Neutral Citation Number: [2022] EWFC 136

IN THE FAMILY COURT

The Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 2 November 2022

Before :

Mr Justice Moor

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CMX v EJX (French Marriage Contract)

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Mr Edward Boydell (instructed by Miles Preston) for the **Applicant**
Mr Stewart Leech KC (instructed by Boodle Hatfield) for the **Respondent**

Hearing dates: 10th to 14th October 2022

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JUDGMENT

MR JUSTICE MOOR:-

1. I have been hearing an application dated 23 September 2020 by Mrs CMX for financial remedies following the breakdown of her marriage to Mr EJX. I propose to refer to them respectively as "the Wife" and "the Husband". I do so for the sake of convenience only. I mean no disrespect to either by so doing.

The relevant history

2. The Husband is French. He was born in 1966, so he is now 56 years old. He is the Chairman of Industrial Investment Banking at B Bank. The Wife is French/Lebanese/British. She was born in 1968. She is therefore aged 54. She has had a career in the bottled water industry, particularly working in a senior capacity for C Group. More recently, she made a success out of her own business, S Co, which she sold for a significant sum of money. She is now considering a new business venture.

3. The Wife had moved to France from Abu Dhabi in 1975. The parties met and commenced a relationship in October 1986. Both were studying in Higher Education. In 1991, the wife started working for C Group. The husband was undertaking a Masters Degree in Paris. In 1992, he worked in London for approximately 18 months. The parties became engaged in the summer of 1993. The Wife says they began cohabiting in Fontainebleau, France in September 1993 when the Husband was undertaking an MBA at INSEAD. He denies cohabitation but nothing turns on it.

4. On 16 June 1994, in contemplation of their marriage, the parties signed a Marriage Contract. The circumstances leading up to this are hotly in dispute. There is no doubt, however, that the principal of the firm of Notaries instructed, Michel Morin, was the Wife's family's Notary. The parties only attended at the firm once, namely on 16 June 1994 when they saw Notary Agnes Braun. It is right that the document actually says that the Contract was witnessed by Michel Morin. Both parties accept that this is not correct. I take the view that nothing turns on this as it is not contended that this anomaly would make the Contract unenforceable in France. The meeting lasted approximately one hour. The parties signed the Contract. It is the Husband's case that the Notary explained to them both the significance of the Contract and how it would operate. The Wife says she has no recollection of what occurred at all. I will have to make findings.

5. The Marriage Contract is a straightforward "separation de biens" contract. The English translation says, at Article One, that "the future spouses declare that they are adopting the SEPARATION OF PROPERTY regime as established by Articles 1536 and 1541 of the Civil Code". There are then four further Articles, dealing with Presumptions of Ownership; Household Expenses; Option of Acquisition or Assignment; and Conditions for the Exercise of the Option of Acquisition or Assignment.

6. The parties then entered a Civil Marriage on 2 July 1994 before conducting a Religious Marriage in Church on 23 July 1994. They moved to the United Kingdom in September 1994. They have been here ever since. The Husband commenced working for A Bank in London. The Wife was working for J Ltd which was a C Group company. They rented a property in London before buying a flat in their joint names in August 1995. In 1996, the Wife moved to work for C Group in London before being appointed as Head of Marketing for bottled waters. Although she had to reduce her working hours at times due to

her commitments to the children, she was appointed Marketing Director in 2003. Around the same time, the Husband moved to M Bank.

7. They have three children. The eldest, S, was born in 1997. She is now aged 24 and is working in Dubai. O was born in 1999 and is therefore aged 22. She is undertaking a Masters in Entertainment & Media Law at a university in France. The youngest, C, was born in 2005 and is aged 17. He is at school in London.

8. The former matrimonial home, in London W11 was bought in joint names on 6 November 2006 for £2.22 million. It has very recently been sold for £4.6 million. The parties have interests in a number of other properties in France that they have inherited/been gifted by their respective families. They also acquired three further properties. The first, P House in Hampshire was bought in their joint names on 27 August 2010 for £1.35 million. It has also been sold very recently for £2.75 million. In August 2010, a ski apartment was acquired in the French Alps in the sole name of the Husband for €1,040,000. The Wife contributed €35,000. The Husband says she was subsequently recompensed by him funding works on her ski apartment. This much smaller studio apartment was also acquired in the same building. It is held in an SCI with 1,000 shares. Each of the children has 333 shares and the Wife holds 1 share.

9. The Wife left C Group in 2007. The following year she commenced a marketing consultancy company. The Husband left M Bank in 2008 and joined N Bank, which later merged with B Bank, his current employers. In 2015, the Wife commenced SCo with her business partner importing fruit flavoured water. She sold the business in July 2017, receiving immediate consideration of £809,000 gross together with a deferred sum but she had to continue working in the business until December 2021. From 2019, she worked three days per week with a reduced salary of £48,000 per annum. She received the final payment of £529,437 gross on 24 June 2022. Capital Gains Tax of £71,063 is payable.

10. The Husband became Co-Global Head of Industrial Investment Banking at B Bank in 2016. He ceased his management duties in November 2019 but remained looking after around twenty large clients with the new title of Chairman. There is no doubt that he has earned very large sums during the marriage. His case is that his income has now become dependent on the fees that he earns, although his basic salary is £500,000 with a supplemental compensation allowance of $650,000. Luckily, in 2020, he was able to advise his biggest client on a Merger and Acquisition deal which generated fee income of $17 million for the Bank together with derivative hedging income of $26 million. As a consequence, his total compensation for the year 2021 was $3 million.

11. The marriage broke down during 2020. The Wife issued a divorce petition on 25 May 2020. There was a half-hearted attempt by the Husband to invoke the French jurisdiction but Decree Nisi was pronounced here on 22 February 2021. It has not, as yet, been made Absolute. The Wife moved out of the matrimonial home on 4 September 2020. She has since resided in rented accommodation, first in W11 and more recently in W8.

12. After her Form A was issued on 6 October 2020, both parties filed Forms E. The Wife's is dated 5 January 2021. I will not set out details of her financial resources at this stage other than to say she said her net assets were £4,087,788. She does own one property in France jointly with her brother in Brittany, but it is occupied by her parents. Her parents had transferred it to their children in November 2009 whilst retaining the usufruct. She put her income needs at £298,956 per annum, although she has since accepted that the figure is too high. She said that the children's income needs were £135,360 per annum. She put her capital needs at £7 million, made up of a four bedroom house in Notting Hill, including the costs of purchase, at £4 million; a ski chalet in the French Alps at £1.3 million and a holiday home in France at £1.5 million. The remaining sum of £200,000 was for furniture, furnishings and decoration. She described the standard of living during the marriage as high. She said that she did not understand the consequence of the Marriage Contract.

13. The Husband's Form E is dated 6 January 2021. Again, I will deal with the detail of his assets later but he calculated that they had a total value, net of liabilities, of £13,507,190. He confirmed that he has interests in five other properties in France, all of which were inherited from or gifted to him by his family. Moreover, he only has a share of each such property. He put his income needs at £117,828 per annum plus £19,860 per annum for the children. In the same way that the Wife's figures were too high, I take the view that these figures were too low. In both cases, the parties had decided to tailor their figures for litigation purposes. He then said that he may need to move to France for work due to Brexit. He confirmed that he had had a "reasonable" year but said that there remained a risk of redundancy due to his age. He described the standard of living as "very comfortable". He added that it was the Wife's family who arranged the Marriage Contract. He did say that the parties ran their financial lives in accordance with the contract by keeping their assets apart, such as the proceeds of sale of the Wife's business which she retained. He ended by saying that he had inherited from his family already whereas he claimed that the Wife's inheritance is yet to come.

14. The First Directions Appointment took place at the Family Court at Willesden before Deputy District Judge Lynds on 10 February 2021. The judge made provision for the case to be heard by a Tier 4 High Court Judge and gave some fairly standard directions. There was a direction for a pensions report by George Mathieson of Mathieson Consulting Limited. It included a direction for calculating the most cost effective way of dividing the pension provision available so as to achieve equality of pension income when the parties reach the age of 60, 65 and 67. As I understand it, this direction was made by consent but I will be returning to this topic later in this judgment. At this stage, all I say is that I cannot conceive of a more inappropriate direction when the assets in the case are between £22 and £28 million.

15. The case was allocated to me and listed before me for directions on 9 July 2021. Various valuations were agreed for the purposes of the Financial Dispute Resolution Hearing ("FDR"). I made a number of other directions for answers to questions and valuations, as well as directing witness statements from the

parties as to the significance of the Marriage Contract. The FDR took place before Sir Jonathan Cohen on 5 October 2021 but, regrettably, the parties failed to reach a consensus. There was a direction for the Husband to file tax advice as to assets that he held offshore. This final hearing was set down before me. The Pre-Trial Review took place before me on 27 January 2022. The parties agreed that their two English properties should be sold in advance of the final hearing. Given the current turmoil in the markets, it seems pretty clear that this was an inspired agreement that has worked to their significant financial advantage. The pension report of Mathieson Consulting had still not been received so I took the opportunity to remove the requirement for calculations to achieve equality of income. It does appear that Mr Mathieson had not understood this change as his eventual report did include such calculations.

The statements and expert reports

16. The Wife filed a statement as to the Marriage Contract on 14 September 2021. She said she could not remember any discussions about entering the Contract prior to the decision to marry. Such a Contract was, she said, a necessary stepping-stone to marriage. She added that she was giving a clear and reassuring message that she was not interested in the Husband's family assets. She claimed that money had caused turmoil in his family. She then said that the parties had pooled their financial resources in accordance with a shared vision that they would be as one. She said she had no legal advice in the run up to signing the contract save for the one appointment at the office of the Notary. She does not recall any discussions about money earned during the marriage being excluded from division on divorce. There was no formal disclosure of either party's resources. She had therefore understood that the Contract just excluded inherited resources. During the marriage, the husband referred to "our" assets. If they were in his name, he had told her this was for tax reasons. They did not mention the Contract to the firm of solicitors, Macfarlanes, when they obtained wealth advice.

17. The Husband's statement as to the Marriage Contract was also dated 14 September 2021. He said that they both signed the Contract with full knowledge as to its ramifications. It represented their family values and who they wanted to be. They both fully intended to be bound. Cascading family wealth to future generations was very important to both of them. They did not need to sign a marriage contract to achieve this as it would occur in any event under the default regime in France. The reason they signed was due to a mutual desire to maintain their financial independence. There were several discussions. He accepts there was no separate legal advice but said that the Notary was under a duty to advise both parties as to the legal implications. Separate legal advice is unusual in France. The instructions to the Notary came from the Wife and her family to prepare a "separation de biens" contract. The meeting lasted one hour. The Notary fully explained the legal consequences and ensured they understood. The Wife would never sign without understanding the implications. She is an intelligent and sophisticated business woman. The Wife employed the contract to her advantage. They are a very French family. The contract would be upheld in France. Throughout the marriage, they have kept their finances separate other than the two properties in England that they both contributed to fully. Other

properties and assets were separate. The French Alps apartment was paid for by the Husband's finances save for a €30,000 loan from the Wife. This was subsequently repaid through renovations to her apartment in the same block. Their English wills only dealt with their English assets which were in joint names anyway. The remaining assets were never treated as "ours".

18. Turning to the issue of tax, CMS produced a report dated 2 November 2021. It says that the husband's resources in Guernsey, amounting to approximately €5.3 million would be subject to United Kingdom income tax/capital gains tax if remitted to this jurisdiction. Following questions from the parties, CMS reported again on 26 January 2022. The money would not be subject to tax if paid to the Wife offshore. The Wife can then remit the money to this jurisdiction without tax consequences after Decree Absolute has been pronounced, as she would no longer be a connected person to the Husband. There would be a risk of a tax charge to the Husband if the money was then used to benefit a relevant person, which would include the children.

19. The pension report of Mathieson Consulting is dated 26 July 2022. It makes the point that there is no Lifetime Tax Allowance ("LTA") protection in relation to the pensions even though they are in excess of the LTA maximum. As I understand it, this does mean that a pension sharing order in this case could be beneficial to both parties in relation to tax. Mr Mathieson calculates that the Wife would require between 54.5% and 56.4% of the Husband's A Bank Directors Pension scheme to achieve equality of income at different ages. This would give the parties £49,000 each gross per annum at the age of 60. The sum would increase to £61,000 gross each at 65. The Wife will then herself have a LTA liability as she too will be in excess of the maximum. The parties could apply for 2016 Act protection if the Husband has made no contributions to the pensions since 2016. In such circumstances, the LTA would increase from £1,073,000 to £1.25 million. In oral evidence, the Husband thought that he had made contributions in 2016 but not since. It was therefore unclear if he could take advantage of this protection.

20. Both parties filed section 25 statements. The Wife's statement is dated 5 August 2022. She says that the parties had a true, loving, equal partnership. She had supported the Husband financially whilst he studied at INSEAD. After the marriage, she became Head of Marketing for C Group. In 2003, she became Marketing Director. At times, she did have to reduce her working days to three days per week due to her commitments to the children. She says there was never any doubt the fruits of the marriage would be joint and equal. She ceased employment with SCo on 31 December 2021. She received £529,437 on 24 June 2022, although there will be tax to pay of £71,063. She has significant industry experience in water. She would like to go back into business as an entrepreneur involved in water purification/filtration. In terms of her needs, she seeks 3 properties, namely a home in London, a ski apartment in the French Alps, and a home holiday home in South West France. She put her total capital need in this statement as being between £8 and £9 million. Her budget is £300,000 per annum, although she has subsequently reduced that to £200,000 per annum.

21. The Husband's section 25 statement is dated 5 August 2022. He sets out his current position at B Bank and makes the point that his income is dependent on the fees he can generate from his twenty large clients. He says he has had no similar success since the Mergers and Acquisition deal that he undertook in 2020/2021. Overall, his fees have been down 60% this year whereas the bank's fees have been down 40%. At present, he believes he is generating about $4 million per annum for the bank, on which basis he could not expect $3 million per annum income. He makes the point that he expects that he will be asked to leave the bank in due course. If so, he would like to be appointed to some non-executive directorships but, if he was to do so, it would be likely that he would lose his unvested shares with B Bank as he would be deemed to be in competition with them. At present, he expects his income to be between £500,000 and £800,000 per annum net of tax. If he retired, he would hope to achieve approximately £100,000 per annum from non-executive directorships and he was considering setting up a boutique advisory business. He then suggested, to my surprise, that his Wife's earning capacity is greater than this at between £150,000 and £180,000 per annum gross. He sets out his case as to post-separation endeavour and the various monies that he has inherited, including €602,122 from his father's estate. It is accepted that this sum should be ignored as non-matrimonial. He talks about money he has recently invested in various entities such as NCap. He claims that investments such as his interest in CCap should be reduced significantly for delay in receipt and other illiquidity matters. Indeed, he seeks to include future capital calls on these investments as hard liabilities. His case as to housing is that both parties can buy in London for around £2.8 million. A skiing apartment for the Wife should have a value around the same as his French Alps apartment namely €1,000,000. In relation to a holiday home, he reminds me that the Wife has, in the past, stayed at her parents' home in Brittany. He says that the last budget of the family as a unit that was prepared in the early part of 2020 was £265,452 per annum. He is concerned that, if he pays capital to the wife offshore and she then remits it to this country, but then uses it for the children, he could have to pay 45% in tax. He therefore seeks that the amount of tax is held in an escrow account.

22. Both parties filed statements in reply. The Wife's statement is dated 24 August 2022. She says that the Husband is so financially aware that he will not lose his B Bank unvested shares or see his financial world collapse. She believes he will move to Paris. Her parents' home is their primary base and too small for the family. The family budget that the Husband referred to covered basic household costs only. The Husband's statement in reply is also dated 24 August 2022. He has moved to rented accommodation in SW7. He makes the point that the Wife has increased her property needs dramatically since her Form E. He says he will continue to live in London.

23. On 15 August 2022, the sale of the former matrimonial home completed at £4.6 million. The property was mortgage free. The net equity was £4,536,326. The sale of P House completed on 15 September 2022 in the sum of £2.75 million. The net sale proceeds amounted to £2,719,752.

The assets

24. I have a long and detailed Assets Schedule that shows the areas in which the parties disagree. There are many such disagreements but the vast majority relate to the Husband having reduced the value of his assets for future contingencies. I do not propose to rule on such disputes at this stage although I have formed an extremely clear view as to them. The Wife's overall figure for the assets is £28,070,377, of which she has £4,365,884 and the Husband £23,704,493. She accepts that this includes some non-matrimonial assets, the vast majority of which are interests in property in France gifted/inherited to each of the parties from their respective families. She calculates these assets as being £219,298 in her case, namely a share in a property in Brittany, Northern France, occupied by her parents, and £1,556,411 for the Husband, which consists of five separate interests in French property.

25. The Husband's figure for the assets is £21,952,336. Of this, he asserts that the Wife's assets have a value of £4,656,336 and his assets are £17,291,687. Of these figures, he agrees the Wife's figure for non-matrimonial assets but contends that his own have a value of £2,381,698. There is no dispute as to the value to attribute to the five property interests. There is a sum of money in a Julius Baer account that he has inherited from his father in the amount of €646,828 and some money that he claims he has been paid by way of bonus and compensation allowance since the breakdown of the marriage, totalling £825,288.

26. The parties divide the assets up between liquid and illiquid assets. The only illiquid assets held by the Wife are two pensions with Aviva and C Group with a total value of £255,796. The Husband, on the other hand, has significant assets that are described as illiquid. These fall into three categories, namely unvested shares with B Bank; long-term investments with OCap, NCap and CCap; and his pensions. The Wife puts the value of the unvested shares, less tax on realisation, and the long-term investments, at £2,985,686. The Husband does not include any value for the unvested shares on the basis that they have no value until they vest and he might lose them in their entirety if he left B Bank and set up in competition to the Bank. If they are to be included, he argues they should be discounted for time and risk. In the same way, he discounts the long-term investments very significantly from the Wife's figure of £1,708,515 to £419,148. Moreover, he also puts down future capital calls on these investments as a hard liability in the sum of £679,141. The total absurdity of this position can be shown by the very recent investment in NCap. He recently invested $150,000 (or £133,929), which he discounts to £20,020 for concepts such as illiquidity and the time value of money. He then deducts a further £401,786 for the future capital calls. It follows that, according to him, this recent investment has no value at all but should be included in the schedule at a negative figure of £381,766. To take this to its logical conclusion, if that asset was to be awarded to the Wife, on his case, he would have to transfer the value of it to her and pay her a further sum of £401,786 for the future cash calls. Such a presentation is completely absurd and does him no credit whatsoever. Moreover, it is all completely irrelevant if his primary case as to the Marriage Contract is correct. Finally, it is agreed that his pensions have a total CEV of £3,284,021.

The Open Offers

27. Both parties have made Open Offers. The Wife's position at trial has been that there should be an equal division of all the assets, other than the inherited assets. She had previously made an offer that she would accept less than equality to settle the case but, even then, she made it clear that she reserved the right to seek equality at trial. Her detailed Open Offer is dated 30 September 2022. On the basis that she receives half of the net proceeds of sale of the two English properties, she argues that she should also receive 50% of the value of the French Alps apartment in the Husband's name and a balancing lump sum to deal with the liquid assets. She would be prepared to receive this offshore if the Husband wishes to pay it to her offshore. In relation to the B Bank unvested shares and any other illiquid assets, she would either accept 30% of the net value now or a Wells sharing of 50% of net receipts as and when they are paid out. She seeks 59.6% of the Husband's A Bank Directors' pension scheme to achieve equality of income. I believe the higher figure is as a result of wishing to take the pension immediately to mitigate the LTA tax. She also sought a lump sum of £310,000 to cover her tax on the basis that the transfer will be in excess of the LTA. Slightly surprisingly, she seeks a lump sum of £100,000 to compensate her for the Husband having "excluded her" from the jointly owned properties following the breakdown of the marriage. In relation to C, she asked for £63,696 per annum by way of periodical payments, following a CMS maximum assessment of £15,288 per annum. Finally, she agreed with the Husband's suggestion that £100,000 be paid into a pension on behalf of the family's long serving housekeeper, Ms D.

28. The Husband's Open Offer was made on 25 October 2021. At the time, he was acting in person. His case was that the Marriage Contract prevented sharing. The Wife's claim should therefore be dealt with on the basis of her needs. He proposed a total award, including the Wife's own assets, of £7,000,000. She would receive half of the net proceeds of sale of the two English properties and a lump sum which, at the time, he calculated at £2.5 million. As the two English properties have sold for more than the valuations on which he calculated this lump sum, he has since revised the lump sum downwards to £2.33 million.

The Law

29. 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 C, although I note that he is only a minor for a further nine months. 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.

30. 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."*

31. He went on to say that it is the essence of the judicial function to discriminate between different sets of facts and thus between different claims. I have to say that I prefer use of the word "*differentiate"* to "*discriminate*" but it is clear what he meant.

32. 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.

33. It follows that my first task is to assess the matrimonial property generated by the parties during the marriage. There are assets in this case that are clearly non-matrimonial, namely those inherited by the parties or gifted to them. In my view, there is absolutely no question in this case that I should completely exclude them from consideration and I do so. The really significant issue,

however, is whether I should also exclude from the matrimonial property all the assets held by the parties separately on the basis of the Marriage Contract.

34. 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".*

35. 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.

36. 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*".

37. 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".*

38. Indeed, Lady Hale, agreed at Paragraph 178 in a judgment in which she otherwise dissented, saying:-

> *"In the present state of the law, there can be no hard and fast rules, save to say that it may be fairer to accept the modification of the sharing principle than of the needs and compensation principles."*

39. Mr Boydell, who appears on behalf of the Wife, has drawn my attention to the comments of Lord Phillips of Worth Matravers at paragraph [81] where he said:-

> *"...needs and compensation ... can most readily render it unfair to hold the parties to an ante-nuptial agreement... [but] Equally if the devotion of one partner to looking after the family and the home has left the other free to accumulate wealth, it is likely to be unfair to hold the parties to an agreement that entitles the latter to retain all that he or she has earned"*

40. That is not, of course, the exact position here as the Wife did continue to work and earn her own money as well as develop a successful business but I entirely accept that the Husband earned infinitely more money than her during the marriage and she was held back by her commitments to the children. I do, however, make the important point that a generous needs assessment in this case would undoubtedly mean that the Husband will not be able "*to retain all that he or she has earned*".

41. Mr Boydell also draws my attention to the observations of Mostyn J in Kremen v Agrest [2012] EWHC 45 (Fam) where he said that "*it will only be in an unusual case where it can be said that, absent independent legal advice and full disclosure, a party can be taken to have freely entered into a marital agreement with a full appreciation of its implications…*"

42. There are two difficulties with this. The first difficulty is that the Court of Appeal has, in effect, dealt with this argument in the case of Versteegh v Versteegh [2018] EWCA Civ 1050; [2019] Fam 518 where Eleanor King LJ said at paragraph [65]:-

> "*In my judgment, when an English court is presented with a PMA such as the present one; signed in a country where they are commonplace, simply drafted and generally signed without legal advice or indeed disclosure, it cannot be right to add a gloss to Radmacher to the effect that such a spouse will be regarded as having lacked the necessary appreciation of the consequence absent legal advice to the effect that some of the countries, in which they may choose to live during their married life, may operate a discretionary system. As Lord Philips said in Radmacher:*
>
> > *"[78] The reason why the court should give weight to a nuptial agreement is that there should be respect for individual autonomy. The court should accord respect to the decision of a married couple as to the manner in which their financial affairs should be regulated. It would be paternalistic and patronising to override their agreement simply on the basis that the court knows best. This is particularly true where the parties' agreement addresses existing circumstances and not merely the contingencies of an uncertain future."*

43. Indeed, I took a similar view in Z v Z (No 2) [2011] EWHC 2878 (Fam); [2012] 1 FLR 1100 in relation to another French case where there had been a "*separation de biens"* agreement. I rejected all the arguments that it would not be fair for me to uphold the agreement but I made it very clear that it might have been very different if the agreement had purported to exclude maintenance claims in the widest sense but I noted that the agreement there, as here, does not do so.

44. The second difficulty with the approach in Kremen v Agrest is that it flies in the face of the decision in Radmacher itself. Mr Granatino was, essentially, held to

an agreement which even contained a waiver of any claim for maintenance. Like this Wife, he was highly intelligent and embarking on a career in business but he had not had independent legal advice or full disclosure. This court cannot be sexist. I will have to assess whether this Wife did have a full appreciation of the implications of the agreement.

45. Mr Boydell referred me 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".*

46. There is not much doubt that, if I reject the Marriage Contract as being operative, it is likely that the matrimonial assets will be divided equally, subject to the small issue as to whether there should be any allowance for post-separation accrual. Issues concerning liquidity would be dealt with by a combination of the value to be ascribed to the asset or the possibility of deferred sharing.

47. If, on the other hand, I find that the Marriage Contract does exclude sharing in this case, I must go on to consider the other two limbs of the Miller/McFarlane test, namely compensation and needs. There is no question of compensation for relationship generated disadvantage in this case. The Wife continued to work and has recently been able to create and sell a very successful business. I do accept that she might have earned more if she had not had child-care responsibilities but any such shortfall will be more than made up for in her needs claim.

48. Finally, I would have to consider her needs. It is clear to me that this is a case where I do not need to consider issues such as whether she will be reduced to "a predicament of real need" as referred to in Radmacher. There is nothing in this Marriage Contract that prevents an award based on needs. As Eleanor King LJ said in Brack, in deciding on her needs, I would have to consider all the section 25 factors. This was a long marriage where the Wife made a full and complete contribution in every respect. There are very significant resources available. The standard of living enjoyed during the marriage was high. The Husband's income was very high and large capital resources were generated. I am quite clear that any award based on need should be generous and complete.

49. Turning to pension sharing, my attention was drawn to the decision of Nicholas Francis QC, sitting, at that point, as a deputy High Court Judge in SJ v RA [2014] EWHC 4054 (Fam) where he said:-

> *"Why should someone receive more just on the basis of gender? There may have been an explanation when rules required the purchase of an annuity. However, to give the wife more than the husband, on account of either age or gender would seem to me to be unacceptable discrimination unless it is a case which is governed solely by needs. If a person should receive more of a pension fund under the modern rules simply because she (or he in the case of a marriage where the husband is much younger) is likely to live longer, then such an approach would logically extend to all capital assets. Moreover, European Union judgments and rules are rapidly outlawing discrimination on account of gender. In cases where distribution is being made on a basis which is not guided by need it is, in my judgment, incorrect to distribute a pension fund on the basis of equality of income…"*

50. I could not agree more. If assets are to be divided equally, they should be divided equally. In general, there is no justification for awarding more to one party because they are younger or have a longer life expectancy. Both parties should share the fruits of the marriage equally. Moreover, in my experience, the only thing that can be said is that life hardly ever goes to plan, whether it be one party living far longer than expected or another remarrying immediately. It follows that I have become very troubled by directions that ask a pensions actuary to calculate a division on the basis of equality of income in retirement. Apart from the fact that such reports tend to be very expensive, the simple fact is that such a direction almost enshrines the Duxbury paradox into practice. It cannot be right, in general, that the younger you are, the greater your award. In any event, it has no place whatsoever in equal division cases.

51. Finally, I have to remember the potential language barrier in this case. The first language of both these parties is French not English, although I make it clear that both speak English extremely well as one would expect given that they have lived here so long. Nevertheless, I must take great care in assessing both parties' evidence as processing information provided in a foreign language may put the participant at a disadvantage. I must guard against the very real possibility that questions or answers or both are misunderstood or, at the least, nuances and shades of different meaning are lost in the process. I have taken all this into account in assessing the evidence in this case.

The evidence I heard

52. The only oral evidence that I heard was from the two parties. In some respects, the evidence of both was unsatisfactory. The Wife's answer to just about any question that Mr Leech KC, who appears on behalf of the Husband, put to her about the Marriage Contract, was that she could not remember. I entirely accept that it is very difficult to remember detail from twenty-eight years ago but this Marriage Contract was important and I find it hard to accept that she has absolutely no recollection of what the Notary told the parties. She told me that

the purpose of the contract was to allow them "to separate what came from our families". Whilst true, I accept that this would have been the default situation anyway. She then said that it did not occur to her as to what would happen on a divorce and that she did not ask herself the question. I accept that, when you are young and in love, it is not something that you wish to contemplate but the Notary had a duty to explain the effect of the Marriage Contract to the parties and this would have been a fundamental part of that explanation. After all, there is no point in a Contract that declares "separation de biens" whilst you are happily married as, in such circumstances, you can do anything you like. Other than on death, it is really only on divorce or separation that it has an effect. It follows that I cannot accept her answer that she did not know that it would affect provision on divorce.

53. She was asked how they ended up going to see a Notary from the firm used by her family. She said that they had asked her parents to recommend a Notary and her parents had said "of course". She did not accept that a draft of the Marriage Contract would have been sent out but I am clear that it must have been, given that the parties only had one appointment and signed the concluded agreement at that meeting. I find some limited support for that in the fact that the document said that it was executed before M Morin, when we know that was not the case. I suspect it was drafted on the basis that he would be the Notary but for some unexplained reason, Agnes Braun stepped in. The fact that it was drafted in advance means that someone must have instructed the Notary to draft a "separation de biens" agreement. She accepted that it was the Notary's function to take her through the Contract. She said it had been "lost in the memory over the years" and that she could not "invent a memory she did not have". It was then put to her that she would not have signed a contract she did not understand. She said that this was incorrect and that she had signed many things without understanding, claiming that she did not have "rigour". It may, indeed, be that she has signed documents without reading them carefully over the years, but I am satisfied this Marriage Contract would have been explained to her over the previous hour so I cannot accept that she signed it without understanding it. Indeed, it is the Husband's case that she asked a significant number of questions to the Notary. Given her personality, I am sure that would have been the case. She accepted it was not a difficult commercial contract but said she did not really pay attention, as contracts bore her. I cannot accept that either. She added that she thought they understood it but claimed it only involved separation of property if the assets came from their respective families. She said that, if you build together, you share. I am sure she has convinced herself of this but I will have to make findings as it is central to the case.

54. She was asked about putting €35,000 into the purchase of the French Alps apartment. She said that they did not consider how much each was putting into any of the properties, including the former matrimonial home and P House as it was "irrelevant". She accepted that she could have put into the purchase of the French Alps apartment, all the money she had received from the sale of an apartment she had been given by her family in Paris. She had sold that property in September 2010 for €180,000. She was then asked about the time in 2016 when she asked the Husband for £150,000 to invest in her new business. She told me it had become a major issue in the marriage as he wanted to impose all

sorts of conditions on the investment. She then said that she had access to all the Husband's accounts via a number of cards. Mr Leech asked her about that. It transpired that four of the cards on which she relied were for Air Miles or the equivalent and that the rest did not give her unfettered access to the Husband's money. She added that she would use the cards for purchases not transfers. She accepted that she could not call the bank to move money as her name was not on the accounts.

55. She was then asked about her earning capacity. She was taken to a job advertisement for the Managing Director of a "fantastic branded consumer products business" with a salary of £180,000 plus benefits. There had been 174 applicants. She said that the job specification was not describing her abilities, other than being ambitious and an innovator. I am absolutely clear that she would have no realistic prospect of obtaining such a job. She has not been employed since 2007. She is now 54 years of age. She has recently been an entrepreneur. I am not finding that she could not obtain some sort of a job but I am clear that it would not be anything like this particular one.

56. I then heard from the Husband. I have to say that I found his recollection of the background to the Marriage Contract to be much more convincing and plausible than that of the Wife. He told me that he had not been involved in making the arrangements for the meeting. He had been sent a brochure about marriage contracts, which he had read and a draft of the Contract, which he had not read. Whilst I find that surprising, particularly as it is a short document, he had nothing to gain from lying to me about that. He said that Agnes Braun explained the consequences of the Contract to them. She said that, if they wanted to buy an asset together, they could but it would need to be specified. They could buy it in uneven shares. She then started to talk about the impact of the Contract on divorce. He said words to the effect of "let's not talk about divorce" but he was given a ticking off and the Notary proceeded to do so. I find that this evidence has the ring of truth and I accept it. He added that they were told they had to pay attention. He said he vividly remembered it. He added that it was very clear as to where the assets would go on divorce. Again, I accept this evidence. The Notary had an obligation to explain this and I consider it inconceivable that she would not have done so.

57. He was taken to his Form E where he had said that his family have a tradition of passing on assets from one generation to the next and that this is an important part of French culture and family structure. Mr Boydell then referred him to a comment that "anything our respective families have or (sic) gifted to us is entirely separate from our other assets". His response was that they had discussed the preservation of inherited assets but there was no need to sign a Marriage Contract to achieve that as that is the default regime in France in any event. He added that marriage contracts are relatively common within their social set. Their significance is well-known and everybody knows what they do. They knew that, if they separated, the finances would be divided according to who owns what. He said that it was important to the Wife. Her mother had suffered from having given up work. The Wife had sworn that she would never relinquish that independence. She wanted a full ability to work and to retain the proceeds of her endeavours. He gave her that reassurance. I remind myself that

the Wife had, at that point, been working for C Group for approximately three years in a responsible role, whereas the Husband had been a student, even if he had, by then, secured a job at A Bank. The Husband added that the whole point of a Marriage Contract is driven by what would happen on a separation. It was discussed by them outside the meeting with the Notary but he did not believe they discussed the position if they had children.

58. It was then suggested to him that Article 2 of the Contract undermines his case. Article 2 provides that personal effects, jewellery and furs shall be presumed to belong to the spouse who makes personal use of them. This would not, however, apply to family jewellery inherited or gifted even if used by the other spouse. I cannot accept Mr Boydell's point in relation to this. I consider it supports the Husband's case. This clause is necessary to prevent the "separation de biens" being used, for example, to prevent the Wife keeping her wedding ring or engagement ring if bought for her by the Husband. Mr Boydell made much of the fact that the document did not mention divorce. I accept that but I do not take the view that it takes the matter forward, given that I accept the evidence that the Notary explained the consequences of divorce to the parties. The Husband said that the document was in a standard form and there was no other contract available in France. He also made the point that the French Courts consider this to be a perfectly valid marriage contract that will be enforced on divorce. Moreover, I am clear that, if it was not intended to include the position on divorce, there really would be no point in entering it at all. He then stressed that the Wife asked a number of questions during the meeting with the Notary although he could not remember what she asked.

59. Mr Boydell then turned to other aspects. The Husband said that there were tax disadvantages of acquiring the French Alps apartment in joint names. There was the problem if the proceeds of sale were remitted to the United Kingdom but there would also be UK Capital Gains Tax on any increase in value of the Wife's share. Mr Boydell asked him about SCo. He accepted that he told the Wife that he did not believe in her business plan. He felt the projections were overly optimistic. The product had been delisted from a number of supermarkets and the management structure was inadequate. He felt it was too risky. He acknowledged that it was a small sum for him but he said he is very careful with his money. I have to contrast this with his recent investments in OCap and NCap that he says are replete with risk and that I should take as net liabilities. He said he treated his Wife as he would any potential investment. He had imposed four conditions before agreeing to advance the money. I said in evidence that I considered this all to be incredibly ungallant of him. It upset the Wife enormously. This was a relatively small sum and he should have just paid up. As it was, he was entirely wrong as the Wife made a success out of it. I do accept that he subsequently transferred the shares to her but the evidence did appear to indicate that this was in part to save tax on sale, as she could take advantage of entrepreneur's relief on Capital Gains Tax whereby she would only pay 10% on the first £1 million of gains.

60. He was asked about an asset schedule that did not appear to distinguish between assets in his name, assets in her name, and assets in joint names. He said that the previous tab on the Excel Spreadsheet did do so. He accepted that the family

was worth around €21 million in 2016/2017. Not surprisingly, Mr Boydell asked him about the OCap and NCap investments that he has included in his Asset Schedule as liabilities. I have already made my point about that. I did ask him if he would transfer the assets to the Wife at these valuations and all he could say was that it was not permitted. He was then asked about further discounts he had included such as 30% in relation to money already received from B Bank shares. He said that the Bank could claw the money back if it lost money as a result of his decisions or reputational damage. I consider this is pretty close to fanciful despite his evidence that he had received two written warnings for mistakes in compliance. He was then asked why he had excluded entirely his B Bank unvested shares. He said that this was because the Bank would be entitled to cancel the shares if he left the Bank but set up in competition to it. Whilst this may be right, it is pretty clear to me that some of these shares would vest before he left the Bank. Moreover, if he was to decide to compete with the Bank, it would be his decision that he would presumably take on the basis that he would make more money from his new venture than he would lose from the unvested shares. I remind myself of his own evidence that he is very careful with money.

61. The one area that does need careful consideration is the question of latent tax on the sum of €4,561,211 held offshore in Julius Baer accounts. If that was remitted to the United Kingdom, income tax would be payable at 45%. This would amount to around £1.8 million. I appreciate that the Husband is very careful with his money and he would do everything possible to avoid such tax. Having said that, if there was to be an equal division of everything, it is difficult to see why one party should be left at a disadvantage with a significant latent tax liability. Moreover, he did say that he was expecting that he would have to use a lot of the money to pay the Wife the award that I will be making. Finally, in relation to future property purchases, Mr Boydell took him to his own comment in his section 25 statement that they would both need to "buy a three bedroom house in London". I realise that it would be unfair to hold a party to such a statement in the face of a necessity to purchase more economically but, in a case where the assets are significantly in excess of £20 million, it is relevant that he was previously of that view.

My findings as to the Marriage Contract

62. I first turn to the question of the Marriage Contract. There is no doubt whatsoever that it was freely entered into by each party. I do not consider that the lack of independent legal advice or full disclosure is fatal. First, they did get advice from the Notary. Second, the parties were well aware of their respective positions at the time. Did they have a full appreciation of the Contract's implications? I have come to the clear conclusion that they did. It is important to remind oneself that such Marriage Contracts are very common in France. In reaching my conclusion, I have been very struck by the fact that the parties went to the firm of Notaries used by the Wife's family. It is difficult to say with certainty how this came about but nobody has suggested that it was the Husband or his family that were pressing for this Marriage Contract. After all, the Husband was a student studying for his exams, albeit that he did have a good

job offer with A Bank up his sleeve. Moreover, somebody must have asked the firm to prepare the first draft of the Contract and I find it almost impossible to believe it was the Husband.

63. In general, I have found the evidence of the Husband considerably more persuasive on this issue than that of the Wife. There is no doubt in my mind that the Notary would have explained the Contract and its ramifications to the parties in detail. It was her obligation to do so and it is inconceivable that she would not have done so. I was particularly taken with the Husband's evidence that, when the Notary started talking about the consequences on a divorce, he tried to stop her but was "given a ticking off". This can only have been because the Notary knew she had to deal with it.

64. This Wife is extremely intelligent. She had been working for three years in responsible employment. I cannot accept that she would not have known that the whole point of such Contracts was to deal with the position on divorce or separation given that there is no real need for them otherwise. In any event, even if she did not, the Notary told her. At the time, she was earning more than the Husband. She wanted to retain her career and keep the rewards from that career. Whilst I cannot be entirely sure of the motivation of her or her family, I am clear that the Radmacher test for upholding this Contract is satisfied. Those who sign marriage contracts must understand that it is a significant step with very important consequences. These contracts will be enforced in France and will not simply be torn up in this jurisdiction.

65. There is no doubt that this Marriage Contract would have failed the Radmacher test if it had attempted to exclude a needs based award as it would not then have been fair but the Contract does no such thing. It follows that I must go on to consider the correct needs based award to make to this Wife following this long marriage in which she has made as full a contribution as she could possibly have made.

The quantification of the assets

66. Before deciding on the correct award, I must quantify the assets. I realise that this is not quite as important now that I have decided against sharing but it is still a necessary exercise to perform in the overall section 25 exercise. I make it clear that I exclude completely the inherited/gifted assets that came from the respective families. In the Wife's case, this is £219,298 for her interest in the Brittany property occupied by her parents. In the Husband's case, this is £1,556,411, namely interests in five separate French properties plus some inherited funds. I recognise that there may be more to come, particularly on the Wife's side, but this is certainly not a case where such assets should be taken into account as part of the respective needs of each party. Indeed, neither counsel has suggested I should do so.

67. The Wife has liquid assets of £4,120,574. I take her bank accounts at their latest balances even though this may have reduced her outstanding costs somewhat. Overall, any change would be de minimis. In addition, she has pension assets of £255,796. I include her Malakoff Humanis pension, generated during her

employment with C Group, at £229,784. Overall, this means she has assets of £4,376,370.

68. The Husband claims matrimonial assets of only £14,909,989 as against a figure of £21,231,269 asserted on behalf of the Wife. I resolve the disputes as follows:-

    (a) For these purposes, I reject the suggestion that post-separation bonuses or compensation should be treated differently. I am not dividing up these assets in accordance with sharing so it really does not matter where on the schedule they are placed. Moreover, there has been no significant delay in getting this case to court.
    (b) I reject the reduction of 30% on the proceeds of sale of his B Bank stock. This Husband has been incredibly successful in business. He is very careful with his money. He will do everything in his power to avoid any reclaim by the Bank and the chances of one being successfully obtained are so low that it should be ignored.
    (c) I accept his figure for the proceeds of sale of his boat. This reduces the Wife's figure by £87,719.
    (d) I completely reject his contention that I should deduct future cash calls on his CCap, OCap and NCap by treating them as liabilities. First, when invested, these amounts will increase the value of the investment. Second, he is a very astute financier. He has only recently invested in NCap. It was his decision to do so. He must take on the financial responsibility that goes with having done so.
    (e) I propose to allow the tax on remittance of the Julius Baer offshore capital in the sum of (£1,800,478) in full. For these purposes, I should compare like with like. I need to know the true net position of each party. I do, however, proceed on the basis that the ability to defer/avoid this tax is a significant advantage to this Husband.
    (f) I ignore the potential past tax on past US earnings, claimed in the sum of £516,368. There is absolutely no evidence of HMRC seeking this money. To do so, they have to establish dishonesty and the period in which they can do so is limited.
    (g) Turning to the Husband's unvested B Bank shares, I reject his contention that I should ignore them all on the basis that he may lose them if he sets up in competition to the Bank after retirement. First, many of the shares will have vested by then. Second, if he does lose them, it will be because of a conscious decision that he is better off doing so than retaining them, because he believes he will earn more in his new business than he will lose.
    (h) Finally, I take the long-term investments in CCap, OCap and NCap at their current values. I do, of course, accept that they will not be received for a considerable period of time. For example, CCap will not mature until somewhere between 2027 and 2029. I will therefore distinguish these assets from the liquid assets but they are included at their current values. Having said that, the Husband tells me that the CCap investment has fallen 20% due to falls in the market since it was last valued. I accept that evidence and reduce the figure to £1,104,739, a reduction of £276,184.

69. The cumulative effect of these findings is that the Husband's assets reduce from the Wife's figure of £21,231,269 to £19,979,387. Of this, £13,985,865 is liquid. The figure increases to £16,695,366 if the illiquid assets are included but the value of his pensions excluded. The total liquid assets is £18,110,752 including the sum of £4,313,000 held in the joint accounts.

70. There are also the pensions. The Husband's pensions have a combined value of £3,284,021. I accept there will be some tax to deduct from this due to the fact that the totals exceed the Life Time Allowance. Added to the Wife's pensions worth £255,796, the total pension assets are £3,539,817.

71. Overall, the total assets are:-

(a)	Wife liquid	£ 4,120,574
(b)	Husband liquid	£13,985,865
(c)	Husband illiquid	£ 2,709,502
(d)	Wife pensions	£ 255,796
(e)	Husband pensions	£ 3,284,021
	Total	£24,360,070

The Wife's needs

72. I now turn to the question of the Wife's reasonable needs. They fall into two main categories, namely housing and income needs.

73. It is agreed that the Wife needs a property in London. Given the capital available and the standard of living during the marriage, I am quite clear that it should be a house, albeit materially smaller than the former matrimonial home. It should also be in Central London where the parties spent their entire married life.

74. I reject the Husband's contention that a flat at a cost of less than £3 million is appropriate. Equally, the Wife's particulars are more expensive than the former matrimonial home on a pound per square foot basis. She may simply have to move slightly further out of Central London but there is no reason why she should not do so. I have decided that an appropriate level for housing for the Wife is £3,500,000 to which I must add stamp duty at £331,250 and costs of purchase/moving at £10,000.

75. I accept that the very small apartment in the French Alps owned, in effect, by the children is not appropriate for the Wife going forward. I have decided that she should have a property to the same value as that owned by the Husband, namely €1,095,000. The total cost, including purchase expenses, will be £1,068,541 as sought by the Wife.

76. I have found the issue of a third property more difficult. I entirely accept that the parties had three homes during the marriage and that P House was a substantial property worth £2.75 million when sold. I reject the suggestion that

the Wife should have a property costing over €3 million in Cap Ferret on the Bay of Biscay. I cannot ignore the fact that she does have access to the property at Brittany, although it is occupied by her parents. I have decided that it is appropriate for her to have her own holiday home but at the same cost as the property in the French Alps, namely £1,068,541.

77. In terms of pension, it is appropriate that she should have a pension share. After all, a significant proportion of the Husband's assets are held in pensions. Moreover, it will assist with reducing the tax burden caused by the Life Time Allowance. I have decided that she should have half of the husband's A Bank Directors' Pension Scheme. As the CEV is £2,279,490, she will receive £1,139,745. Combined with her own pensions, she will have a pension entitlement of £1,395,541. In so far as there are any tax consequences of her exceeding the Life Time Allowance, she will be responsible for that tax.

78. Finally, I turn to her income provision. She gave some very frank and helpful evidence about her future income needs that the court accepts in full. She considered that her income needs would reduce as she got older. She told me that she felt that her current income needs were £200,000 per annum but this would reduce to £160,000 per annum at the age of 60 and £120,000 at the age of 68 onwards. I consider this to be realistic and appropriate. I take those figures.

79. She then assesses her earned income at £48,000 per annum gross from the age of 55 to 58 and then self-employed income at the rate of £80,000 per annum from age 59 to 67. I have been slightly troubled that these figures may be too high. I have rejected the Husband's case that she could obtain a high-flying senior management role. Equally, whilst I recognise that her SCo business was very successful, it is amazing how many similar business fail, even when the entrepreneur has great experience of the industry and has been very successful in other ventures. Nevertheless, I take the view that I should accept her figures as she is very determined and does know the bottled water industry extremely well.

80. Finally, she takes her pension receipts at being £40,500 per annum. Although this may be slightly reduced by the fact that I have awarded her slightly less by way of pension share, overall it is good enough. The resulting Duxbury calculation shows a capital sum required of £2,092,579. I accept that figure.

81. This gives an overall need of:-

(a)	London home	£3,841,250
(b)	Ski apartment	£1,068,541
(c)	Holiday home	£1,068,541
(d)	Duxbury sum	£2,092,579
(e)	Pensions	£1,395,541
Total		£9,466,452

Cross-check

82. If the Wife exits the marriage with a total sum of £9,466,452 plus her interest in the Brittany property, she will have received 38.9% of the total matrimonial assets. The liquid assets, however, are £18,110,752. Of that sum, she will receive £8,070,911 or 44.56%. Taking into account the Marriage Contract and all the section 25 circumstances, I am satisfied that this is a correct and appropriate division of the assets.

83. The parties will have to check my arithmetic but I calculate that she already has liquid assets of £4,120,574. She will therefore require a lump sum of £3,950,337 to bring her up to £8,070,911 plus 50% of the Husband's A Bank Directors' Pension Scheme. I can see no legitimate reason why the lump sum could not be paid to her offshore but, given that I have taken into account the latent tax on the Guernsey funds, I do not require her to give any undertaking as to the money's future use. It is therefore up to the Husband how and where he pays the money.

Occupational rent

84. I have to say that I consider the claim for occupational rent in the sum of £100,000 to be without any justification at all. I do accept that occupational rent is an important element of TOLATA and bankruptcy claims but it has no place whatsoever in financial remedy proceedings. The court simply cannot investigate the parties' respective conduct to see if the party who vacated was forced out or went voluntarily. Moreover, it does not matter. If one party has incurred rent, it will have reduced his or her assets. If the assets are shared equally, the liability will have been shared. If it is a needs case, the fact the money has been spent will be taken into account in assessing the needs of the party who paid the rent.

Ms D

85. Both parties have expressed a concern to provide a pension for the family's long-standing employee, Ms D. I do not consider I need to resolve this issue. If the parties want to provide for her by agreement, they can. If they cannot agree, they will both be very wealthy after my judgment. They can use their own resources to do so if they wish.

Child periodical payments

86. I have to decide on periodical payments for C. I have jurisdiction as there has been a maximum CMS assessment of £15,288 per annum. Mr Boydell refers me to a decision of Mostyn J in CB v KB [2019] EWFC 78 in which he suggested that the easiest way to calculate the top-up maintenance was to apply the same rate as the CMS to the Husband's income, namely 9.8% between the CMS maximum of £156,000 and an income of £650,000. This would give a total award of £63,804 per annum in this case. I do, of course, accept that the beauty of the decision of Mostyn J is that it makes it easy to calculate the figure, so avoiding dispute. There are, however, significant disadvantages. There

were four children in CB v KB so the Wife got £12,600 per annum per child. Given that I have to apply section 25, it is impossible to see why the Wife in CB v KB gets £12,600 per child but this Wife receives £63,804 for one child just because the two eldest children in this case are no longer part of the calculation. If they were, the figure would reduce to £21,268 each.

87. Moreover, the sum of £63,804 is far in excess of the Wife's own budget for C. Although the overall figure in the budget was £47,936, I accept that it is appropriate to strip out the school fees and extras being paid by the Husband as well as the figure for training for oral examinations. This reduces the budget to £31,844 per annum. If a figure for extra school lessons and private tuition is also removed, the amount reduces to £21,876 per annum. I consider that to be too low. I find that the appropriate amount is £25,000 per annum. This figure includes the CMS assessment. I will extend the order to the end of first degree in tertiary education on the basis that the amount payable to the Wife reduces to one-third once C leaves full-time secondary education. It is agreed that the Husband will meet all additional educational costs for both O and C in the future.

Conclusion

88. I am very grateful to both counsel and their instructing solicitors for all the help they have given me with this case. Nothing more could have been said or done on behalf of either party.

Mr Justice Moor
14 October 2022