

Neutral Citation Number: [2023] EWHC 613 (Fam)

Case No: BV19D25385

**IN THE FAMILY COURT**

The Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Date: 10 March 2023

**Before:**

**Mr Justice Moor**

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**Between:**

**MN**

Applicant

**-and-**

**AN**

Respondent

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Miss Deborah Bangay KC and Miss Lily Mottahedan  
(instructed by Penningtons Manches Cooper LLP) for

the **Applicant**

Mr Michael Horton KC and Miss Sophie Hill  
(instructed by Dawson Cornwell LLP) for the

**Respondent**

Hearing dates: 13<sup>th</sup> to 16<sup>th</sup> February 2023  
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# JUDGMENT

## MR JUSTICE MOOR:-

1. I have been hearing cross-applications in relation to the financial arrangements to be made following the breakdown of the marriage of the parties. The Applicant, MN applies by Form A dated 25 May 2021 for the full range of financial remedies. The Respondent, AN, issued a Notice to Show Cause why the application for financial remedies should not be dealt with in the terms of a Pre-Nuptial Agreement (“PNA”) dated 3 June 2005. I propose to refer to the parties as the Wife and the Husband respectively. I do so for the sake of convenience and mean no disrespect to either by so doing.

### The relevant history

2. The Husband was born in 1961. He is therefore aged 61. He is treated as domiciled in this country. He lives in a property in the English countryside that he jointly owns with the Wife, (“The Country Property”).
3. The Wife was born in 1972, so she is aged 51. She lives at a property held in the sole name of the Husband, (“The London Property”). She is a home-maker and child-carer.
4. The parties married in early September 2005. There are two children of the family. CN was born in 2008, so is aged 15. ON, who was born in 2009, is aged 14. Both attend fee-paying schools in London.
5. This was a first marriage for the Wife. The Husband had been married before. There were two children of that marriage, DN and VN, both now in their late twenties. That marriage broke down in around 2001.
6. The Husband is a very successful finance professional. His business success can be seen by the fact that, by the time the PNA was signed in June 2005, he had net assets of £32.5 million.
7. The relationship between the parties commenced in March 2003. They briefly separated in October 2003, before getting back together again in January 2004. The Husband completed the purchase of The London Property in November 2003, whilst the parties were not together, in his sole name, for £3 million with a £2.85 million mortgage. He had exchanged contracts in June 2003 and shown the property to the Wife in September 2003. The property is a substantial mid- terraced home over six floors in a prime Central London location. It has seven bedrooms, a roof terrace and a paved patio garden. It measures approximately 4,600 square feet. It is now valued at £9.5 million but remains subject to a mortgage of £2,850,000.
8. The parties began to cohabit in The London Property in the summer of 2004.

By then, the Husband had indicated that he would support the Wife financially after she had been made redundant in March 2004 from her job, where she had been earning approximately £2,300 per month. They became engaged in December 2004. The Husband had already raised the issue of “signing something” before a marriage with the Wife in the autumn of 2004. Both parties instructed well-known “divorce” solicitors. In the Husband’s case, that was Baroness Shackleton (then Mrs Shackleton) at Payne Hicks Beach (“PHB”). He suggested the Wife consult Gill Doran of Withers but she decided to instruct Maggie Rae at Clintons instead and first saw her and her assistant, Paul Newton on 27 January 2005. In the taxi they shared, when she was on her way to the first meeting, the Husband showed her a piece of paper containing his suggested terms for the PNA. In essence, the proposal was that he would pay her £300,000 for each year of the marriage.

9. On 28 January 2005, Clintons sent the Wife a letter which said, amongst other things that:-

*“...the current position in English law is that pre-nuptial agreements are not binding upon the Court when making an Order for division of finances on divorce. Therefore, although the document may have some influence in the Court deciding on the allocation of assets on any future divorce, I could not say it would definitely be binding. However, you need to proceed on the basis that it would be upheld. It is very important that you are aware of this from the outset.”*

10. Thereafter, both parties communicated quite extensively with their respective lawyers in face-to-face meetings, on the telephone and by email. Maggie Rae instructed a chartered accountant specialising in financial remedy work, David Greene of Martin Greene Ravden to do some calculations, which must have been Duxbury type calculations, although a Mr Braham actually did these calculations. On 4 March 2005, Clintons sent to PHB a proposal as to what the PNA should contain. It provided that the Wife would receive £2 million on the second anniversary of the marriage and £600,000 per annum thereafter. After ten years, she would receive half the value of The London Property or her half would be held on trust until the children ceased tertiary education. There would be child maintenance of £60,000 per annum plus school fees in the event that the parties had children. It would cease to have effect if the marriage lasted more than twenty years. A draft agreement was enclosed.
11. There is no doubt that this proposal upset the Husband, particularly the provision for £2 million on the second anniversary. The parties had a disagreement on 7 March 2005 but the Husband sent a constructive email to PHB on 8 March 2005 which said, amongst other things that *“I’m at 300,000, she’s at 600,000 so maybe we can split the difference at 450,000 for each year of the marriage.”* On 10 March 2005, a further email from him to Mr Neil Graham at PHB said he had had an *“unhappy [Wife] on the phone complaining about how this agreement is ‘ruining our relationship’. I told her we just had to work through it...”*
12. PHB replied to Clintons on 14 March 2005. It rejected the proposal for £2 million after two years as being inappropriate and suggested that a figure increasingly annually in the bracket £3-400,000 would be more appropriate.

The letter agreed that a housing fund, if there were children in due course, of half the value of The London Property would be entirely reasonable. The proposals for child maintenance were also reasonable. It also suggested a payment of 50% of the increase in the value of the assets during the marriage if greater than the annual payments but the whole provision should be capped at 35% of the Husband's assets.

13. On the evening of the 15 March 2005, the parties had, in the words of the Husband, "*the mother of all arguments*" in The London Property. There is dispute as to exactly what was said but there is no doubt that the net result was that the Wife left the property for up to a couple of hours. She says that the Husband was shouting at her down the street that she was a "*gold-digger*". He denies that but accepts he said, in the property, that the £2 million provision would be a "*gold-digger's charter*". The Wife returned to the property later. Constructive talks then took place between them. In essence, they largely agreed the provision that would be included in the PNA although it appears that both sides made an amendment thereafter. I am clear that the negotiations between them did not involve one side or the other "capitulating". Nobody has suggested that these discussions were other than cordial, albeit in the context that there had been the argument earlier that day. The basic terms were that the Wife would receive £500,000 per annum and half the value of The London Property after eight years or following the birth of children. In the alternative, she would receive 50% of the increase in the Husband's assets, if that was greater but with a cap of 42% of the Husband's overall wealth. The agreement would cease to operate after 25 years. Both parties subsequently told their lawyers that they had reached an agreement.
14. Thereafter, the solicitors corresponded and sent each other revised drafts. There were some changes made on behalf of both parties that were agreed. In relation to the Husband, the change was a clause that any interest in real property held by the Wife would be treated as a payment on account unless it was specifically agreed that it was a gift. On behalf of the Wife, a clause relating to the position on death was removed. It is clear that, although the parties may well have informed friends and family that they were intending to marry in September 2005, the "Save the Date" email was only sent to guests on 6 May 2005 after the agreement had been finalised.
15. The PNA was executed by each party in front of a witness and dated 3 June 2005. It recited that each was to retain their separate property accumulated before they met. They had given full and frank disclosure of their resources. Appendix A showed that the Husband had assets of £32.5 million. Appendix B had the Wife's assets at £62,000. It then recited that each party had received separate and independent legal advice and that they were freely entering into the agreement. It said that they intended that it "*shall be legally binding upon them...*"
16. The financial provision was that the Wife would receive £500,000 for each complete year of the marriage to a maximum of £12,500,000 on the 25<sup>th</sup> anniversary of the marriage. She would receive one-half of The London Property on the 8<sup>th</sup> anniversary of the marriage or the arrival of children if earlier. She would, however, receive 50% of the increase in the value of the net assets during the marriage if that sum was greater. In any case, the award

would be capped at 42% of the Husband's net worth. On the arrival of children, there would be maintenance of £60,000 per annum per child plus school fees and medical expenses. After ten years, the maintenance would be indexed in accordance with the Consumer Prices Index ("CPI"). Pending the conclusion of divorce proceedings, the Husband was to provide reasonable financial support for the Wife until they were divorced. This would involve him providing accommodation for her along with financial support. The financial support would either be at the same standard of living as she enjoyed during the marriage or by providing the equivalent of the net income after tax that would be earned on the provision to which she was entitled overall. The agreement would cease to have effect after 25 years.

17. During the marriage, two properties were purchased. In 2007, a property in the USA ("The American Property") was acquired in joint names for \$700,000, mortgage free. In February 2010, they purchased, again in joint names, The Country Property for £3.2 million with a mortgage of £1.6 million. The Country Property was subsequently refurbished at a cost of between £600,000 and £1,000,000. The mortgage has since been increased to £1.975 million. The re-mortgage money remains partly held in a joint account and is being used to discharge the mortgage instalments. It is a Grade II listed property with 8 bedrooms, 7.39 acres, an outdoor swimming pool and two further properties in addition to the main house. It is now valued at £4 million. In addition, in 2015, three substantial plots of land were purchased in Majorca for €2.4 million. The intention was to build a fabulous home on the plots at a cost of around £5 million at the time. In fact, nothing was ever built. In March 2021, the Husband sold two of the plots for €2.12 million but he retained the third. He told me in evidence that he still hoped to build a more modest residence on the third plot, which he values at €1.2 million but he denied any intention to move there permanently.
18. In relation to the Husband's business career, between 2009 and 2016, he earned an average sum of £1.86 million per annum. In April 2016, he decided to focus on managing his personal wealth. Six months later, he co-founded an investment business with an ex-colleague.

#### The history of the litigation

19. The marriage broke down in February 2019. Both parties instructed solicitors, albeit different firms to those currently representing them. On 17 September 2019, the Husband gave notice of an intention to petition for divorce, which, according to clause 5.9 of the PNA, is the date for computation of the financial provision to which the Wife is entitled under that agreement.
20. In fact, it was the Wife who petitioned for divorce on 30 October 2019. A decree nisi was pronounced on 2 April 2020. It has not as yet been made absolute.
21. On 15 September 2020, the Husband made an open offer to pay the Wife the sum of £7 million to which she is entitled by virtue of the clause in the PNA that gave her £500,000 for each completed year of marriage and to permit her to remain in The London Property until December 2030, whereupon there would be an equal division of the proceeds. It was made clear that this was on

the basis that the terms could be promptly agreed and that the overall provision in the PNA was not increased. The following month, October 2020, the Husband vacated The London Property and moved to live at The Country Property. More recently, he has rented a flat in London as well.

22. On 27 January 2021, he made a second open offer in which he again said that he was willing to facilitate the Wife remaining in The London Property “in the best interests of the children” on the basis that it would be sold in January 2027, whereupon she would receive her entitlement from the proceeds of sale as provided in the PNA, which was referred to as the “lodestar”. She would also get the £7 million. The alternative was to sell The London Property immediately, whereupon the letter calculated that she would receive around £11.5 million after the jointly owned assets had reverted to the Husband.
23. The Wife issued a Form A on 25 May 2021. The Husband made his third open offer on 7 July 2021 saying that he wished to resolve the matter swiftly and amicably without incurring unnecessary legal expense. It was said that it is clear that the PNA provides a fair outcome. He was concerned that the parties would “waste hundreds of thousands of pounds each in legal costs”. Without prejudice to his contention that the PNA is fair and should be upheld in full, he offered her a further £500,000, together with the PNA provision. He also noted that she had her own assets valued at around £600,000. Alternatively, he would transfer The London Property to her but the lump sum would then be reduced to £6,250,000 to account for her retaining his share of the equity in the property.
24. As there was no substantive response, on 2 August 2021, the Husband issued a Notice to Show Cause why the Wife’s application for financial remedies should not be dealt with in accordance with the terms of the PNA. Thereafter, his position has throughout been that the Wife should be held to the terms of the PNA, although he has on a number of occasions suggested mediation with lawyers involved.

#### The Forms E

25. Both parties filed Forms E in early August 2021. I do not propose to set out the financial disclosure contained in either document as there is no dispute as to the assets in the case. I will merely say that, at the time of her Form E, dated 3 August 2021, the Wife had £462,141 in bank accounts, although this included approximately £160,000 held in two joint accounts with the Husband. She also had investments of £411,683, but again, a significant portion, namely £180,675 was held in a Credit Suisse portfolio jointly with the Husband. She did say that she had jewellery worth £379,000 but, despite her evidence to me that she thought this was the sale valuation of the jewellery, I am actually clear that it is the insurance value. She put her income needs at £654,012 per annum for herself and a further £190,488 for the children, excluding their school fees. She said that, before the marriage, she was employed but she gave up this work at the Husband’s insistence. She set out an extremely high standard of living, with the family spending in the region of £1 million per annum, excluding capital expenditure. She said that both parties had made full and equal contributions in terms of their respective roles during the marriage. This is, of course, correct, but it ignores the unmatched contribution of £32.5

million by way of assets introduced by the Husband at the commencement of the marriage. She completed the “conduct” box, asserting that the Husband “behaved in a coercive and controlling manner towards me”, adding that she reserved her position in that regard. I will have more to say about this in due course. Finally, in relation to the PNA, she said that the Husband was insistent about entering the PNA and made it clear that there would be no wedding unless she signed. She said the PNA is not fair and does not meet her reasonable needs. She makes the point that it was signed before the decision in Radmacher in the Supreme Court.

26. The Husband’s Form E is dated 2 August 2021. He said that the standard of living was “very comfortable” which was not an accurate statement as it understates the true position. He makes the point that he brought £32.5 million of assets into the marriage and that the PNA gave the Wife, at the time of this Form E, around £11.375 million. In relation to his offshore assets, which he now puts at approximately £35 million, he says that he will have to pay tax of 40 to 45% if he brings the money onshore. He says his future income needs for himself will be £449,993 per annum. He puts current expenditure at £622,623 per annum but accepts it would have been higher in the past.

#### The evidence as to the Pre-Nuptial Agreement

27. On 6 September 2021, Mulki DJ allocated the case to the High Court. Both parties were to file statements in relation to the PNA. The Wife’s statement is dated 11 October 2021. I have set out quite a bit of the history of the negotiations earlier in this judgment and do not intend to repeat what I have previously said. She makes the point that the main negotiations took place between her and the Husband direct. She says that her solicitors told her to implement what the Husband wanted. I remind myself, however, that I have not heard evidence from Maggie Rae or Paul Newton. She says that the Husband had casually remarked to her that he wanted her to sign something before they married. She adds that she was shocked and ashamed by what she calls the “marriage meter”, namely an award that increases year on year. She adds that Maggie Rae told her that such agreements carried very little weight and were not legally binding and might never be, although she accepts that Ms Rae said that she needed to proceed on the basis that it would be upheld. She says she did not want stress or tension. She felt she had no choice as the wedding was booked, although this does not appear to have been correct at the time the agreement was reached.
28. She deals with the argument the parties had on 15 March 2005 saying that the Husband was very cross and irate after her lawyer’s suggested changes, such as £2 million after two years and then £600,000 per annum, when he had offered only £300-400,000 pa. She says that he shouted at her that she was a “gold digger”. She was shocked and traumatised such that she felt she had to acquiesce. She capitulated as she had no alternative. She was ashamed. She lacked the life experience to negotiate such an agreement. There would have been an unbearable social stigma if the wedding had been called off. She deals with the standard of living during the marriage, noting that their budget was £1,075,735 in 2008, half of which was spent onshore and half offshore. She said she would not have signed the agreement if she had known they would

spend that much money during the marriage. She then deals with her coercive control allegation, saying that the Husband persistently undermined and criticised her in outbursts. She says that the children should remain at The London Property, mortgage free and that it is unfair to amortize her provision, although I cannot see why that would be the case.

29. The Husband's statement is dated 11 November 2021. He makes the point that he had already been through a contentious and costly divorce. He wanted to preserve his remaining wealth for the two children of his first marriage. He says he explained this to the Wife before they became engaged and only proposed after she agreed to enter an agreement. He accepts that it was a condition of marriage. The Wife entered the PNA freely and with a full appreciation of its implications. Indeed, he notes that it provides for her to receive, now, £11,750,000. He said that he suggested she see Gill Doran of Wither's but she chose Clintons instead. He made it clear no wedding invitations should be sent out until after they had agreed the PNA to avoid anyone feeling under pressure. He notes that it was the Wife who took the lead with the first draft and proposed very different terms to those he had suggested. He acknowledges that they did upset him and made him question her primary motivation. He says his position made her cross. He adds that she has a degree in business. The PNA was a fundamental condition of marriage for him. He accepts that they had "the mother of all arguments" on 15 March 2005 and he did call her proposals a "gold-digger's charter". When she returned to The London Property later on 15 March 2005, she wanted to negotiate. They did so and a generous agreement emerged. He did, however, twice refuse indexation although he agreed to index child periodical payments after ten years. It was her solicitors who pressed his solicitors once they had agreed. They did not send the "Save the Date" notification until 6 May 2005. He says that there is not a single piece of evidence that she was under duress or unfair pressure.
30. He then says that he was only prepared to live at such a high standard during the marriage because he knew his assets were protected by the PNA. He refers to various documents produced by the Wife as to spending which he says were not budgets but spreadsheets of expenditure to demonstrate a need to economise. In any event, they included expenditure not referable to this marriage, such as maintenance and school fees for his children by his first marriage. The Husband's business lost money until 2018 and made £666,000 in 2020 and £789,000 in 2021. During the marriage, he gifted the Wife £2.4 million, which he says is hardly indicative of coercive control. There was no abuse. He does not have an aggressive nature.
31. I heard the case on 28 March 2022 for directions after an unsuccessful private FDR before Lord Wilson of Culworth. I directed that the two applications be heard together. Mr James Rivett QC (now KC) was to prepare a tax report. I directed section 25 statements and updating financial disclosure before the final hearing limited to a one-page summary each. This final hearing was listed to commence on 13 February 2023 with a time estimate of five days. I dismissed an application the Wife made to rely on a report from a psychologist, Dr A, on the basis that this was not a conduct case pursuant to s25(2)(g).

Interim provision



32. The Husband accused the Wife of over-spending on his credit cards. For example, she spent £151,335 in the last four months of 2021 and £80,222 in the first two months of 2022. He therefore cancelled three of her four cards without telling her in advance. He also reduced the limit on the fourth card from £10,000 to £500. The Wife also accused him of stopping paying her offshore allowance of €90,000 per annum during 2020. She therefore applied for maintenance pending suit on 25 March 2022.
33. She filed a statement in support dated 24 May 2022. It complains that she had been squeezed financially and only given £22,166 per month from March 2022, whereas she sought £35,579 per month, along with £150,000 for essential and long-standing maintenance work at The London Property. She also sought that the Husband pay the interest on her litigation loan with Level, which was running at 14.4% per annum. She said that she had never had any financial independence as the Husband controlled their finances and she had to go cap in hand for anything she could not pay on a credit card. This is slightly difficult to reconcile with a schedule she has produced showing he provided her with approximately £2.3 million in tranches from 2006 onwards. She sets out enormous levels of expenditure during the marriage along with credit cards with huge limits. She says that the family spent £178,000 on holidays in 2018. Finally, she notes that the Husband had offered to pay an additional sum of £294,931 per annum directly, in relation to items such as the expenditure on The London Property, including staff.
34. The Husband never filed a statement in response as the parties reached a sensible compromise which was incorporated in an order of Roberts J dated 5 July 2022. In essence, the Husband increased his provision by £5,000 per month “without prejudice” to avoid the costs of a hearing. The order provided that he was to maintain the financial status quo in relation to the family home, school fees and other expenses. The Wife was to have a credit card for the sole purpose of meeting the children’s medical and travel costs. Maintenance pending suit was ordered of £326,000 per annum or £27,166 per month. He was to pay arrears of £7,500. I take the view that this compromise effectively deals with any argument that the Husband did not provide proper interim provision in accordance with the PNA.

#### The section 25 statements

35. The Wife’s section 25 statement is dated 12 December 2022. She says that her Husband’s treatment of her made her seriously doubt her own intellectual abilities so she became incapable of making sensible, independent decisions for herself. She felt financially and emotionally vulnerable and entirely dependent on the Husband. She felt patronised and infantilised. There are two points in relation to this. The first is that I had already decided that conduct was not relevant in this case. Indeed, the statement itself says that she does not rely on conduct. Miss Bangay KC, who appears on behalf of the Wife with Miss Mottahedan, says it is relied on as a “circumstance of the case” but such an approach was roundly condemned in Miller/McFarlane and should never reappear in this type of litigation. The allegation of “gaslighting” is

completely unacceptable as there is no evidence of it whatsoever. Second, with the possible exception of allegations relating to the negotiations in relation to the PNA, there is not a shred of evidence of coercive control in this case. The Wife does say she was deeply frightened of the Husband's behaviour in the run up to the signing of the PNA and felt she had no option other than to capitulate. I will have to make findings as to that. She says her total income needs, without a mortgage, are £615,423 per annum and £12,155 per month for the children. She says that they have two live-in staff, who have been with them since 2018 plus a part-time cleaner who works 20 hours per week. The family never wanted for anything.

36. The Husband's section 25 statement is dated 13 December 2022. He makes the point that the Wife is seeking some £7 million over and above the PNA which gives her £4.75 million for housing and £7million for a Duxbury. He says that the Wife's recent spending on credit cards included £50,000 on a holiday to the Maldives, excluding flights, and she spent £57,000 on credit cards alone in December 2021. During the marriage, she was able to save £500,000 from his gifts as she retained that money when the proceedings started. She always wanted "bigger and better" and he just agreed. There was no financial control. She does not need full-time staff now the children are 15 and 14. There had been massive renovation of The London Property in 2019. It does not make sense to have all the money tied up in The London Property. He calculates that the PNA will give her, on a Duxbury basis, between £335,000 and £390,000 per annum net to spend as well as child periodical payments of nearly £75,000 per annum per child.
37. Somewhat unnecessarily, both parties filed statements in reply although they are, at least, brief. In her statement dated 17 January 2023, there is much repetition by the Wife of her allegations of bullying and intolerability. There is also repetition in the Husband's statement of 18 January 2023. He does say that the parties would have sold The Country Property if they had been able to build the Majorca villa. He also says that he has approximately £35 million offshore which, if remitted in full, would attract tax of £16 million.
38. The tax report of James Rivett KC was received on 20 December 2022. It is a complicated report with at least two addendums following requests for clarification from the parties. The main thrust of the report is that the Wife's award can be paid to her offshore and remitted to this country tax free provided it is not remitted until after Decree Absolute. There is much discussion about the potential tax consequences of the Husband retaining an interest in The London Property but that only applies if I decide that the Wife should have that property transferred to her. I therefore propose to say no more about it at this point.

#### The assets

39. Updating disclosure was exchanged on 18 January 2023. Thankfully, there is absolutely no issue about the level and quantum of the assets. The total wealth is £46,383,787. The Husband has £44,381,664. On the basis of the updated valuation of The London Property at £9.5 million, the net equity is £6,152,576 after payment by the Husband of the mortgage, the costs of sale and Capital

Gains Tax of £212,424. He has £2.3 million in bank accounts and £31.8 million in investments. His business interests are £3.9 million. The Wife's assets are now negative to the extent of (£338,614) mostly as a result of her litigation loan. She has £94,761 in bank accounts; £145,478 in investments; but she has liabilities of (£578,854) of which the litigation loan was (£550,000). Miss Bangay updated this figure during the trial to (£576,903) but that is after the Wife has discharged all her costs. Interest accrues at £258 per day. The joint assets are £2,340,737. These consist almost entirely of the The Country Property and The American Property. The valuation of The Country Property is now £4 million. After deducting the mortgage of (£1,975,153), the costs of sale and Capital Gains Tax of £70,185, the net equity is £1,834,662. The American Property has a gross value of £518,306. It is mortgage free. The net equity, after deducting costs of sale, is £456,146. Finally, I should note that the Husband's costs to date are £853,005, of which he has paid £765,350 and the Wife's costs are £826,949, effectively all paid due to the litigation loan.

### The Open Proposals

40. I have already recounted the Husband's early open proposals. By 11 November 2021, he was making it clear that his case was that the correct outcome should be that the Wife should exit the marriage with provision calculated in accordance with the PNA. At the time, he put this at £11.875 million together with child periodical payments of £130,000 per annum. The Wife's first open offer was dated 24 March 2022. She proposed that she be allowed to remain in The London Property. The Husband should discharge the mortgage but he should have a charge in his favour for half the current net equity to be realised on the children completing tertiary education to first degree. She then sought a lump sum of £9.1 million, making the point that, if the PNA had index-linked her annual provision in accordance with RPI, she would have received £10.6 million.
41. Her final open proposals are dated 19 December 2022. The London Property should be transferred to her with the Husband to pay the Capital Gains Tax due on transfer. She would then pay him the fixed sum of £2,025,000 on or before 30 July 2031. He should pay her a lump sum of £13,211,236 to enable her to discharge the mortgage and to cover her income needs of £615,423 per annum which requires a capital sum of £10.4 million but on the basis that her budget reduces by 25% in nine years and she frees capital of £2.85 million from the house at the same time. In addition, the Husband should discharge her litigation loan and she should receive her half of the joint accounts, namely £181,608 at the time. Child periodical payments should be paid at the rate of £72,934 per annum per child and CPI linked, which figure is in accordance with the PNA, on the basis that the Husband pays school fees and medical expenses as well.
42. The Husband's open offer is dated 30 January 2023. He contends that the court should give full effect to the PNA. He will pay £7 million to the Wife offshore to cover her income needs, on the basis that she will not bring it onshore until after pronouncement of Decree Absolute. He will also pay her £4.75 million offshore as half the value of The London Property. There are lots of references to tax indemnities that I note do not feature at all in the PNA.

43. On 19 January 2023, I made agreed directions in place of conducting a PTR the following day. It was drawn to my attention that the Wife was asserting coercive and controlling behaviour. Knowing very little about the position, I was clear that I had to make participation directions. I therefore directed that the Wife could sit in the curtained off area of Court 43 so that she would not be visible to the Husband and that she could give evidence from there. I did so without prejudice to whether any such directions were justified. The Wife did not do so. She did not do so for the obvious reason that such directions were quite unnecessary in the circumstances of this case.

#### The respective Skeleton Arguments/Case Summaries

44. Both parties filed helpful documents in advance of the case. On behalf of the Wife, Miss Bangay KC and Miss Mottahedan reminded me that this PNA was reached five years prior to the decision of the Supreme Court in the case of Radmacher v Granatino. They asserted that it was vitiated by undue pressure and that it did not meet the Wife's needs. It was said that it was of paramount importance to provide security and stability for the children by enabling them to remain in The London Property.

45. Mr Michael Horton KC, who appears with Miss Sophie Hill, on behalf of the Husband, makes the point that executing a PNA is supposed to promote certainty and reduce the role of lawyers on the breakdown of a marriage. It is said that, if this PNA is not upheld, the whole *raison d'être* for such agreements is called into question. They note that Ms Rae and Mr Newton have not been called to give evidence. It is said that it is fanciful to suggest that the Wife's lawyers just did what the Husband wanted. There were five proposals and four draft agreements. It is not unfair pressure to say you will not get married without an acceptable PNA. The Wife seeks £18.1 million out of £46.3 million, which is approximately 40% although that percentage would rise significantly if there was a deduction for the latent tax.

#### The relevant law

46. I must apply section 25 of the Matrimonial Causes Act 1973, as amended, in deciding what orders to make pursuant to sections 23 and 24. It is the duty of the court to have regard to all the circumstances of the case. I must give first consideration to the welfare, while a minor, of CN and ON. I do, however, remind myself that their needs are not paramount. There is no binding authority of which I am aware to the effect that the requirement to give the children's welfare first consideration requires a court to enable them to remain in a matrimonial home if everything else points to it being sold. Moreover, it is agreed that their mother will receive periodical payments for them approaching £150,000 per annum. In addition, their school fees will be paid along with their medical expenses.

47. I must then have particular regard to the matters set out in subsection (2), namely:-

(a) The income, earning capacity, property and other financial resources

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

- (b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) The standard of living enjoyed by the family before the breakdown of the marriage;
- (d) The age of each party to the marriage and the duration of the marriage;
- (e) Any physical or mental disability of either of the parties to the marriage;
- (f) The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it; and
- (h) The value to each of the parties to the marriage of any benefit which, by reason of the dissolution ...of the marriage, that party will lose the chance of acquiring.

48. The overall requirement in applying section 25 is to achieve fairness. It was made clear in the seminal House of Lords decision of White v White [2000] UKHL 54; [2001] 1 AC 596 that there is to be no discrimination in financial remedy cases between a husband and wife. This was expanded upon in K v L [2012] 1 WLR 306, CA when Wilson LJ reiterated at [15]:-

*“what is unacceptable is discrimination in the division of labour within the family, in particular between the party who earns the income and the party whose work is in the home, unpaid.”*

49. I do, of course, accept that the existence of a pre-nuptial agreement can have a significant bearing on the approach of the court to applications for financial remedy. In the absence of such an agreement, in the case of Miller/McFarlane [2006] UKHL 24; [2006] 2 AC 618, the House of Lords identified three principles that should guide the court in trying to achieve fairness, namely:-

- (a) The sharing of matrimonial property generated by the parties during their marriage;
- (b) Compensation for relationship generated disadvantage; and
- (c) Needs balanced against ability to pay.

50. It is accepted that the Husband had resources of £32.5 million at the date of the marriage and that, to all intents and purposes, the Wife had nothing. The assets brought into the marriage by the Husband clearly amount to non-matrimonial property and do not, with the possible exception of family homes, fall into the category of assets available for sharing. As it is, the assets are

now worth £46.3 million, which means they have grown by just under £14 million during the marriage. The PNA deals with this. It ignores any arguments as to the passive growth of these assets and merely says that the Wife should receive 50% of the increase. Such a calculation would produce an award of £7 million. It is clear that such a figure is significantly below the Wife's reasonable needs, so the concept of sharing does not feature in this case any further.

51. It is equally clear that there is no possible claim here based on compensation for relationship generated disadvantage as the Wife will be more than compensated for any economic loss to her as a result of the agreement that she would perform the role of home-maker and child-carer throughout this marriage.
52. The remaining strand is, of course, needs. The issue, however, is the extent to which the calculation is affected by the existence of the PNA. The leading case remains Radmacher v Granatino [2010] UKSC 42; [2010] 3 WLR 1367. The majority of the Supreme Court held at paragraph [75] that:-

*“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”.*

53. Although the Court declined to lay down rules as to the circumstances in which it would not be fair to hold the parties to their agreement, saying it would not be desirable to fetter the flexibility that the court requires to reach a fair result, it is fair to note that Mr Granatino was, in effect, held to an agreement that most English family lawyers prior to Radmacher would have considered unfair.
54. Moreover, the Court clearly took the view that it would be easiest to show that an agreement was not unfair if it excluded sharing but did not prevent the court from providing for the reasonable needs of the applicant. At Paragraph 81, the majority say that it is “...needs and compensation which can most readily render it unfair to hold the parties to an ante-nuptial contract”.
55. At Paragraph 82, they add:-

*“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 their financial affairs in the circumstances that have come to pass. Thus it is in relation to the third strand, sharing, that the court will be most likely to make an order in the terms of the nuptial agreement in place of the order that it would otherwise have made”.*

56. Miss Bangay reminds me of the passages at Paragraphs [71] and [72] which are clearly pertinent to what I have to decide:

*“[71] In relation to the circumstances attending the making of the nuptial agreement, the comment of Ormrod LJ in Edgar v Edgar at*

*p1417, although made about a separation agreement, is pertinent. 'It is not necessary in this connection to think in formal legal terms, such as misrepresentation of estoppel; all the circumstances as they affect each of two human beings must be considered in the complex relationship of marriage'. The first question will be whether any of the standard vitiating factors: duress, fraud or misrepresentation is present. Even if the agreement does not have contractual force, those factors will negate any effect the agreement might otherwise have. But unconscionable conduct such as undue pressure (falling short of duress) will also be likely to eliminate the weight to be attached to the agreement, and other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it.*

*[72] The court may take into account a party's emotional state, and what pressures he or she was under to agree. But that again cannot be considered in isolation from what would have happened had he or she not been under those pressures. The circumstances of the parties at the time of the agreement will be relevant. Those will include such matters as their age and maturity, whether either or both had been married or been in long-term relationships before. For such couples their experience of previous relationships may explain the terms of the agreement. What may not be easily foreseeable for less mature couples may well be in contemplation for more mature couples. Another important factor may be whether the marriage would have gone ahead without an agreement, or without the terms that have been agreed. That may cut either way."*

57. In relation to undue pressure, Miss Bangay refers me to the decision of RBS v Etridge (No 2) [2001] 2 FLR 1364 as follows:-

- a. Whether a transaction was brought about by the exercise of undue pressure (or influence) is a question of fact.
- b. The burden of proof rests on W. The evidence required to discharge this burden "*depends on the nature of the alleged undue influence, the personality of the parties, their relationship, the extent to which the transaction cannot readily be accounted for by the ordinary motives of ordinary persons in that relationship, and all the circumstances of the case.*" The objective is to ensure that the influence of one person over another is not abused.
- c. The court must take into account all the circumstances of the case attending the making of the agreement including a party's emotional state and the pressures they were under to agree.
- d. The court will also take into account "*their age and maturity, whether either or both had been married or, been in long-term relationships before. For such couples their experience of previous relationships may explain the terms of the agreement and may also show what they foresaw when they entered into the agreement*".

- e. Where consent is procured by undue pressure or influence the law will not permit the transaction to stand.
58. I was referred to the decision of the Court of Appeal in Brack v Brack [2018] EWCA Civ 2862 where Eleanor King LJ said the following at paragraph [103]:-
- “Even where there is an effective prenuptial agreement, the court remains under an obligation to take into account all the factors found in s25(2) of the Matrimonial Causes Act 1973, together with a proper consideration of all the circumstances, the first consideration being the welfare of any children. Such an approach may, albeit unusually, lead the court in its search for a fair outcome, to make an order which, contrary to the terms of the agreement, provides a settlement for the wife in excess of her needs. It should also be recognised that, even in a case where the court considers a needs-based approach to be fair, the court will, as in KA v MA, retain a degree of latitude when it comes to deciding on the level of generosity or frugality which should appropriately be brought to the assessment of those needs”.*
59. Mr Horton, on behalf of the Husband, referred me to KA v MA [2018] EWHC 499 (Fam); [2018] 2 FLR 1285 at [55] for the proposition that the mere fact that the agreement pre-dates the Radmacher decision does not mean it should not be given full weight. Indeed, that must be right or Mr Granatino would not have been held to the agreement he signed. Moreover, in this case, the Wife said, during her evidence, on more than one occasion that she thought the PNA would apply if the law changed. Whilst I will have to make a finding as to whether that was the position or not, it deals with any residual issue about this PNA pre- dating Radmacher.
60. He also reminds me that it is not unfair or undue pressure to state that you will not get married without an acceptable pre-nuptial agreement (see, for example, KA v MA at [60]). This must be correct as the ability to apply for financial remedies after the breakdown of a relationship is entirely dependent on there having been a marriage. A wife cannot secure the right to apply for financial remedies via a marriage by signing a pre-nuptial agreement only to renounce the agreement thereafter on the basis that she only signed it because he said there would be no marriage if she did not.
61. Finally, Mr Horton refers me to paragraph [63] of KA v MA for the proposition that an engaged couple negotiating a pre-nuptial agreement can have a row, even a “furious row” without it amounting to undue pressure. I am not sure I would go that far. It all depends on the nature of the “furious row” and the effect on the parties, but I accept that the fact of a “furious row” cannot, of itself, vitiate an agreement. He goes on to say that pressure arising from the situation is inevitable but, for the agreement to be vitiated, there must be undue pressure (see WC v HC [2022] EWFC 22; [2022] 2 FLR 1110; Peel J at [36]). This is undoubtedly correct.
62. Miss Bangay invites me to give myself a Lucas direction. I therefore do so. There are issues in the case as to the extent to which the parties have lied to this court. First, I must decide the extent of any lies. If I find that there have



been lies, I have to ask myself why the person concerned lied. The mere fact that a witness tells a lie is not in itself evidence that other matters asserted against that witness are true. A witness may lie for many reasons. They may possibly be “*innocent*” ones. For example, they may be lies to bolster a true case; or to protect someone else; or to conceal some other disreputable conduct; or out of panic, distress or confusion. It follows that, if I find that a witness has lied, I must assess whether there is an “*innocent*” explanation for those lies. However, if I am satisfied that there is no such explanation, I can take the lies into account in my overall assessment of the facts of the case and the truth of the various allegations raised.

### The oral evidence

63. I heard oral evidence from both the Wife and the Husband. The Wife went first. She got appropriately distressed on occasions, whereupon we would have a ten minute break. Overall, however, she was composed and able to give her best evidence. Miss Bangay asked her about the sale of The London Property. She told me that she did not want her children to have to move out of her home. Indeed, she said she wanted to stay there until they complete University. I am going to have to decide whether it is right for her to stay there at all but, whatever my decision in that regard, I cannot possibly see how it is justified for her to stay there when the children are at University. She did say that she could not think of anything more cruel than their father moving back in if they had to vacate. I agree with her on that. She was then asked about budgeting. She said that she would do the investigating and research into holidays and then her Husband would say if he approved or not. She was not given an annual budget and it is clear to me that she was able to make arrangements for the most luxurious holidays at vast cost. I was not told that he ever objected, let alone that he did so regularly. Indeed, she told me she had the odd holiday for herself with friends and there was no budget for those either. She added that, in all other respects, she did not remember being given an annual budget for anything else. She told me that the €90,000 offshore annual allowance was intended to be spent on clothes, shoes or bags. These sorts of arrangements are the absolute opposite of coercive and controlling behaviour.
64. She was then cross examined by Mr Horton. She told him that the children were extremely attached to their home and want to stay there with her. It appeared from her evidence that she actually asked them about this which was quite wrong of her. She was asked about a reference she made to the children’s relationship with their father being ruined “even more” when she talked about the possibility of him moving back in. She said she did not mean to say that, as their relationship with him has not been ruined. She said it was a mistake and denied being prone to exaggeration. I accept what she says in this regard. At this point, Mr Horton turned briefly to the PNA. She said she met her solicitors twice but did have telephone calls and email contact, but she could not remember them being lengthy. She accepted that Clintons had instructed Mr Braham of Martin Green RAVDEN to do calculations but said she cannot remember being taken through them. I accept that she cannot remember as it was a very long time ago, but I am clear that she would have been told about them at the time, given that they were important to the provision to be made for her. She accepted that Clintons thought it was a good

idea, with which I also agree. It was put to her that the calculations were revised when the proposal was changed. She accepted that she listened to her lawyers' but she did not understand the projections. She said she was not very good with figures. Even if she is right about that, about which I have reservations, there is no doubt that her lawyers understood them. She then said she did not pay too much attention, saying she was just trying to get through the process. I cannot accept that. I do not accuse her of deliberately lying to me. She is remembering in a way that fits her current case. She then said that she was a truthful person.

65. She accepted that she was the only one who would really use the joint Coutts current account and that the Husband would put £70,000 into it every year. She added that she was relatively free to spend it. She had an American Express card which was the only one not linked to the Husband. She said she was very responsible. She was asked about the previous offers. I did not find that evidence very illuminating on either side. She complained that the Husband's second offer said that they would have to leave in 2027 whereas the first said 2030. The Husband made it clear in those offers that he was trying to reach a compromise to avoid litigation. Unfortunately, the Wife did not engage. That was her decision, but she cannot then complain if he withdraws the offers, let alone try to hold him to the best parts of those offers. She told me that she was not saying that the children would not have coped if the family had decided to move home during the marriage. She is absolutely right about that and it is important evidence. She was asked about the "garden" at The London Property. She accepted that it was a mostly paved patio area, albeit with some greenery. Mr Horton said it was twenty feet by twenty-five feet. She said they considered it a garden but it is very difficult to see how its maintenance can be a main responsibility of one of the live in staff members given its size. She was then asked about alternative properties in Central London. She accepted that, on the basis of the Husband's offer, she would be able to buy somewhere for around £4.3 million net of SDLT. She said that she needed somewhere from which the children can get to school, which is right. She did accept, very reluctantly, that they could use public transport, although she said that their bags were "super heavy". She acknowledged that Sloane Square was only one Underground stop from Victoria. She said she did not know about the District Line also going to Hammersmith, which I find surprising.

66. In particular, she was asked about a property at a Chelsea address on the market with an asking price of £4.25 million. It is described as an immaculately refurbished 5 double bedroom freehold house. She accepted it was seven minutes' walk from Sloane Square Station. She acknowledged it has a very similar sized "garden" to The London Property as well as a roof terrace, also like that property. She made two complaints. The first was in relation to a spiral staircase that she thought was slippery and very steep. She thought it was too steep for a carpet. She also complained about the loud ringing of Church bells on a Sunday morning. I have to say that I find these complaints flimsy to say the least. I have seen the photographs and the floor plans. I accept that it is not the largest property in the world but that is the price you pay for living in Central London. It is in very good condition and I really could not see anything wrong with it. The Wife was asked about other properties. Some of her criticisms had more force, such as the access route to

a particular property but when she said that some of the other properties required £2 million of refurbishment, I was amazed, given the pictures of them that I could see, even if the properties were shown to good effect.

67. She was asked again about her live-in help. She told me that this was the only lifestyle the children had ever known and they benefit from it. She said that the two live in staff were like extended family, although they had only been with the family for four and a half years. They were “essential” to the family’s life. I have to say that I cannot accept that. Of course, in many of the cases that I do, the parties have a lavish lifestyle and can afford such support, but it cannot be described as “essential” when you have two children aged 15 and 14. One member of live in staff does the garden and drives the children to school. The other member of live in staff cooks. Someone else cleans. It will be up to the Wife to decide how to spend her award. I am clear that she will have money available for staff but the staff she currently has are not “essential”. She was then asked about the money she pays her mother amounting to £24,000 per annum. She told me she had done this every year since 2007. Her mother depends on it and it is established provision. I am clear that it is reasonable for her to continue to make these payments but I am clear that she will be able to do so out of the award this court will make. Mr Horton then turned to her credit card spending. It was £87,039 in 2020 but £258,132 in 2021. I pointed out that 2020 was the pandemic so we were not comparing like with like, but there was no doubt that the spending did increase dramatically in the last few months of 2021. She accepted that she spent £58,000 on going to the Maldives and that this figure did not include the flights. I understand the point she makes that, until the breakdown of the marriage, these costs went on the Husband’s credit cards. She was asked about her career before the marriage. Her CV is impressive but I am minded to accept that she made it look better than it really was. She did live and work in South Africa for a time and went to do business in Ghana and Kenya, which she acknowledged took a bit of courage. When she returned to London in 2002, she tried to establish her own business without success and took a job earning around £2,300 per month until she was made redundant in 2004. She has not worked since. I am absolutely clear that I should not attribute any earning capacity to her. She may choose to take some modest employment in the next few year’s but it will be up to her and any income she earns will simply enhance her living standard somewhat. It follows that the only relevance of her employment history is as to her business acumen when it came to the issue of the PNA.

68. She said that the Husband first raised the issue of her “signing something” when she was lying in bed. She said she loved him and trusted him. She had no ill-will or bad intention’s so she just said “yes”. After that, he proposed. She was asked about her statement that she was told that a PNA was not legally binding in England and would carry little weight. Mr Horton contrasted this with the letter from Maggie Rae which had said that the Wife needed “to proceed on the basis that it would be upheld” and that it was important she was aware of that from the outset. She persisted in telling me that she understood that it would only be operative if the law changed, but I cannot accept that. Again, I take the view she is misremembering to suit her current case. The letter was clear. She knew how important this was to her husband-to-be. Very experienced and expensive London solicitors had been

instructed. It was obvious that it was not just something that would only come into effect if the law was changed. In fairness, she did then say that she knew it carried weight. She was also asked about the terms of the document she actually executed which refers both to the parties intending it to be binding and to it being freely entered into. Of course, I accept that parties can say that they are entering something freely when they are not. I will have to make a finding about that. It is far more difficult to say that they signed something intending it to be binding if they did not.

69. She was then asked about “the mother of all arguments”. She accepted that she became aware of his counter-proposal of 14 March before the argument on 15 March 2005. She said she does not get cross very easily and, if she does get cross, it is because someone is being horrible to her. She said she likes to find a solution. I accept that. She said that she remembered that the argument got heated and she tried to defend herself. She told me that she tried to say that the

£2 million was not her idea but the Husband was not listening and was not believing her. He was trying to tell her it was her fault. He told her she was greedy and entitled. He said she was a gold-digger. She tried desperately to calm things down as she hates confrontation. He was shouting at her and was “so so” cross with her. She was really in the wrong in his eyes. She was so confused as she was trying to resolve it. She accused him of being emotionally abusive and intimidating in language and tone. She said it just got unbearable so she went down the stairs. He stood at the front door. She decided she had to go. He was still shouting at her as she was going down the street. She was mortified to be called a gold-digger by the man who she trusted and was entwined with. She said, until then, he had been extremely nice the majority of the time but then he suddenly flipped. She said she did not cause the argument and did not start it. Mr Horton asked her why she did not break the relationship off if he was so awful. She said that you think it is your fault and you are to blame. She was trying to save something that she treasured. I do understand this point as it is a common feature of abusive relationships but I will have to decide what happened in this case. I make it clear that one aspect that has troubled me is why this argument occurred on 15 March, when the Wife got the Husband’s proposals, rather than earlier in March, when he got her proposals.

70. After she returned and the compromise was negotiated later that evening, she told Clintons what had been agreed. She said she was not able to raise concerns with her lawyers as she was deeply ashamed as to what had happened. I have to say that I do not understand that. If the Husband was entirely in the wrong, why could she not tell her lawyers what happened and ask their advice. That was what they were there for. She said she was happy as the agreement had stopped the row and the agony. Her world was not falling apart anymore. She said that she was so traumatised that she never got over that night. He was more dominant and he used anger to achieve his ends. She was then asked about her statement that he shouted at her “on a number of occasions”. She accepted that she got her timelines confused. She added that, each time you look back, you remember more bits. She added that, if she ever brought up the agreement, he would start to get angry. At best, I consider that to be significant exaggeration.

71. The Husband then gave evidence. He told Mr Horton that he accepted that the children would be disappointed by having to move out of The London Property but that they would adapt quickly to their new environment. I accept this is likely to be the case. He also acknowledged that they need to be close to their schools, friends and the like but he said that children adapt. I agree with his evidence in this regard as well. He was then cross-examined by Miss Bangay. He told her that he did not accept that the Wife's motivation in wishing to retain The London Property was to provide security for the children. He cannot see into her thinking, but he did feel that part of her motivation was to retain a larger, more prestigious house for herself. He was asked if she should be allowed to stay in an ideal world. He said it depended on what is meant by "should" and "ideal world". He added that it is not the bricks and mortar that is important. It is relationships. He did not agree that it would be cruel if he moved back in, but I find that it would. He was asked about the full-time staff. He accepted that they were integral to the smooth running of The London Property when he was there and that it is a big property at 4,500 square feet but he made the point that it is a Town House. He said that, originally, the staff were hired for The Country Property. He was then asked about his early offers. Not unreasonably, he said he was willing to make a compromise then on the basis of her request but it was up to him to decide what to offer. The mechanics of retaining the property were far more complicated than foreseen but he really made the offers to avoid the disastrous expense, waste and tension of contested proceedings. He had not been able to avoid that so the offer did not stand.
72. He was asked if he was "very cross and irate" when he received, on 7 March 2005, the Wife's initial proposals dated 4 March 2005 for the terms of the PNA. He said he was not sure he would use the word irate but he accepted he was cross and upset. It is important to note, however, that there was not the "mother of all arguments" on the evening of 7 March 2005. He was taken to his letter to PHB in which he talked about where the annual payment might end up. He said he was not proposing £450,000 per annum. That was a potential compromise, which would have been in the middle of the two original proposals. He made the point that the letter was to his solicitors not to Clintons. His response on 14 March was to propose £300,000 to £400,000 per annum. He is undoubtedly right about that. He did send an email saying that he had an "unhappy (Wife) on the phone" and that it was "ruining our relationship". It was put to him that there was no mention of a claw back of jointly held assets in the PHB letter on 14 March. He said it was in the original Clintons draft, although he thought it was covered by the clause that said you retained your assets if you paid for them. I take the view that the clause he is referring to is different as, in general, you would expect to retain an asset placed in your name.
73. He was then asked about the "mother of all arguments". He said there was one argument and it ended with the Wife storming out. He denied that it was as bad as the expression "mother of all arguments" suggests, maintaining that this was an American expression. He described it as "a bit of a row" and that it did not seem that traumatic at the time. I find that it was more than that, but this does not mean that all the shouting and abuse came from him. He said he could not really remember who started it but he made the point that the only new information on 15 March was his counter proposal and so he assumed it

was her as she had the new information. Whilst he may be right, it is equally possible that he got that idea from my intervention. He did say that it was the Wife who was upset when he got home. I find, on the balance of probabilities, that he is right about that. He added that he wanted to negotiate a compromise but she did not want to compromise at all, so they were stuck. I am less sure about that. He denied that he became enraged, but I am of the view that he did get angry and he did convey his upset. He accepted that he said that her terms were unreasonable. They had to resolve it as they both wanted to get married. He was trying to find middle ground. He said that he thought that his initial proposal and the eventual PNA were both very generous compared with what other people were negotiating at the time. Whilst I am not sure about this, it does not matter as the only issue is this PNA. He said that the £2 million provision upset him, but he did not accept he was furious. He had, he said, known about it since 7 March. She did not, however, offer to compromise until she returned later on the evening of 15 March 2005. He told me that he did not think it was good enough for her to say that she was acting on the advice of her lawyers, but I do not accept that. It is a valid point to make. He then said that they were both entitled to make proposals and say that, if it is not resolved, there will be no marriage. He had told her that already. He denied calling her a gold-digger but said it was not unreasonable to say that it was a gold-digger's charter. On the balance of probabilities, I find that he did call her a gold-digger and it did upset her. He made the fair point that they had to find a solution.

74. He then said that they were both upset. They both raised their voices and she stormed out. I accept that evidence. He added that the Wife initiated the negotiations when she returned home. I accept that as well. He denied that this was impermissible as his lawyers had told him that it had to be an "arm's length" negotiation. In this regard, I agree entirely. There is absolutely nothing wrong with parties negotiating themselves provided there is not undue pressure and the lawyers then approve the agreement. The lawyers are there to say it is not fair or advise against such terms. It does not appear to me that Clintons did so in this case, but it cannot be said that the negotiations were not arm's length just because the parties conducted them at home themselves. If so, enormous numbers of agreements, both before marriage and after its breakdown, would be subject to possible set aside and that cannot be right. He was then taken through the various amendments to the draft thereafter. I accept that both sides sought amendments. Some, such as the claw back and the position on death, were accepted. Others, such as indexation, were not. Again, there is nothing wrong with that, provided again it was approved by the lawyers.
75. He was then asked about various miscellaneous matters. He said that he had purchased The American Property outright in 2007 for around \$700,000 and that he purchased The Country Property in 2010. It was suggested that this showed that, despite the economic recession at the time, this family's spending was not constrained. He was not prepared to accept that, but I consider it is a fair point. I do note that the Husband had significant capital and it is well known that a recession is, often, a good time to acquire real property if you have such assets. He also accepted that his average income, from April 2009 to April 2016, was £1.86 million although he made the fair point that it was lower in the earlier years as everybody's investments were down. He was

criticised for the way that he cut off the Wife's credit cards without warning in early 2022. He said he held off until she returned from a holiday in Mustique. It was pointed out to him that there had not even been one letter of complaint as to her alleged overspending. I accept both points. He said it was a change of regime and that her spending had accelerated. I find that her spending on the credit cards had increased dramatically and it is understandable that he was upset. He said that it was hypothetical to ask him how he would have felt if it had happened to him but I consider that was a fair question to which he did not have an answer. It was particularly unfortunate that CN could not pay his train fare. Even if the Husband had tried to put a second credit card on CN's phone, CN was clearly not aware of this. He was then asked about a series of annual schedules of expenditure/budgets. He said that these were attempts to rein in the Wife's spending. Miss Bangay considers he lied to me about this but, as with the Wife, I do not consider there were any deliberate lies, just differences of recollection. He was asked about the claw back clause and why he should be able to claw back the money in the joint accounts. Miss Bangay pointed out that clause 3.3 of the PNA was concerned with real property. His defence was that the money was from the re-mortgage and had been in real property prior to that happening. He added that, if the property had been sold, the money would have gone into a joint account and it could not sensibly have been argued that the Wife's half-share should not be clawed back. Finally, he was asked about the Level litigation loan. He accepted that the Wife had invited him to assist her with her legal costs and he declined, so her only option was the loan. He took the view that she could pay that out of her lump sum of £7 million but it is difficult to see how that is fair. Many husbands would have provided the litigation funding themselves to save on the 14% interest payments. I cannot accept that this Wife should be in a worse position because he refused to do so. All he could say was that he tried to settle many times but that is a matter that goes to whether or not there should be a costs order at the end of the case.

### My conclusions

76. Miss Bangay submits that I should perform a two-stage exercise. First, I must decide if there are any circumstances surrounding the making of the PNA which should eliminate or reduce the weight to be attached to the agreement. Second, I must see whether the PNA operates fairly now having regard to all of the section 25 factors to include the marital standard of living and needs, reminding myself that the children are the court's first consideration.
77. I propose to proceed in that way. Before doing so, it is of note that the proposals made by the Wife make no reference whatsoever to the PNA. It is her case that it should just be completely ignored, other than in relation to child periodical payments, the quantum of which is very large and clearly in her interests to accept. I consider her overall position to be bold and difficult to advance successfully.
78. I will deal first with my findings as to the PNA. I am absolutely clear that it cannot be ignored. The question I have to ask myself is whether it should simply be upheld. I have already made a number of findings of fact earlier in this judgment during my review of the evidence. I now make the necessary remaining findings. First, both parties were represented by first rate firms of

family law solicitors at the top of their respective games. I have already made the point that Ms Rae and Mr Newton have not been called to give evidence before me. Their file is not available and I accept that no criticism of the Wife can be made in relation to that. I simply cannot accept, however, that Clintons did not do its job properly or that the lawyers just allowed their client to be browbeaten into a thoroughly unsatisfactory agreement that was not remotely in her interests. The opposite was clearly the case. The solicitors took their roles very seriously. They went to a respected firm of accountants to analyse the effect of the proposals on their client. Having said that, they did not recommend she did not sign. They did not get her to sign an indemnity as is common in such circumstances if lawyers are troubled about an agreement. The reason is clear. The deal was a reasonable deal. It was certainly within the bracket of reasonable agreements that could have been reached. As is now apparent, after a marriage lasting fourteen years, the PNA provided for their client to receive £7 million as a Duxbury fund and £4.75 million for her housing, a combined total of £11.75 million. Moreover, it could not be said that sharing was ignored. She would have got half of the marital acquest if that was greater. She got very generous child maintenance. After twenty-five years, the PNA would be torn up and ignored.

79. There was full disclosure. There was proper legal advice. The only criticism that is made relates to the allegation of undue pressure. Even then, I note that there was a significant cooling off period between the evening of 15 March 2005 and the eventual execution of the PNA with a date of 3 June 2005. Moreover, the Husband has at least the respectable argument that, even if there was undue pressure, the existence of top-quality legal advice is a very strong countervailing factor. Nevertheless, I must decide whether the Husband did exert undue pressure on her, whether it was during the “mother of all arguments” on 15 March 2005 or at any other time.
80. I am clear that he did not. I accept that the Wife was under pressure, but that is not sufficient. It has to be undue pressure. I accept that he was saying that there would be no marriage without a pre-nuptial agreement but that is commonplace and, again, cannot be a vitiating factor by itself. Moreover, although some friends and family might have been aware of the intended marriage, no formal invitations had gone out. Even the “Save the Date” notification was not sent out until after agreement had been reached as to the PNA. Although the Wife had been investigating venues and arrangements, nothing had been formally booked.
81. As noted during the oral evidence, I was struck by the fact that the argument took place on 15 March 2005, not after the Wife’s proposals were sent on 4 March 2005. It is these earlier proposals that the Wife says infuriated the Husband. If that was the case, I would have expected the “mother of all arguments” to have been after PHB received the letter and communicated its terms to the Husband on approximately 7 March 2005. There was no such argument then. Thereafter, the Husband communicated with PHB in a constructive manner and even sent an email saying that it was the Wife who was unhappy and it was ruining their relationship. The argument happened after PHB sent the Husband’s counter-proposals, the Wife had received them and she had gone home. I find, on the balance of probabilities, that she was angry about these proposals and she instigated the argument. I accept that the



Husband then lost his temper, but it was a two-way argument. He did call her a gold-digger but I find both said things that they would not normally say. There was no physical violence. The Wife did decide to leave. This was sensible of her as both needed a cooling off period. He did follow her downstairs and, on the balance of probabilities, shout after her down the street. This would have embarrassed her but it does not mean she was under undue pressure.

82. The idea “to cool off” clearly worked. The Wife thought about things and returned. There followed negotiations. I have not heard even a hint of an allegation of impropriety from either side about those negotiations. As I have already made clear, I cannot accept that it is not proper for parties to negotiate themselves in such circumstances. Indeed, in many cases, it is sensible that they do so. In this case, it led to the bones of an agreement but there was always the safeguard of lawyers for both sides to look at what the parties had agreed and advise them impartially and in their interests on the terms. I reject Miss Bangay’s categorisation of the negotiations as a “capitulation” by the Wife. It was no such thing. She did accept that there should not be a payment of £2 million after two years but, in exchange, the Husband agreed that the annual payment should be £500,000 per annum. This was closer to the Wife’s original figure of £600,000 per annum than his initial figure of £300,000 per annum, or even the £300,000 to £400,000 in his solicitors’ letter dated 14 March. The fact he told his solicitors that he might be prepared to go to £450,000 per annum is irrelevant as that had not been offered. Miss Bangay is therefore wrong to categorise it as him only moving from £450,000 to £500,000. Moreover, there were other concessions as well, such as half The London Property after eight years, not ten, if there were no children and a cap at 42% of his overall wealth rather than 35%. There was also the sunset clause at twenty-five years.
83. Thereafter, the lawyers looked at it. I accept there were subsequently some further amendments but the Wife cannot criticise that, given her contention that the lawyers should have been negotiating all along. I am also satisfied that the changes worked both ways and did not involve any “capitulation” by anyone. In short, the parties reached a sensible agreement. The lawyers either approved it or, at least, did not stand in the way. “Save the Date” notifications were then sent out. The final version of the PNA was executed by both parties and dated 3 June 2005.
84. The other point made on behalf of the Wife is that this PNA pre-dated the decision in Radmacher. I have already made some points in relation to this but I am clear that it cannot be a vitiating factor. First, if it was, Mr Granatino would not have been held to the agreement he made with Ms Radmacher. Second, this Wife was told by Clintons that she had to proceed on the basis that it would be upheld. Third, she told me on more than one occasion that the reason for the PNA was in case the law changed. I find that this is not what she was told at the time but, if that is her case, she cannot then argue that the fact that there was a subsequent decision is grounds for her being relieved of the terms she signed up to.
85. It follows that I am quite clear that there is no vitiating factor in this case that means that this PNA should be ignored; nor is there any factor that means that

I should give it less weight than would otherwise be the case. Litigants must realise that it is a significant step to instruct top lawyers to prepare a pre-nuptial agreement prior to marriage. It is highly likely they will be held to these agreements in the absence of something pretty fundamental that vitiates the agreement. These agreements are intended to give certainty. Those signing them need to know that the law in this country will provide that certainty. Litigants cannot expect to be released from the terms that they signed up to just because they don't now like what they agreed.

### The second stage

86. Nevertheless, I do still have to perform the Brack exercise and take into account the factors in section 25 to see if there is anything in this agreement that leads me to decide that I should vary or amend it in some way. The watchword in financial remedy litigation is fairness. The test therefore is whether it is still fair to hold this Wife to this PNA given the passage of time and the circumstances today, whilst always remembering the significance of the fact that I have found no vitiating factor in relation to the agreement itself. One possible way of characterising this would be to perform the test undertaken when a court hears an appeal. In other words, is the provision that the PNA provides for the Wife and children outside the bracket of reasonable awards that a court might have made, such as to make it unfair.
87. The first point to make is that I am absolutely clear that the Wife's wish to retain The London Property is not such as to make this PNA unfair. There is absolutely no reason for her to retain a property worth £9.5 million, just because the children have lived there throughout their lives. Children adapt to change. Children move house when their parents move house. They do not have a veto. As the first consideration of the court, there is no doubt that a judge hearing a financial remedy case will want to be sure that the children have a good quality home in a good area that is convenient for their schools and friends, assuming it is possible to achieve such an outcome. The children, however, are not the paramount consideration of the court as they are in section 8 Children Act proceedings. Even if they were, I am by no means sure that their welfare would require the retention of this particular home.
88. This PNA provides the Wife with £11.75 million. The structure of the agreement is that she has £4.75 million for accommodation, although she can, of course, spend more or less than that if she wishes. I am quite clear that this is sufficient for her to obtain an entirely suitable property in Central London, convenient for the children's schools. There are always choices. In general, you get more for your money if you move out slightly from the centre but that is for the Wife to decide. The property shown to the Wife at a Chelsea address shows she can get a house in the very best area within her budget. It may be smaller than The London Property, but it is still large by most standards and even has room for staff. There is virtually no garden but that is true of The London Property. It may be that, absent the PNA, a judge would have awarded slightly more than £4.75 million for housing but that is not the test. This figure is not unfair.
89. I then turn to her income needs. The PNA gives her £7 million for a Duxbury fund. Table 15 in "At a Glance" 2022/2023 shows that she would need

£7,280,000 to produce £300,000 net per annum index linked for the rest of her life. I have accepted that she has no significant earning capacity of her own. There are, however, strong arguments for her being able to increase her Duxbury fund by injecting further capital into the fund, by moving to a less expensive property when the children leave home. It will, of course, be a matter for her. She can either remain in her home and live at a slightly lower rate or move and increase her expenditure. There are also good arguments for reducing her income requirement by say 25% when the children become independent. Both arguments would increase the Duxbury figures. Mr Horton provides calculations showing that the annual spending would increase to around £400,000 per annum if her spending was to reduce by 40% at 67 and she injected £1 million from a property sale at the same time. As I say, it is a matter for her.

90. Miss Bangay relies heavily on the standard of living enjoyed during the marriage. Whilst I accept that it was exceptionally high, with spending in excess of £1 million per annum, I cannot find that this invalidates provision that would give the Wife the best part of £300,000 per annum along with child maintenance in the sum of £146,000 per annum. Again, it may be that, absent the PNA, I would have come to a somewhat higher figure, but I am clear that the Wife does not need to spend at anything like the rate of £615,424 per annum, for which she contends. The idea that she must retain as the two live-in staff at £116,682 per annum, as well as part-time cleaning staff at £12,197 per annum, cannot be justified, particularly now that the children are in their teens. She will have the ability to employ staff at a sensible level on the provision she will receive. The family are entitled to good holidays, but £150,550 per annum for the Wife alone comes into the same category as the live-in staff. There are other similar points that could be made if necessary.

91. A small issue arose over an entry in her budget for “financial advisory/accountant” of £18,507 per annum. It was submitted to me that the Duxbury calculations did not include the cost of investment advice. I informed the parties that I intended to ask Mostyn J about this submission. He informed me that the rate of return was historically fixed as the realistic return net of management fees. This had been my understanding as well. I also remind myself of the wise words of Thorpe J in Flick way back in 1995 (reported as F v F [1995] 2 FLR 45) when he said:-

*“I see no justification for refining and complicating a system which is well tried and which, in any event, is no more than a guide.”*

92. It follows, therefore, that I conclude that the PNA provides a reasonable level of provision for the Wife’s income fund. The figure is also not unfair.

93. There are three additional points with which I must deal. The first relates to the question of the Wife’s costs. She has a litigation loan with a figure outstanding of (£576,903). I am clear that the Husband must discharge this loan. The current costs regime in force in relation to financial remedy proceedings is that there is a presumption of no order as to costs. The court proceeds on the basis that litigation liabilities should be cleared before considering the needs of the parties. I have already made the point that many husbands would have offered to discharge the Wife’s costs liability. I cannot

permit this Wife to be in a worse situation than if the Husband had agreed to do so. Equally, I cannot decide any costs application in advance. The Husband must discharge her costs liability over and above making provision for her in accordance with the PNA in the sum of £11.75 million. There can then be a costs argument, if necessary, at a later stage. If the Husband satisfies me that she should pay part or all of his costs, so be it but I am not prepared to decide that argument in advance, let alone make her pay her costs out of her provision of £11.75 million, which was meant for her housing and income needs.

94. The second issue concerns the joint Credit Suisse account now holding £49,929. This is the balance of the money derived from the re-mortgage of The Country Property. The Husband says that the re-mortgage occurred after notice was given in relation to the PNA, arguing that, if there had not been the re-mortgage, this money would still be equity in The Country Property and therefore belong to him. I consider this is a good argument. This account will be transferred into his sole name.
95. The final issue is what should happen to The London Property. I accept that it would be very bad for the children if, after they have vacated The London Property, their father moved back in. This should not occur. The Husband gave the usual evidence about wanting to avoid paying any tax by moving back in for a short period. At best, this would save him £212,424 in CGT. Unfortunately, this is of a part with virtually every wealthy litigant that comes before this court attempting to do everything possible to avoid tax at every opportunity. I am clear that he should not move back in. The property will be subject to an order for sale.
96. This does, of course, raise the issue of when and how the Wife should receive her award. I am clear that she should have a fixed sum of £4.75 million regardless of the figure for which The London Property is eventually sold. This will make her a cash purchaser, which, in what may well be a falling property market, will improve her position. It will also obviate any arguments about what offers should be accepted on The London Property. The Wife, however, must have six months to vacate the property. She will therefore vacate no later than 21 August 2023, regardless of when the lump sum is paid to her but provided it has been paid to her by then. That sum will be £12,326,903, namely the PNA figure of £11,750,000 plus the litigation loan. I assume it will be paid offshore in accordance with the advice of Mr Rivett KC. I will leave it to the parties to agree the date for payment. I do not expect the Wife to give any undertakings or indemnities in relation to this money, other than that she will not bring the money onshore until after Decree Absolute. The interim arrangements will continue until payment in full, although I would expect the Husband to continue to pay the mortgage until the Wife vacates. On payment, there will be a clean break and the provisions as to child periodical payments will come into force. These payments will continue until the conclusion of tertiary education to the end of first degree, with up to one gap year, but the payments will be made 2/3<sup>rd</sup> to the children and 1/3<sup>rd</sup> to the Wife after the children complete their secondary education. Absent an agreement with their father, the children will be responsible for all their costs, including fees, at University.

97. There will be an order for the sale of The London Property but with no completion date before 21 August 2023. The Wife will also transfer The Country Property and The American Property to the Husband, on the basis of him giving her an indemnity for any tax arising as a result. She will transfer the joint Credit Suisse account to the Husband forthwith.
98. I make it clear that I am not making this order on the basis of no order as to costs. Either party is free to apply for costs, which I will consider on the merits.
99. I want to thank the advocates for all the assistance they have given me with this case. Nothing further could have been done or said on behalf of either party.

Mr Justice Moor  
21 February 2023