. In so doing all the respective circumstances, including negotiations preceding the contract and correspondence, practice being established in the mutual relations of the parties, the customs of the business turnover, and the subsequent conduct of the parties, shall be taken into account."

96. This Article does not on its face appear to me to be wholly inconsistent with the approach to construction which would be taken by an English court. The principles applicable to the construction of a matrimonial consent order are the same as those applying to a commercial contract: see *Besharova v Berezovsky* [2016] EWCA Civ 161, per Sir Stephen Richards at para 11. Relying on the earlier authority of the House of Lords in *Sirius International Insurance Company v FAI General Insurance Limited* [2004] UKHL 54, [2004] 1 WLR 3251, at [18], his Lordship said this:-

> "As Lord Steyn said in that paragraph, the question is what a reasonable person, circumstanced as the actual parties were, would have understood the parties to have meant by the use of specific language; the answer to that question is to be gathered from the text under consideration and its relevant contextual scene."

97. In similar vein, Bodey J had to construe the meaning of certain documents in the recent case of *BG v BA (Deceased)* [2015] EWHC 3947 (Fam). That case concerned the same subject matter as that under consideration in *Besharova v Berezovsky* to which I have referred above. At paragraph 22 of his judgment, Bodey J said this:

> "**E. The Law**
>
> 22. I have been referred to five House of Lords or Supreme Court or Privy Council cases where the construction of documents has been discussed. They are as follows: *Investors Compensation Scheme Limited v West Bromwich Building Society & Others* [1998] WLR 896; *Attorney General of Belize & Others v Belize Telecom Limited & Another* [2009] 1 WLR 1988; *Chartbrook Limited v Persimmon Homes Limited* [2009] 1 AC 1101; *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900; and most recently *Arnold v Britton & Others* [2015] AC 1619. I have considered all the passages in those reports to which I was referred. Most particularly, I am guided by the dicta of Lord Hoffman in the Bromwich Building Society case where he said:
>
> > "1. Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
> >
> > 2. The background was famously referred to by Lord Wilberforce as the 'matrix of fact', but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.
> >
> > 3. The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification …

> 4. The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax.
>
> 5. The 'rule' that words should be given their 'natural and ordinary meaning' reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had."

98. Mr Vyacheslavov gave evidence by means of a video link with his office in Moscow. He queried whether Article 431 would have any application to interpreting an agreement which was subsequently made into an order of the court. In this context I bear in mind that Mr Vyacheslavov is not a matrimonial specialist: his legal expertise lies in commercial dispute resolution. However, he has advised Russian clients in relation to divorce proceedings and he is sufficiently familiar with Russian law and procedure as they apply to matters involving international law.

99. In relation to the Russian approach to the construction of the order which mirrored the agreement, he told me that individual cases were usually dealt with on the basis of a literal interpretation of the written documents. It was very unusual for witnesses to be called to give oral evidence since, in almost every case, the written documents are relied upon by the court as the best evidence available (he referred to them as "the King and Queen of evidence"). It was only if the true meaning of the agreement or order was not clear from the face of the document that the judge would move to the next stage and construe what had been the parties' intentions at the time. For these purposes, it would be a legitimate exercise to look at contemporaneous correspondence, travelling drafts of amended agreements and the like. He told me that the concept of privileged, or 'without prejudice', negotiations is not recognised as a matter of Russian law.

100. Pausing there, it seems to me that the evidence of the single joint expert as to the manner in which the Russian court approached its task in making this order is relevant for a number of reasons which go beyond issues of interpretation.

101. First and fundamentally, there is no obligation on the parties to Russian divorce proceedings to disclose any information about their financial circumstances to the court. Unlike the extensive obligations imposed on English litigants, Mr Vyacheslavov's evidence was that the issue of whether or not to make financial disclosure of their respective circumstances was left entirely "at the discretion of the parties". He acknowledged the absence of such obligations to be an entirely different ethos or approach from that adopted under English or American law. He described the Russian approach as "a different legal environment". Because matrimonial disputes within that jurisdiction were essentially adversarial in their nature (he used the word "competitive"), it was left to the individual endeavours of the party alleging non-disclosure to put before the court evidence that other assets existed. It appears that, whilst the Russian court has the power to make coercive orders in respect of disclosure, these are not exercised in a manner which would be familiar to an English lawyer. On more than one occasion, he told me that it was very much down to the "strategy" of the individual party's lawyer.

102. To that extent, it seems that the quasi-inquisitorial nature of the enquiry undertaken by an English judge who must satisfy himself or herself that the proposed terms of any order which the court is considering making are fair and fall within the generous ambit of the court's discretion when held up against the section 25 factors in any given case are not replicated within the Russian system. That does not, of course, lead to a conclusion that a Russian court would sanction an order which was unfair. However, the approach is clearly very different from English practice and procedure. The court in that jurisdiction seldom hears oral evidence. I was told that the approach adopted by judges exercising a divorce jurisdiction in Russia was not necessarily a uniform approach. Mr Vyacheslavov was asked what would happen if it were subsequently to emerge that a Russian judge was not given the full picture of a party's financial position and had made an order in ignorance of a material fact. He told me that, whilst routes of appeal were open to a litigant, it would depend upon whether or not the judge had made an error. If the parties produced and put before the court sufficient evidence to enable the judge to make what he described as 'a lawful order' but the judge did not evaluate that evidence or take it into account, a higher court could set that order aside. But, if there was no procedural or substantive mistake or error and the order was made on the basis of the evidence which the parties chose to put before the court, then a higher court would uphold the order. The third option was a new claim which a party would be entitled to bring within a three year limitation period if for some reason assets were to come to light which were not disclosed or discovered at the time of the original order. However, this route would only be open as a potential avenue to an aggrieved party if those undisclosed or undiscovered assets were deemed to be the common (or joint) property of the parties. Absent the discovery of such property, the option of bringing a fresh claim would not arise. It is difficult in these circumstances to see how a contingent beneficial interest in a trust in

respect of property held in the name of a third party could be susceptible to a claim under Russian matrimonial law unless the court in that jurisdiction was applying English law, or a combination of English and Bermudan law.

103. Returning to Mr Hagen's first point in relation to the construction of the agreement, the question which has to be asked, in my judgment, is this. If the words *"property in trusts"* in clause 1 of the order was not referring to the BMT Trust and/or the Kensington House, what was it referring to ? Mr Hagen points to the general nature of the various categories of property which are "swept up" in this clause which include *"stock, deposits, shares in capital assets of organizations"* as well as *"financial and other investments … and funds in bank accounts"*. The applicant's oral evidence was that these words were inserted into the agreement and order as a commonplace or standard clause which had no particular intended effect or substance. The difficulty with that evidence is that it is contradicted by the evidence she gave when being cross-examined by Mr Marks.

104. She accepted that, whilst Mr Harper (her English solicitor) was not actively involved in the Russian proceedings, she had been asking him for advice during their currency. (It was, of course, Mr Harper who had been writing to the BMT trustees at the beginning of 2009 advertising the likelihood of a Part III claim and seeking undertakings in relation to the trust structure.) She told me that she had stopped taking his advice after the Russian agreement was reached in August 2009. She accepted that Mr Harper had been sent trust documentation although she herself did not read all the documents at that time. She was aware of the existence of the annuity provision in the BMT Trust and confirmed that she knew her entitlement would be preserved under the terms of the Russian agreement. She said that she had been told by the respondent that he was not entitled to any benefit from the trust until after Dr Z's death. Whilst she accepted that her English lawyers knew that he might be entitled to benefit from the trust during his father's lifetime with the consent of the Protector, she told me that the respondent was throughout very involved in the affairs of the trust with his father and was actively involved in decision making. She confirmed that, at the time she agreed to the terms of the Russian order, she was aware that he would be getting further 'family money' in due course. She also confirmed that she knew at the time that the BMT Trust held assets worth some $40 million.

105. Not once but twice during the course of her evidence the applicant told me that the respondent had "fought hard" for the inclusion in the agreement of the expression in clause 11 of the order *"in all countries of the world, wherever they may live, and wherever their property may be located"*. Whilst she sought to qualify that evidence by telling me that "it did not cover everything and everywhere", I have to bear in mind that she had an experienced Russian lawyer guiding her through this process. I know not what liaison there may have been between Mr Harper and Mr Voronin and I cannot speculate. Initially, the applicant's evidence was that Mr Voronin had no

knowledge of the trusts. She later contradicted herself by telling me that it was Mr Voronin who had had a "private conversation" with the judge during the course of which he told the judge about the existence of the trusts. This and the churn of funds through the applicant's bank accounts as a result of the two trust loans appear to have provided the platform for the judge's remarks in relation to a referral to the relevant tax authorities. She told me that the judge had taken the view that if the trust or trusts were not held in the names of either of the parties, he was not willing to consider them in terms of the order he was being asked to make.

106. However, the applicant herself was (as she confirmed) receiving legal advice from both lawyers at the time and there can be no doubt that Mr Harper was fully informed by this stage about the underlying structure of the BMT Trust and its assets. He had been provided with copies of all the relevant trust documentation. She told me during the course of cross-examination that her lawyers (plural) had explained matters to her but they were *"not confident as to the outcome"*. She said the only certainty she had was that she would receive one of the Moscow properties. She acknowledged that she had given Mr Harper instructions to write to the trustees in relation to an application under Part III of the 1984 Act; she told me she had done so *"because I felt that the rights of my children were being infringed"*. She accepted that she was aware at the time she reached the agreement that it was expressed as having, and intended to have, worldwide effect but she told me that her primary concern at the time was *"my children if I were to end up in a Russian prison as a result of my husband's conduct"*.

107. So, too, when Mr Marks was asking questions about the form of the order itself, the applicant accepted that on its face it captured not only real property (in terms of houses and apartments) but also property held in trust. She said,

> *"I was always told I couldn't have any claims to anything. I did not know this was a nuptial agreement. … The problem was that I did not know what trusts were meant to be covered by this provision. I did know it covered the BMT Trust at that time. I did not know what other trusts there were."* [my emphasis]

108. In terms of the technical point of construction which is relied on by Mr Marshall and Mr Hagen on the applicant's behalf, I have reached the following conclusions. First, even if they are right about a literal interpretation of clause 1 as excluding the BMT Trust, that construction cannot sit happily with the clear evidence of the applicant in relation to her understanding at the time. Whilst I had some initial sympathy for the 'literal construction' point, there are factors pulling in the other direction which persuade me conclusively that Mr Marshall and Mr Hagen cannot succeed on this point. Mr Vyacheslavov's evidence was to the effect that it was doubtful whether Article 431 had any application in construing the meaning of the order. His opinion was that the proper procedure would have been to take the matter back to the judge who made the order and ask him to explain what was or was not covered by its terms. Second, and perhaps of greater weight, there is the fact that the applicant's own

evidence all points in the direction of her understanding, without any room for doubt, that the BMT Trust was indeed swept up in the definition of *"property in trusts"*. That understanding must have been informed by the advice she had received not only from Mr Harper but also from Mr Voronin who may not have had the same depth of knowledge but who certainly knew, as I find, about the existence of the trusts. At the very least it is reasonable to assume, in my judgment, that in the discharge of their professional obligations as her legal advisers, either or both of Mr Harper and/or Mr Voronin would have warned the applicant about the risk of these trust assets falling into the relevant dismissal provisions of the Russian order.

109. The third and final reason for rejecting the 'literal construction' argument is the more nuanced approach of the English courts to the status given to nuptial agreements which are subsequently converted into formal orders of the court. This was confirmed by Lord Phillips in *Radmacher* (see paragraphs 62 and 63 of his judgment at [2011] 1 AC 560). An application of the strict rules of contractual interpretation was firmly rejected as having any consequence in this sort of situation and was described by his Lordship as "a red herring".

110. Another important aspect of the applicant's evidence was her concession in cross-examination that she was fully aware that she was agreeing to the dismissal of her own claims for spousal maintenance. She said this in answer to a question from Mr Marks:-

> *"Yes, I did understand I would not have any claims for maintenance for myself."*

I was concerned to ensure that, in giving this response to Mr Marks' direct question, the applicant understood what she was being asked. I raised the point with her directly and she confirmed that I had correctly recorded her evidence and the sense she had intended to convey. When she was asked how, in these circumstances, she believed she might be able to pursue a maintenance claim now in the context of her Part III application, she gave me this response:-

> *"I think the realisation began to sink in gradually. After several years I began to realise that the agreement was not a fair one. I accept that we fairly divided the property in Russia on a 50:50 basis but I had absolutely no idea I had a claim on anything in the family trust. The Russian court did not consider everything we had. The sort of discussions we are having today [about the trust assets] did not take place in Russia."*

111. Mr Marks and Miss Cowton rely on those concessions by the applicant as clear evidence both as to her state of knowledge at the time of the Russian order and in relation to the underlying rationale of this Part III application. What she is seeking, on their case, is a top-up (or 'second bite') because she does not now believe that the award made by the Russian court was fair in the light of the wealth into which the respondent has subsequently come.

112. In this context they place significant reliance on the dicta in *Radmacher*. At page 75A, Lord Phillips formulated the following proposition which applied in the case of both ante- and post-nuptial agreements:

> "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."

As to the circumstances which would render an agreement unfair, the court made it clear that a nuptial agreement cannot be allowed to prejudice the reasonable requirements of any children of the family. Here, the provision offered by the respondent in terms of the package of support he has proposed renders it difficult to reach a conclusion that the reasonable requirements of these children will not be met by a pre-paid seven year lease which guarantees their security of occupation at the Kensington House. The applicant's evidence was that the sum he was providing in terms of child support was insufficient to cover all their expenses and she was having to meet the shortfall from her own capital. I agree with Mr Marks and Miss Cowton that, if that were the only complaint, these matters could be addressed by an application under Schedule 1 of the Children Act 1989. Rather, the fundamental unfairness to which she points in terms of meeting the section 16 criteria of 'appropriateness' is the absence of financial provision for her own needs. To an extent, her needs and the particular needs of these children may be said to be aligned insofar as they may need continuing support of a non-financial kind beyond their respective majorities. Only time will tell but I accept that her contributions to the family under section 25(2)(f) of the 1973 Act (a relevant consideration under section 18 of the 1984 Act which is interrelated to section 16) have been significant since the demise of this marriage.

113. On behalf of the respondent, it is said that central to the applicant's Part III application is her contention that in 2009 there was one or more nuptial settlements which could, and probably would, have been varied by an English court exercising its powers under section 24(1)(c) of the 1973 Act. He says her case can be distilled into the following proposition. Because that remedy was not available to her in Russia at the time, the English court should now step into the breach and make provision to alleviate the hardship which will arise when she is no longer permitted to live in the Kensington House whether in 2022 or at some earlier point in time. Mr Marks and Miss Cowton seek to meet that point by their submissions that (i) the respondent had no more than a contingent (and thus defeasible) interest in the BMT Trust in 2009 and

consequently a variation would have been unlikely had an English judge been dealing with the matter; and (ii) it was in any event open to her to ask the Russian court to apply English law.

114. Mr Vyacheslavov was asked to address whether it is likely that the Russian court would have applied English law in respect of any application to vary a post-nuptial settlement had that been raised as an issue in the Russian litigation. He gave me the impression that the issues for the court to determine were, for the most part, shaped and honed by the presentation of the individual parties. If they neglected to bring issues to the attention of the judge, those matters would not find reflection in court orders. Whilst Article 161 of the Russian Family Code imposed on the court a requirement to apply the law of the country of their 'common habitual residence' to matters concerning non-property and property rights, the judge would have been dependent upon the parties and their lawyers to raise that issue as a preliminary point. Here, it is agreed that the addresses given by the parties in the court documents (i.e. the divorce petition and the financial application) were the addresses at which they were registered in Moscow. The expert's opinion was that, in these circumstances, the onus was on one or both of the parties to make an application.

115. In terms of practical examples of instances where foreign law had been applied in the context of a Russian domestic divorce, Mr Vyacheslavov's evidence was that his researches had revealed only a single case where this had happened, and it did not arise in the context of divorce proceedings but in the context of an inheritance claim. In one instance, in January 2014, the Supreme Court had held that the law of Finland should be applied to a claim notwithstanding that the proceedings were ongoing in Russia[8]. He could find no reported case of a Russian court having applied English law (or any other foreign law) in the context of a Russian divorce case. He did not appear to be surprised that there was no existing precedent since he told me that, in his experience, it was unusual for Russian courts to apply anything other than Russian law in the context of matrimonial disputes. When he was asked what might be the procedure or applicable law in the context of a Russian case involving a property in London owned by a Bermudan trust, he said that the situation would take on an additional layer of complexity. He was unaware of any situations where a Russian court had joined a trustee as a party to divorce proceedings although he could see no reason why, theoretically, it might not be possible. On any basis, if asked to go down this path, the Russian judge would be likely to need expert specialist evidence which would need to be adduced by the parties themselves. As an alternative, the judge himself could approach the Ministry of Justice and ask for assistance as to how he should apply the law.

116. Further, as a matter of substantive law, the concept of trust property is not recognised in Russia. (It appears that, for these purposes, any sums paid out from a trust would

[8] In that case the claim concerned land in Russia where both parties were living in Finland.

be deemed to be the property of the receiving party and would not be susceptible to sharing.) There is no formal or informal recognition that one party may beneficially own property whilst it is held in the name of another. Thus, in terms of any claim she might have wished to pursue in the Russian court in respect of the Kensington House, I am satisfied that, absent an application of English law by the Russian court, the applicant had no apparent legal remedy in those courts.

117. In the light of the evidence which I heard from the single joint expert, whilst I accept that in theory it was open to the applicant to ask the judge to apply English law to a division of all the assets (including any beneficial interest she might have had in a nuptial settlement), I have to stand back and ask myself whether that was indeed a realistic and practical step for her to take. It would have undoubtedly introduced delay and significant expense into the proceedings in circumstances where the judge had already made threats to refer the matter to the relevant tax authorities. Mr Marshall suggested in his closing submissions that exposure to a full blown Russian tax enquiry might be very different from a similar exercise undertaken in this jurisdiction. I do not have any evidence to form a view on that one way or the other but, as I have said, I am prepared to accept that the threat of a tax investigation was a cause of concern for the applicant.

118. Taking all these matters into account, I am persuaded by the totality of the evidence I have heard and read in this case that the likelihood of the Russian court acceding to a request from the applicant to apply English and/or Bermudan law to the division of their property in 2009 was remote as a matter of practical reality. It might have been theoretically possible but I do not accept that the opportunity to make such an application provided her with any substantial basis for a realistic expectation that she could or would resolve the issue of any potential interest she might have in the Kensington House within the scope of the Russian proceedings. The precise nature of what that interest might be is not something which I need to determine within the Stage I enquiry which I am conducting at this juncture.

119. In relation to 'fairness', it is urged on me by Mr Marks and Miss Cowton that there is nothing inherently unfair about the terms of the Russian agreement and order. Whilst I accept the proposition which emerges from *Agbaje* that the existence of a disparity between what was awarded abroad and what might have been awarded in England *"will certainly be insufficient to trigger the application of Part III"*, Mr Marks and Miss Cowton submit that the facts here demonstrate that the applicant has suffered, and will suffer, neither 'hardship' nor 'injustice' if no order is made. In terms of a *Radmacher* compliance test, the concepts of 'fairness' and 'hardship and injustice' are to an extent entwined. As Lord Phillips explained in paragraph 76 of his judgment, each case necessarily turns on its own facts. Having considered the competing factors of the children's needs, the parties' personal autonomy, the existence or otherwise of non-matrimonial property and a possible change in future circumstances, his Lordship said this at page 565:

> "**82** Where, however, these considerations do not apply and each party is in a position to meet his or her needs, fairness may well not require a departure from their agreement as to the regulation of the financial affairs in the circumstances that have come to pass….."

120. Mr Marks and Miss Cowton submit that I should accord particular respect to this post-nuptial agreement since it was intended to be implemented not in the event of a future divorce but as part and parcel of the terms of an existing divorce. Viewed objectively, its terms were fair and thus, on their case, the court should not now revisit the provision made for the applicant by a further order under Part III. I have already dealt with the proper approach to these Part III claims in paragraph 90 of my judgment. I do not accept that I am confined in terms to a consideration of what an English court would have done in 2009. In terms of my application of the law in this context, the Supreme Court has confirmed that the presence of either or both of 'hardship' or 'injustice' in any given case will be relevant considerations for the purposes of both section 16 and section 18 of the 1984 Act.

The Radmacher 'safeguards' and the applicant's most recent statement in relation to undue pressure

121. I have already referred to the fact that complaint is made about the fact that, in her most recent statement dated 19 February 2016, the applicant's case has been presented in a somewhat different light from her previous evidence. She has changed tack in terms of the emphasis which she now seeks to place on the pressure to which she was subjected by the respondent. This degree of pressure, combined with the difficulties in her own psychological health and wellbeing exacerbated by her anxiety over the issues which the children were experiencing, are prayed in aid of both the unfairness of the agreement and the reasons for her delay in bring this Part III claim. She has produced lengthy and detailed chronologies within the body of her statement to explain the minutiae of her domestic life between 2005 and July 2014. Whilst it forms part of the evidence which was put before the court, as does the oral evidence which the applicant gave me when she was cross-examined on the contents of that statement, I do not intend to set out in any detail the various facts and matters upon which she seeks to rely. As a preliminary issue of case management, I declined to allow Mr Marshall and Mr Hagen to adduce as evidence the medical reports which she sought to exhibit to her statement in respect of which no permission under Part 25 of FPR 2010 had been sought. Inevitably the introduction of this evidence would have led to an adjournment of the case since I was told that Mr Marks would have required the authors of those reports to make themselves available for cross-examination. No issue in respect of medical evidence was raised by the applicant's legal team in December 2015 when I conducted the pre-trial review. That was unsurprising since the statement of issues which had been prepared by the parties' respective legal teams was silent in this respect.

122. In her latest statement the applicant states:

> "I was under a huge amount of emotional and financial pressure from [the respondent] at this time [i.e. 2009] but was also, crucially, suffering from a wider sense of depression and desperation that hindered my ability to fight on and deal conclusively with all of the claims that I needed to make against him in England at that time.
>
> I needed to secure at least some level of security for me and for our children at that time to get ourselves back on our feet before the rest of the matters between us could be formalised. We were completely at [the respondent's] mercy at the time and needed a bedrock of capital security to hold on to. Collectively I am in no doubt that the combined result of the pressures being put on me from every angle by [the respondent], at the time of the agreement and in the years that led to it being entered into, amounted to financial and psychological abuse." (paragraphs 7 and 8)

123. Whilst I did not admit into evidence the various medical reports on which the applicant sought (at the eleventh hour) to rely, I accept as a fact that she has during the period since 2009 been receiving treatment and support from a variety of doctors and therapists. Following the very late miscarriage which she suffered in 2007 when she was 30 weeks pregnant towards the end of the marriage, she was diagnosed as suffering from post-traumatic stress disorder. I have not seen the basis for that diagnosis nor the prognosis for the future but I accept that the intervening years have been difficult for the applicant. Quite apart from the various issues with which she has had to deal from the children's perspective, it was clear from her evidence that she still needs support in terms of communicating clearly in English. She was assisted throughout her evidence (as was the respondent) by a professional interpreter and each gave their oral evidence in a mixture of English and Russian. Thus, whilst she can communicate fairly easily in English on a basic level, I accept that her interaction with various professionals in relation to the children's issues regarding their health and schooling will have been made more difficult (and thus stressful) by the fact that English is not her first language. The respondent does not live in this country to assist her with these matters. For the purpose of my judgment, it is not necessary to descend into any further detail in relation to the children's issues. Mr Marks and Miss Cowton seek to characterise much of what she says in her latest statement as "unreliable or fanciful or exaggerated and almost all unsupported by anything objective". However, the respondent does not challenge the fact that there have been difficulties, particularly in relation to their eldest child who is now living a semi-independent existence away from the family home. The applicant summarises them in paragraph 16 of her statement in this way:

> "This was no ordinary five years. I cannot think of many families who have gone through such a turbulent time. Far fewer, as single parents, alone, whilst going through their own psychological problems. I did the best that I could for my children and I believed that putting them first, before formalising my (and their

financial needs), which were partly being met in the meantime, was what I had to so."

124. In terms of my assessment of these parties as witnesses, each presented in court as very different personalities. The applicant struck me as a quiet and softly spoken woman who was anxious at all times to ensure that she had conveyed to me (often through the translator who sat beside her) the full nuance and meaning of that which she was seeking to express from the witness box. She remained composed throughout her evidence but was clearly exhausted by the end of the process. I accept that the litigation has been a significant source of stress both in 2009 when the Russian proceedings were current and since 2014 when she issued these Part III proceedings. In terms of the reliability and weight which I can attach to her evidence, she was willing to make some significant concessions during the course of her cross-examination by Mr Marks but was at other times inconsistent and contradictory in her recollection of events. For example, she told me that she was well aware that she was giving up all and any rights she had in respect of spousal maintenance by agreeing to the terms of the Russian order, yet she went on to tell me that she was relying on assurances which the respondent had given her at the time and subsequently that he would support her financially. She said that she knew full well that the BMT Trust was intended to be swept up in the clause which prevented any further claims against 'property in trusts' yet she repeats in her latest statement her understanding that *"I would still be able to formalise my income and housing claims at home in England (as I am now doing)"* (paragraph 5(f)). She accused the respondent of dragging out the proceedings in Russia with a view to ensuring her bankruptcy, yet the examples of delay in those proceedings appear to have been occasioned by her own applications for adjournments and appeals. Those inconsistencies do not, in my judgment, contaminate the whole of her evidence so as to make her a generally unreliable witness in relation to the matters which I have to decide. Nevertheless, I am concerned that the evidence which appears for the first time in her latest statement is an attempt to bolster her defence to the perceived deficiencies in the case she was previously advancing, particularly in relation to the aspect of delay. To that extent, I have formed the view that I have to treat with some caution those matters which she raises for the first time in terms of the weight I can properly attach to them. That said, I accept, as Mr Marshall contends, that there is a clear imbalance in their preoccupation in relation to their children even allowing for the difficulties which are now presenting in the respondent's youngest two children.

125. The respondent was a more objectively confident witness when he took his turn in the witness box. It was very clear to me that he, too, required the assistance of his own interpreter. He presented as significantly more 'worldly wise' than his former wife and it was clear to me that his life has moved on since the divorce in ways in which her life has not. Much of that is no doubt a function of the wealth which now underpins his life and the choices and financial security which that wealth undoubtedly brings. It is what has enabled him to devote much of his time to philanthropy and charitable projects without having to concern himself as to how his current standard of living is to be funded.

126. I am satisfied that he has fought hard to close down these claims from the outset. Mr Marks and Miss Cowton would no doubt contend that, since the claims have no merit, that is precisely what he was (and is) entitled to do. In my judgment, it is worthy of note that, whilst his first statement rehearses at some length the substantial financial provision which he had been making for the children since the conclusion of the Russian agreement, it is silent as to the very significant change in his own financial position. He explains that the Kensington House is held within an offshore trust which was settled by his father of which he is not a beneficiary. He states that it is not a 'dear me' trust and he does not have any influence or control over the trustees. He states, at paragraph 61, that he is not currently a beneficiary and the applicant never will be, save in respect of the annuity provision. It took some five months for him to correct that impression which *"did not take account of some trust changes, which had taken place in January 2014"* and resulted in his becoming the sole beneficiary of the BMT Trust on his father's death.

127. He was initially unwilling to file a Form E setting out the extent of his current wealth until required to do so by the court on 31 October 2014, albeit that the scope of the documents to be produced was restricted.

128. When he was asked about his ownership of the two homes between which he now commutes in Bulgaria and Cyprus, his evidence was that both of these properties were leased on an arm's length commercial basis, although one (the Limassol property) was owned by one of the trusts.. Whilst he could identify this trust as "one of the family structures", he could not help me at all with details about its acquisition despite the fact that it appears to have been acquired for his use as recently as two and a half months ago. He told me that as far as he was concerned the legal ownership was unimportant since it belonged directly or indirectly to him and had been acquired for the purposes of his application for a Cyprus passport. It then emerged during the course of cross-examination that his personal trust vehicle, the Mezano Trust, had owned a property in Cyprus in 2014. At some point he attempted to explain that this property might have been acquired for the purposes of a similar passport application by his father although it is accepted that his father was not, and is not, a beneficiary of the Mezano Trust.

129. He was asked about the disclosure he had made to the Russian court during the 2009 divorce proceedings in that jurisdiction. He accepted that he had told the court that he and the applicant had separated in 2005 rather than 2008. He sought to justify that by telling me that it was difficult to pinpoint the precise date of their separation. He accepted that he had represented to the Russian court that funds of c.$34.5 million had been paid into the applicant's bank account when he had earlier accepted that he had treated these funds as a gift from his parents which, for the most part, had been spent by the time of the Russian divorce. He told me that this had been done in order to force the applicant to disclose her bank statements in order that he could establish precisely what was left. From what I now know about the manner in which the

proceedings in Moscow were (legitimately) conducted, this explanation may well be true. He agreed that he had not disclosed to the Russian court that the BMT Trust then held some $40 million but claims he was justified in withholding this information because, at the time, the Trust had "nothing to do with our divorce or marriage". When asked by Mr Marshall what he thought the Russian court might have done in terms of the applicant's claims against the Trust, he said that he did not know but it was irrelevant because "the Trust had nothing to do with me" despite the fact that she was living in a property which had been purchased by the Trust as a family home.

130. In relation to the subsequent restructuring of the trusts in December 2014, the respondent accepted candidly that he had been involved in these discussions with his father and the Trust's lawyers. He told me that the impetus behind the changes was the change to Russian tax legislation which introduced tighter controls over tax exemptions for offshore residents. It was important that his father was not seen to be a beneficiary or otherwise involved in any way with the relevant trusts. He denied that the present litigation had inspired or motivated the changes.

131. On balance, I did not find either of these parties to be a dishonest or untruthful witness although I am satisfied that each has to one extent or another manipulated the "spin" which they have sought to put on their evidence in order to assist the presentation of their respective cases in this litigation. I am prepared to accept that the applicant felt under a degree of pressure during the 2009 proceedings since at that stage the respondent was plainly in a superior position so far as her occupation of the Kensington House was concerned. Regardless of any ability he might have had had to influence the trustees either directly or through his father, he was paying the rent from personal resources emanating from his family. Whether or not it was the case, the applicant clearly believed that he was in a position to control her occupation of that home. She had the balance of the monies lent to her by BMT Capital from the M Trust but no guarantee of any further benefit from the Z family funds which had been the family's financial mainstay and source of support throughout the marriage. I accept that, "on paper", their respective financial positions in 2009 may have been broadly similar in terms of the division of the two Russian properties they then held in their own names (and probably slightly to the applicant's advantage in terms of the value of the property in Moscow which she was retaining). In addition, she held $5 million in cash whereas the respondent had cash reserves of only £120,000. Nevertheless, in my judgment, the contingent interest which the respondent then had in the BMT Trust was not without significance in terms of the concerns which the applicant had (and had been expressing) about her security within that property. Notwithstanding the generosity of Dr Z in including her as a beneficiary as to $930,000 in the event of his death and as a beneficiary of the annuity provision in the event of the respondent's death, the divorce and the respondent's new relationship with the woman who was to become his third wife put her "outside the immediate family fold" in terms of any future dealings with the Trust. I have also accepted her evidence that she was fearful of the potential consequences for herself in the event of

a report to the Russian tax authorities and that this, too, prompted her wish to conclude a deal with the respondent.

132. So where does this leave me ?

133. I return to the statutory framework of section 16 of the 1984 Act and those matters to which I am required to have particular regard.

(a) The connection which the parties have with England and Wales

134. The applicant and the children undoubtedly have a strong connection with this jurisdiction. Perhaps the strongest connection the whole family has is that the applicant and the respondent together decided that this was where their three children should be raised and educated. They have lived in central London and attended English schools since the summer of 2004 although one of their sons returned to Russia to continue his education between 2005 and 2006. There is no proposal that this should change in the foreseeable future. Indeed, the respondent, by his present proposals, accepts that London will remain home to the applicant and the children for the next seven years.

(b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated

135. These are Russian nationals who, despite the years they spent living in London, retain family connections with Russia. One of the applicant's complaints is that she is living in London without support from her immediate family who remain in Russia. Neither is yet completely fluent in English but their joint intentions that the applicant and their children will continue to live in London for the next few years is evidence of a further loosening of the applicant's ties with Russia and a strengthening of her own and the children's ties with England. The respondent's ties with any one particular jurisdiction appear to be driven in no small part by the tax advantages it can offer.

(c) the connection which those parties have with any other country

136. This factor has no particular relevance to the matters which I am determining in this judgment.

(d) Any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce … by virtue of any agreement or the operation of the law of a country outside England and Wales

137. I have already dealt comprehensively with the provision which was made for the applicant in the context of the Russian divorce proceedings. The Russian order made no express provision in terms for her housing. It appears that the court was made aware that she was living overseas at the time of the divorce. I know not the extent to which the Russian judge was made aware that her housing (and that of the children) at that point in time was connected to the BMT Trust, albeit on the basis of what the respondent contends was a commercial arm's length tenancy granted by a wholly owned trust entity. In the light of the agreement which the Russian court was asked to approve, there does not seem to have been any specific enquiry by the court into whether the $10 million of value which she retained would have been sufficient to meet her needs at that point in time and going forward, although it is difficult to envisage circumstances where "bare" needs would not have been covered by this sum.

138. However, the point which arises here is whether or not, in consideration for what she received under the terms of the Russian agreement, I should treat it as a binding agreement not to litigate further or, in other words, a final compromise in relation to all and any claims arising out of the marriage. That is certainly the deal which the respondent believed he was putting in place. I am less sure that this was the applicant's intention. On one view she accepted the compromise and consented to the order being made knowing full well that a Part III claim was a possibility under English law. Mr Harper had been advising her about precisely such a claim only a few months earlier and had written to the trustees advertising such a claim. The applicant agreed with Mr Marks that she knew the agreement captured any potential claim against the BMT Trust, although in her written evidence she seeks to advance a contrary case.

139. Mr Marshall and Mr Hagen make the compelling point that this sub-section requires the court to consider the *"financial benefit"* which an applicant or child of the family has already received as a result of the foreign divorce order. It does not, in terms, require the court to consider whether the foreign order has foreclosed any claim in England under the terms of the agreement. They submit that it would be curious and wrong in principle if an applicant in overseas proceedings were obliged to pursue his or her claim to an adjudication in those proceedings only to lose in circumstances where there was an offer which could be accepted in order to bring the litigation to a conclusion. In support of this submission, they rely on the judgment of Munby J (as he then was) in the first instance decision in *Agbaje* reported at [2006] EWHC 3285 (Fam) at paragraph 58a. His Lordship was ultimately upheld by the Supreme Court despite his initial reversal in the Court of Appeal. He said this in relation to the Nigerian proceedings which had preceded the Part III application in that case:

> "[Mrs Agbaje] did not choose to litigate in Nigeria and took appropriate steps, both in Nigeria and in this country, to ensure that her claims would be heard in this country. Having failed in those endeavours, I do not see that she should be criticised for seeking what she could in Nigeria and then … turning to this

> country when the order made by [the Nigerian judge] turned out to be so disappointing from her point of view. What, after all, was she supposed to do ? Simply ignore the Nigerian proceedings and let them go by default ? That would have been a very high risk strategy indeed …"

140. I set out below the passage from Mr Marshall's and Mr Hagen's closing submissions since it encapsulates what I regard as the crux of this point.

> "[A]pplicants should not be criticised for seeking what they can in the foreign jurisdiction. But on the facts of this case, to seek what she could, [the applicant] was obliged to do a deal as to which, as she has put it: *'I felt that I had no option but to put an end to the proceedings and secure some financial award'* **[C55/76]**. In the light of the evidence from the SJE as to the complete absence of any duty of full and frank disclosure it is hardly surprising that [the applicant] felt obliged to compromise the proceedings in Russia – i.e. "to seek what she could". The only alternative per [the respondent] and seemingly per the SJE was seemingly to invoke English law (apparently for the first time in Russian history) before the Russian court in what the court might conclude was an entirely hypothetical and ultimately futile endeavour.
>
> The cost to [the applicant] was to sign up (on the [respondent's] case) to an agreement which [he] now invites the court to conclude was in full and final settlement of all [her] claims.
>
> It is accepted, therefore, that there is a tension between the court's encouragement in Part III claims that an applicant seek what he or she can in the foreign jurisdiction (which might well involve a compromise with a "full and final settlement" type clause), and the precepts of *Radmacher* that such a done deal should be honoured unless unfair. To resolve this tension, one must look at the statute. As submitted above, the statute is quite clear that "in particular" one looks not at any prohibitory effects in the foreign compromise against later proceedings, but at the actual substantive financial benefit arising under it."

141. In my judgment it is relevant to the overall fairness of the Russian agreement that the applicant must, at the very least, be presumed to have relied on assurances which I find the respondent gave to her on more than one occasion that she could remain at the Kensington House until the children were no longer minors. No such clause or provision appeared in either the agreement or the order. New tenancy arrangements were put in place very shortly after the Russian proceedings concluded but the lease which was presented to the applicant, and which she signed, was limited to a three year period.

142. In considering the overall fairness of the agreement, I accept, as I must, that the provision of secure housing during the children's minority and a capital sum of $10 million in circumstances where the respondent had none of the scale of his current wealth available to him would be likely to survive a 'fairness' health check. However, the statute does not constrain me to leave matters where they lay in 2009. The respondent did not implement his promise to preserve the applicant's home for what would then have been a further period of some thirteen years. That formal offer (apparently endorsed by the trustees) only came much later when she was presented with the draft lease which had been prepared by Farrer & Co. She does not now have a sum of $10 million at her disposal. The respondent stands his ground and submits that is no fault of his but a consequence of decisions which she has taken in the years since the Russian proceedings concluded. By April 2014 she had $2.85 million left from the $5 million she retained in her bank at the time of the divorce. A significant sum will have been spent on this litigation. She lost an investment worth c. $465,000 in the economic crash. Her capital has been further eroded as a result of expenses she has met for the children (including various medical bills) together with what she describes as "decoration and repair costs for the Kensington House" in the sum of just under $40,000. Quite why she is expending this sort of money on the trustees' property, I know not. But there it is. Whilst her expenditure may well be the subject of legitimate criticism, the statute enjoins me to look at "all the circumstances of the case" and those circumstances are not limited by reference to the circumstances pertaining at the time of the foreign agreement or order. So, too, I am entitled to take into account the very significant change in the respondent's financial circumstances since the conclusion of the Russian proceedings. The evidence will not allow me to make a finding that the wealth which was to flow into his hands was deliberately delayed or suppressed by agreement with Dr Z or otherwise during the course of the Russian proceedings. I do not believe that to be the case in any event. Mr Marks in his final submissions said that those on the respondent's side of the case believed that the applicant's case was now founded, in part, on allegations of non-disclosure. If Russian law did not impose on him any obligation to disclose his financial circumstances, there cannot be any criticism of his failure to do so in those proceedings. In my judgment, whilst the applicant did not have the benefit of the full and transparent disclosure exercise which would have been available had the proceedings reached a conclusion in this jurisdiction, the respondent cannot be tarred with that particular 'non-disclosure' brush. I am entirely satisfied that his financial disclosure in relation to the trusts and the exchange of documents which took place prior to the conclusion of the English divorce proceedings was full. Mr Harper was supplied with that for which he had asked. To whatever extent the respondent may have attempted to stop these Part III proceedings from getting off the ground, he cannot be criticised for any non-disclosure in the context of the Russian proceedings insofar as that disclosure process is measured against his obligations in an English context. I accept that there were issues over the date of separation and the débacle of the extent of the funds remaining in the applicant's bank account but these do not in my judgment condemn the respondent to the ranks of serial non-disclosers.

(e) In a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the

extent to which the order has been complied with or is likely to be complied with

143. The Russian order has been complied with in full.

(f) Any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission

144. This is not relevant here.

(g) The availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made

145. The target of the applicant's claim under this sub-section is the property at the Kensington House which she seeks to secure by means of a variation of a post-nuptial settlement together with the second, and less valuable, London trust property. In their written presentations, leading and junior counsel for both parties made various submissions about the nuptuality of the BMT Trust and the precise nature of the settled property which might fall to be varied under section 24(1)(c) of the Matrimonial Causes Act 1973. I do not need at this Stage I hearing to consider the detail of those submissions. I have recently had an opportunity to consider the law in this respect in my judgment in *NR v AB* [2016] EWHC 277 (Fam) and I am very familiar with the legal principles which may fall to be considered at any Stage II hearing, were matters to proceed to that point.

(h) The extent to which any order made under this Part of this Act is likely to be enforceable

146. The respondent has submitted to the jurisdiction of this court. He has at his disposal the means to satisfy any reasonable lump sum order which the court might make notwithstanding that his personal funds are currently held within the Mezano Trust.

147. At this stage, I am not going to consider in any detail the means by which the applicant could extract from the BMT Trust the legal title to the Kensington House property or the apartment at Wycombe Square. The court is familiar with the legal arguments which would be engaged given the means by which the purchase was funded. I have already referred to the forensic issues which will inevitably flow in relation to the nature and extent of any interest she may be found to have in a post-nuptial settlement.

(i) The length of time which has elapsed since the date of the divorce, annulment or legal separation

148. It is this aspect of the applicant's case which has troubled me the most. I bear in mind that there is no limitation period in respect of financial claims following a divorce but the 1984 Act clearly envisages that the aspect of delay is a factor which has to be considered for the purposes of determining whether it is "appropriate" to make an order.

149. Quite properly, Mr Marks and Miss Cowton remind me that, following the Russian order, there was no solicitors' correspondence or any other indication from the applicant relating to those matters which she now seeks to raise to explain away the delay of some five years or more. The applicant's evidence was that she was psychologically and physically "totally unable to deal with any further litigation". She told me that she had been "traumatised" by the whole process and struggled to get through life on a day to day basis. She has attempted, in her most recent statement, to chart how her life and those of the children went into what she describes as an "accelerated decline" after the 2009 agreement. She describes her own and the children's struggle as "only just beginning". She says that, whilst she knew that her housing position would have to be addressed and documented so as to formalise the position in England, *"I also knew that neither I, nor the family, could cope with this happening before we had reached a more stable state"*. I have already commented upon the weight which I can properly attach to the detail which she now gives in her written evidence given the absence of much of this evidence from her earlier presentation. It is true that it is touched upon at various points in her earlier statements but the full exposition of these events comes only in the weeks leading up to this hearing after many months of ongoing litigation and case management.

150. However, that delay has to be seen against the background of the continuing concerns which were being expressed by her English solicitors. On 1 March 2013, Mr Harper wrote to Harcus Sinclair thereby putting the trustees on notice that he had been reinstructed by the applicant in relation to her and the children's interest in the BMT Trust. That letter specifically referred to her ongoing concerns about her occupation of the Kensington House. That letter was copied to the respondent's father and Kopt's lawyers.

151. Mr Marks and Miss Cowton have produced for me a table showing over the 5½ year delay the periods during which the applicant was consulting her doctor, psychotherapist or counsellor. Throughout 2009 and into the early part of 2010 she was receiving treatment and/or advice from Dr Beniashvili, a doctor who had been

recommended to her by the respondent who must have recognised that she needed support. He told me during the course of his evidence that this doctor had been instrumental in enabling him to maintain good relations with his first wife following their divorce. I am satisfied that the support which Dr Beniashvili was providing was more than support in a 'counselling' role. At the end of 2009 he had formally diagnosed her as suffering from post-traumatic stress disorder and depression of moderate to major severity over a prolonged period. There was then a period of some two years when she says she struggled on without medical intervention or support. It was during this period that their elder daughter began to exhibit signs of self-harm and suicidal ideation. There were several discussions between these parents about her problems. There were issues relating to the children's education and a change of school for all three which had to be dealt with through 2011. In January 2012, the applicant began to see an English psychotherapist for regular sessions which continued throughout 2012 and into 2013. Whilst I have to be careful about the weight which I can properly attach to this evidence since I did not hear from this lady, there is some support for the extent of the applicant's difficulties during this period in a letter she wrote. Whilst I did not admit that letter in evidence as expert medical evidence per se, the applicant's statement (which was in evidence) refers to the *"high anxiety"* levels being experienced by the applicant and *"a considerable level of emotional stress"* which necessitated *"a great deal of support"*. Whilst I place no specific reliance on what the psychotherapist is alleged to have recorded in her letter, it seems to me that I am entitled to take into account the fact that the applicant was seeing the psychotherapist on a regular basis on two or three occasions a week over an extended period of seventeen months. That level of support suggests to me that the applicant's health was indeed fragile throughout this period. From January 2014, as Mr Marks' table shows, and up to the commencement of this litigation, she was being supported by a family counsellor.

152. In terms of legal advice, the applicant received none between the end of August 2009 and March 2012 when she consulted not Withers (whom she claimed she could not afford) but Francis Lindsay & Co, a smaller and less expensive firm. That firm appears to have been advising her in relation to these matters throughout the rest of 2012. The applicant's case is that she had fully intended to proceed with a Part III application in March 2012 but that firm failed to progress her application and sought to charge her a sum in excess of £20,000 in order to seek advice from counsel. The lack of progress in the case resulted in the applicant making a formal complaint to the Legal Ombudsman. It appears that there was some support from that source for her complaint because it led to a settlement with the firm which involved a significant discount to the final bill. I know not whether that discount was a reflection or acknowledgement of poor service or simply an acceptance by the firm that counsel had been instructed without the applicant's prior authority. It may simply have been a commercial decision taken by the firm and/or the applicant to bring her relationship with that firm to a close and thereby release the file for onward transmission to Withers who were reinstructed in February 2013. I do not know and I cannot speculate. Nonetheless, I accept that the applicant was not simply letting matters drift but was actively engaged in seeking advice in relation to her claims.

153. I have referred earlier to the letter which Mr Harper wrote to the trustees more or less immediately on his reinstruction.

154. Next, Mr Marks and Miss Cowton have produced for me a schedule showing the extent of the delay in previously reported cases where financial orders have either been granted or refused under Part III. It is not necessary for me to rehearse in any detail the nine authorities which appear in that schedule. Each case is fact specific on its own terms and I accept that it shows only one case where leave was granted after a delay of just under three years: *Schofield v Schofield* [2011] EWCA Civ 174. Thus, they submit, the delay of over five years in this case is sufficient on its own to deny the applicant the relief which she seeks. During the course of his closing submissions, Mr Marks took me to the decision of the Court of Appeal in *Burns v Burns* [2004] EWCA Civ 1258, [2004] 3 FCR 263, a case in which he had appeared against Andrew Moylan QC (now Moylan J). In that case Thorpe LJ referred in his judgment to *"the extraordinary fallow period of three years … in which the wife does nothing"* (para 38). That case concerned an application by a wife for permission to appeal out of time against a consent order in circumstances where there had been a supervening *Barder* event. One of the issues which the Court of Appeal had to consider was whether to extend time for the application for permission to appeal in circumstances where the wife had become aware of the matters which informed her proposed appeal some three years before she took any action. Thorpe LJ records in his judgment that she had sought to explain the delay in the course of her evidence *"by saying that she had many misfortunes, that she had to cope with all sorts of unexpected problems and challenges"*. Whilst no particulars of the substance of this evidence was recorded in his judgment, Thorpe LJ nevertheless took the view that this evidence was insufficient to explain or justify the delay despite the fact that there was evidence in that case of material non-disclosure by the husband.

155. There has been delay in this case. That conclusion is inescapable. I have pondered long and hard over whether or not that delay should operate so as to bar the applicant from any and all relief in this jurisdiction. I have reminded myself again that I am obliged by the terms of the statute to survey a wide canvass in my search for the just conclusion to these Stage I proceedings. I have to consider <u>all</u> the circumstances of this case, including those referred to in section 16(2) and, where relevant to this stage of the enquiry, those identified in section 18(2) and (3). I have already referred to the fact that the applicant's ongoing contributions to the welfare of the family, in addition, to the length of the marriage, will be relevant considerations for the purposes of determining what, if any, orders for financial provision should be made for her if the matter proceeds to Stage II. I am also required by section 25(2) of the 1973 Act, which section is engaged by section 18(3) of the 1984 Act, to have regard to the parties' needs and the resources which are available in the hands of each to meet those needs. That, in turn, triggers a consideration of the financial benefits which the applicant has already received pursuant to the Russian agreement and those benefits have already been the subject of my analysis (above) under section 16(2)(d) of the 1984 Act. I have weighed and considered all of these matters in the context of the submission made on behalf of the respondent that all these factors must be subsumed within the overarching (and fatal) embrace of the delay in this case.

156. By the narrowest of margins, I have decided that the particular and exceptional circumstances of this case as I have set them out at considerable length in this judgment, even viewed against the backdrop of delay, make it appropriate for an English court to make an order for financial provision in the applicant's favour. I am not in any sense seeking to prejudge the outcome of the second stage of this litigation but I make plain now in the clearest terms my view that the applicant's overall target of the Kensington House with the second London trust apartment and a sum of £8 million is wildly ambitious and needs careful reconsideration. The factor of delay is bound to be reflected in any substantive order which the court might make pursuant to section 17 of the 1984 Act, as Mr Marshall readily acknowledges. Any order made will be based on the applicant's needs and those needs must, in my judgment, be restricted to reflect the delay which there has been in bringing her claim. The fact that she acknowledged that she knew she was surrendering her future claims for maintenance by her compromise of the Russian proceedings will inevitably find reflection to some degree in the outcome of Stage II. Whilst the court will be concerned to ensure that her future housing needs are met in an appropriate manner when, and if, her occupation of the Kensington House comes to an end, it will not and cannot allow Stage II of this litigation to present the applicant with a "second bite" following her inability to deal successfully with the property in the context of the Russian proceedings.[9]

157. I am not precluding argument altogether in relation to the existence of a post-nuptial settlement in relation to the BMT Trust but I am urging the parties to keep a very close eye on the underlying merits of her claim and the escalating legal costs. Each has a first class team of advisers and I would hope and expect that my judgment in relation to Stage I will provide a platform for further negotiations in an attempt to resolve matters in the round. The applicant must be aware that the delivery to her of a £6 million house, a second investment property and a sum of £8 million is a very tall order in this case and one which, in my preliminary view, does not properly reflect the merits of her case regardless of the extent of the wealth now held by the respondent or available to him. It is, perhaps, not without significance that the respondent has been prepared to underwrite the future cost of rent in this case to the tune of over £1 million. Subject to future arguments about the ultimate destination of the beneficial interest in these funds, that money is lost to him as it is lost to the applicant as part of a potential housing fund. She currently has property investments of her own and residual capital resources. All these factors will come into play should the court, in the absence of a settlement, be required to proceed to Stage II. It is at that stage that any relevant arguments about the applicant's characterisation of the payment of rent being a "carousel" will need to be addressed and determined in context of the respondent's resources.

[9] The rent is paid to Kopt which is owned by the BMT Trust of which the respondent is now the sole beneficiary (subject only to the current prohibition during his father's lifetime).

158. In this context, I am reminded that the order which I made at the pre-trial review on 15 December 2015 provided that consideration would need to be given at the conclusion of the Stage I hearing to the need or otherwise for the joinder or representation of the children (as minor beneficiaries of the BMT Trust) for the purposes of the Stage II hearing (see para 12). I would hope that this will not be necessary but will deal with any submissions in relation to any further directions which may be required either on paper or by means of a further short hearing. I would invite the lawyers to liaise with Mr Denman, my clerk, for these purposes once they have had an opportunity to consider my judgment.

Order accordingly

Capitalise Calculations

Capitalise profile of:

Mrs X

Female

aged 45 years

Life expectancy 44 years

(using ONS14 Life Expectancy Table)

Summary of calculation

Calculation number 1

Capitalise profile:	Mrs X, Female, aged 45 years, Life expectancy 44 years (using ONS14 Life Expectancy Table)
Type of calculation:	Life (44 years)
Term of calculation:	Conventional
Real rate of return:	Yr 1: 2.25%, Yr 2: 3.75%, Thereafter: 3.75%
Inflation:	3%
Capital growth:	3.75%
Income yield:	Yr 1: 1.5%, Yr 2: 3%, Thereafter: 3%
CGT:	CGT calculated on 'Recycle plus drawdown' basis (Recycle rate = 3%)
Income tax:	Income tax calculated as per 2016 rates, rules and allowances
Initial capital amount preserved?	No

Income requirement

Income requirement	£140,000.00 every year for life

Income receipts

Income receipt	£78,000.00 every year between age 46 - 51

Suggested capital sum: £3,333,480.93

Capitalise Results

Calculation number 1

	Age 46	Age 47	Age 48	Age 49	Age 50	Age 51	Age 52	Age 53
Capital at start of the year	£3,333,480.93	£3,401,887.79	£3,499,893.73	£3,600,621.11	£3,704,139.77	£3,810,084.06	£3,918,062.78	£3,980,473.11
New capital introduced	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Capital at end of the year	£3,458,486.46	£3,529,458.58	£3,631,139.75	£3,735,644.40	£3,843,045.01	£3,952,962.21	£4,064,990.14	£4,129,740.86
Capital growth	£125,005.53	£127,570.79	£131,246.01	£135,023.29	£138,905.24	£142,878.15	£146,927.35	£149,267.74
Income yield from capital	£50,002.21	£102,056.63	£104,996.81	£108,018.63	£111,124.19	£114,302.52	£117,541.88	£119,414.19
Taxable income (savings)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Taxable income (non-savings)	£78,000.00	£80,340.00	£82,750.20	£85,232.71	£87,789.69	£90,423.38	£0.00	£0.00
Income tax	£44,600.89	£67,761.49	£69,739.65	£71,774.20	£73,866.67	£76,012.75	£32,688.13	£33,007.19
Non-taxable income	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Associated costs	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Net income	£83,401.33	£114,635.15	£118,007.37	£121,477.14	£125,047.21	£128,713.16	£84,853.76	£86,407.00
Income requirement	£140,000.00	£144,200.00	£148,526.00	£152,981.78	£157,571.23	£162,298.37	£167,167.32	£172,182.34
Amount of capital needed	£56,598.67	£29,564.85	£30,518.63	£31,504.64	£32,960.95	£34,899.43	£84,517.02	£90,045.93
Capital gains tax	£0.00	£0.00	£0.00	£436.93	£1,314.21	£2,203.46	£4,270.59	£5,477.04
Capital c/f to next year	£3,401,887.79	£3,499,893.73	£3,600,621.11	£3,704,139.77	£3,810,084.06	£3,918,062.78	£3,980,473.11	£4,039,694.92
Latent gains	£125,005.53	£247,739.77	£369,393.33	£490,102.72	£609,943.74	£728,936.65	£838,271.92	£943,428.19

Capitalise Results

Calculation number 1

	Age 54	Age 55	Age 56	Age 57	Age 58	Age 59	Age 60	Age 61
Capital at start of the year	£4,039,694.92	£4,096,274.39	£4,149,958.68	£4,200,446.65	£4,247,414.99	£4,290,518.05	£4,329,386.50	£4,363,625.82
New capital introduced	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Capital at end of the year	£4,191,183.48	£4,249,884.67	£4,305,582.13	£4,357,963.40	£4,406,693.05	£4,451,412.47	£4,491,738.49	£4,527,261.79
Capital growth	£151,488.56	£153,610.29	£155,623.45	£157,516.75	£159,278.06	£160,894.43	£162,351.99	£163,635.97
Income yield from capital	£121,190.85	£122,888.23	£124,498.76	£126,013.40	£127,422.45	£128,715.54	£129,881.59	£130,908.77
Taxable income (savings)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Taxable income (non-savings)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Income tax	£33,275.10	£33,498.01	£33,672.51	£33,794.55	£33,859.85	£33,863.81	£33,801.56	£33,667.90
Non-taxable income	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Associated costs	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Net income	£87,915.75	£89,390.22	£90,826.25	£92,218.85	£93,562.60	£94,851.73	£96,080.03	£97,240.87
Income requirement	£177,347.81	£182,668.25	£188,148.29	£193,792.74	£199,606.52	£205,594.72	£211,762.56	£218,115.44
Amount of capital needed	£94,909.10	£99,925.99	£105,135.48	£110,548.42	£116,175.00	£122,025.98	£128,112.67	£134,447.06
Capital gains tax	£6,647.96	£7,813.44	£8,974.52	£10,131.08	£11,282.99	£12,430.15	£13,572.50	£14,710.01
Capital c/f to next year	£4,096,274.39	£4,149,958.68	£4,200,446.65	£4,247,414.99	£4,290,518.05	£4,329,386.50	£4,363,625.82	£4,392,814.72
Latent gains	£1,044,448.88	£1,141,247.04	£1,233,720.61	£1,321,756.37	£1,405,229.15	£1,484,000.79	£1,557,919.08	£1,626,816.65

Capitalise Results

Calculation number 1

	Age 62	Age 63	Age 64	Age 65	Age 66	Age 67	Age 68	Age 69
Capital at start of the year	£4,392,814.72	£4,416,503.51	£4,434,212.29	£4,445,429.19	£4,449,608.34	£4,446,167.89	£4,434,487.81	£4,413,907.61
New capital introduced	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Capital at end of the year	£4,557,545.28	£4,582,122.39	£4,600,495.25	£4,612,132.78	£4,616,468.65	£4,612,899.19	£4,600,781.11	£4,579,429.15
Capital growth	£164,730.55	£165,618.88	£166,282.96	£166,703.59	£166,860.31	£166,731.30	£166,293.29	£165,521.54
Income yield from capital	£131,784.44	£132,495.11	£133,026.37	£133,362.88	£133,488.25	£133,385.04	£133,034.63	£132,417.23
Taxable income (savings)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Taxable income (non-savings)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Income tax	£33,457.30	£33,163.87	£32,781.35	£32,303.08	£31,721.97	£31,030.48	£30,220.61	£29,283.85
Non-taxable income	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Associated costs	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Net income	£98,327.14	£99,331.23	£100,245.02	£101,059.80	£101,766.28	£102,354.56	£102,814.02	£103,133.38
Income requirement	£224,658.90	£231,398.67	£238,340.63	£245,490.85	£252,855.57	£260,441.24	£268,254.48	£276,302.11
Amount of capital needed	£141,041.77	£147,910.10	£155,066.07	£162,524.44	£170,300.76	£178,411.38	£186,873.50	£195,705.21
Capital gains tax	£15,842.66	£16,970.46	£18,093.39	£19,211.47	£20,324.69	£21,433.04	£22,536.48	£23,634.95
Capital c/f to next year	£4,416,503.51	£4,434,212.29	£4,445,429.19	£4,449,608.34	£4,446,167.89	£4,434,487.81	£4,413,907.61	£4,383,723.93
Latent gains	£1,690,509.88	£1,748,797.76	£1,801,460.67	£1,848,259.23	£1,888,932.97	£1,923,199.06	£1,950,750.96	£1,971,256.96

Capitalise Results

Calculation number 1

	Age 70	Age 71	Age 72	Age 73	Age 74	Age 75	Age 76	Age 77
Capital at start of the year	£4,383,723.93	£4,343,188.02	£4,291,503.00	£4,227,821.10	£4,151,240.59	£4,060,802.70	£3,955,488.19	£3,834,213.89
New capital introduced	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Capital at end of the year	£4,548,113.58	£4,506,057.57	£4,452,434.37	£4,386,364.39	£4,306,912.11	£4,213,082.80	£4,103,819.00	£3,977,996.91
Capital growth	£164,389.65	£162,869.55	£160,931.36	£158,543.29	£155,671.52	£152,280.10	£148,330.81	£143,783.02
Income yield from capital	£131,511.72	£130,295.64	£128,745.09	£126,834.63	£124,537.22	£121,824.08	£118,664.65	£115,026.42
Taxable income (savings)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Taxable income (non-savings)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Income tax	£28,211.16	£26,992.92	£25,618.94	£24,078.39	£22,359.75	£20,450.85	£18,338.71	£16,009.60
Non-taxable income	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Associated costs	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Net income	£103,300.56	£103,302.72	£103,126.15	£102,756.25	£102,177.46	£101,373.23	£100,325.94	£99,016.81
Income requirement	£284,591.17	£293,128.91	£301,922.78	£310,980.46	£320,309.87	£329,919.17	£339,816.75	£350,011.25
Amount of capital needed	£204,925.56	£214,554.57	£224,613.27	£235,123.79	£246,109.42	£257,594.61	£269,605.11	£282,167.96
Capital gains tax	£24,728.38	£25,816.64	£26,899.58	£27,977.01	£29,048.68	£30,114.30	£31,173.53	£32,225.97
Capital c/f to next year	£4,343,188.02	£4,291,503.00	£4,227,821.10	£4,151,240.59	£4,060,802.70	£3,955,488.19	£3,834,213.89	£3,695,828.94
Latent gains	£1,984,358.72	£1,989,669.70	£1,986,773.51	£1,975,222.23	£1,954,534.55	£1,924,193.88	£1,883,646.28	£1,832,298.38

Capitalise Results

Calculation number 1

	Age 78	Age 79	Age 80	Age 81	Age 82	Age 83	Age 84	Age 85
Capital at start of the year	£3,695,828.94	£3,538,882.64	£3,361,035.25	£3,161,157.37	£2,937,552.11	£2,688,491.70	£2,412,145.40	£2,106,565.79
New capital introduced	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Capital at end of the year	£3,834,422.53	£3,671,590.74	£3,487,074.07	£3,279,700.77	£3,047,710.32	£2,789,310.14	£2,502,600.85	£2,185,562.01
Capital growth	£138,593.59	£132,708.10	£126,038.82	£118,543.40	£110,158.20	£100,818.44	£90,455.45	£78,996.22
Income yield from capital	£110,874.87	£106,166.48	£100,831.06	£94,834.72	£88,126.56	£80,654.75	£72,364.36	£63,196.97
Taxable income (savings)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Taxable income (non-savings)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Income tax	£13,677.20	£12,215.36	£10,877.73	£9,399.81	£7,771.17	£5,981.18	£4,018.61	£1,871.50
Non-taxable income	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Associated costs	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Net income	£97,197.67	£93,951.12	£89,953.32	£85,434.91	£80,355.40	£74,673.57	£68,345.75	£61,325.47
Income requirement	£360,511.59	£371,326.93	£382,466.74	£393,940.74	£405,758.97	£417,931.73	£430,469.69	£443,383.78
Amount of capital needed	£295,539.89	£310,555.49	£325,916.70	£342,148.66	£359,218.62	£377,164.74	£396,035.06	£415,881.27
Capital gains tax	£33,179.68	£33,403.29	£33,642.83	£33,815.04	£33,906.58	£33,911.12	£33,822.96	£33,636.55
Capital c/f to next year	£3,538,882.64	£3,361,035.25	£3,161,157.37	£2,937,552.11	£2,688,491.70	£2,412,145.40	£2,106,565.79	£1,769,680.74
Latent gains	£1,769,401.82	£1,693,753.59	£1,604,737.97	£1,501,450.02	£1,382,959.88	£1,248,276.01	£1,096,336.56	£926,002.33

Capitalise Results

Calculation number 1

	Age 86	Age 87	Age 88	Age 89
Capital at start of the year	£1,769,680.74	£1,398,812.35	£989,213.46	£536,674.06
New capital introduced	£0.00	£0.00	£0.00	£0.00
Capital at end of the year	£1,836,043.77	£1,451,267.81	£1,026,308.96	£556,799.33
Capital growth	£66,363.03	£52,455.46	£37,095.50	£20,125.28
Income yield from capital	£53,090.42	£41,964.37	£29,676.40	£16,100.22
Taxable income (savings)	£0.00	£0.00	£0.00	£0.00
Taxable income (non-savings)	£0.00	£0.00	£0.00	£0.00
Income tax	£0.00	£0.00	£0.00	£0.00
Non-taxable income	£0.00	£0.00	£0.00	£0.00
Associated costs	£0.00	£0.00	£0.00	£0.00
Net income	£53,090.42	£41,964.37	£29,676.40	£16,100.22
Income requirement	£456,685.29	£470,385.85	£484,497.43	£499,032.35
Amount of capital needed	£437,231.42	£462,054.35	£489,634.91	£519,101.35
Capital gains tax	£33,632.87	£34,813.88	£36,169.22	£37,643.02
Capital c/f to next year	£1,398,812.35	£989,213.46	£536,674.06	£37,697.98**
Latent gains	£735,799.77	£523,132.57	£285,597.09	£20,908.87

** Capital remaining	£37,697.98
Less: outstanding CGT bill	(£37,643.02)
	£54.96

Suggested capital sum: £3,333,480.93