NEUTRAL CITATION NUMBER: [2023] EWFC 79

Case No ZZ21D38660

IN THE FAMILY COURT

SITTING AT THE ROYAL COURTS OF JUSTICE

Date: 28/04/2023

Before :

MR L. SAMUELS KC SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :

MARY LOUISE CHARLOTTE BACKSTROM

Applicant

- and –

MARTIN CARL SIMON WENNBERG

Respondent

- -
- -

Michael Glaser KC and Ewan Murray (instructed by Stewarts) for the Applicant
The Respondent in person

Hearing dates: 20, 21, 24 and 28 April 2023

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APPROVED JUDGMENT

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

Introduction

1. This is the final hearing of cross applications for financial remedies orders.

2. I shall refer in this judgment to Mary Louise ('Louise') Backstrom as 'the Wife' and to Martin Wennberg as 'the Husband'.

3. The parties met in Stockholm and formed a relationship in March 2012. When they met, the Wife was a student and the Husband was working selling luxury watches. They started to cohabit in early 2014 and married on 11 July 2015. They have a son who is now 5.

4. Prior to their marriage the parties entered into 3 written agreements. On 5 March 2014 they entered into a cohabitation agreement under Swedish law. On 3 July 2015 they entered into an agreement under Swedish law to disapply the statutory regime of community of property. On 6 July 2015 they entered into an English Pre-Marital Agreement.

5. Some months after their marriage, on 24 February 2016, they entered into an English Post-Marital Agreement.

6. At the time of the Pre-Marital Agreement the parties provided each other with financial disclosure. The information provided by the Wife was that her net assets were valued in the region of £50 million, but that she was likely to inherit at least several hundred millions of pounds. The information provided by the Husband was that his net assets were valued at about £225,000 and, in addition, he had a small pension entitlement in Sweden. His gross income (from employment) was said to be around £35,000 per year.

7. The parties separated in June 2021. The Husband issued a divorce petition on 7 July 2021. The Wife issued a cross petition on 23 March 2023. A Decree Nisi on the Wife's petition was granted by HHJ Roberts at the Central Family Court on 13 April 2023. The Husband's petition was dismissed.

8. The Wife issued a Form A alongside a 'notice to show cause' on 8 April 2022. The Husband issued a Form A on 20 June 2022. It is those applications that are to be determined by me at this final hearing. A schedule of issues to be determined by the court has been filed on behalf of the Wife. In summary those issues are:
   (1) The extent of the Husband's resources and what inferences can be drawn from his failure to make full and frank disclosure (or any disclosure);
   (2) Whether the marital agreements entered into by the parties are fair and whether the court should implement them;
   (3) The quantum and nature of the housing provision to be made available to the Husband;

(4) Whether there should be a spousal maintenance order in favour of the Husband;

(5) The quantum and term of the child maintenance order to be made in favour of the Husband for the benefit of the parties' son;

(6) Whether the Husband should return to the Wife certain sums she has provided to the Husband since separation;

(7) Costs.

9. There are concurrent proceedings under the Children Act 1989. The current child arrangements are that their son spends time with his father on a Tuesday and Thursday after school and on alternate weekends from Friday to Monday. The parties share the school holidays broadly equally. The Husband is seeking a shared care order and the longer term arrangements are to be determined at a final hearing later in the year.

The Attendance of the Parties

10. The Wife has attended this hearing and has been represented by Mr Glaser KC and Mr Murray, as she has throughout these proceedings. A helpful opening note was filed by Mr Glaser and Mr Murray which I have read alongside the bundle prepared by the Wife's solicitors, Stewarts, some separate documents sent in to the court by the Husband (after the close of the evidence and submissions) and some documents provided by the Husband's former solicitors. The Husband has not attended any part of this hearing and has not been represented.

11. On 20 April 2023 I considered an application by the Husband to adjourn these proceedings. That application was not made formally, but the basis of it was set out in emails sent by the Husband to the Court on 14, 17 and 19 April 2023 and in attached letters written by his general practitioner. For the reasons given in a detailed ex tempore judgment I refused the husband's adjournment application. I asked Stewarts to notify the Husband that the hearing was to continue the next day, 21 April, and that he was invited to attend.

12. In an email exchange later that evening I confirmed that I had not issued a witness summons to compel the Husband's attendance nor had I ordered him to attend. There had seemed to me to be little point in making such an order given that the Husband was already in breach of the order for him to attend made by Peel J on 2 March 2023. I confirmed, however, that it was open to the Husband to attend and / or be represented at that hearing. That email exchange had been initiated by Mr Ali KC on behalf of the Husband. Mr Ali had represented the Husband, on a public access basis, at a previous hearing before Peel J on 14 October 2022.

13. In the event the Husband did not attend court on 21 April 2023 and was not represented. Mr Glaser properly raised with me on that day the separate question of whether I was prepared to continue to hear the case in the absence of the Husband.

14. I confirmed that I did intend to proceed with the hearing. Up until that point it was possible that the Husband and / or a legal representative on his behalf might attend and request time within the hearing for preparation and / or instructions to be taken. As I said to Mr Glaser such application, had it been made to me on 21st (a Friday morning) might well have resulted in my adjourning at that point to allow the rest of that day and the weekend for such preparation. However, as I have said, the Husband did not attend and was not represented, so no such application was made.

15. A decision whether to hear proceedings in the absence of a party must be made in accordance with Part 18.12 and / or Part 27.4 FPR and in accordance with the overriding objective set out in Part 1 FPR.

16. As I highlighted when considering the adjournment application, this 7 day hearing was listed on 14 October 2022 and a listing notice was sent to both parties on 24 November 2022. The Husband's adjournment application was not only unsuccessful, it was made very late. The husband had been warned by Peel J, as recorded in the order of 2 March 2023, that should he fail to attend this hearing then orders may be made in his absence. He has therefore been placed on notice of the potential consequences of his non-attendance.

17. I agree with Mr Glaser that in determining the question of whether or not to proceed in the Husband's absence, fairness to the parties requires consideration of the Wife's position as well as the Husband's. She has anticipated the conclusion of these proceedings for many months. She has spent considerable sums in costs. I must also, under the overriding objective, take into account the resources of the court that would be wasted by an ineffective hearing and the impact on other cases of seeking to set aside more time for this case.

18. Moreover, the Husband's engagement with these proceedings as a whole has been sparse. He has not prosecuted or withdrawn his own Form A. He finds himself in wholesale breach of directions previously given and has not filed any evidence at all as set out in more detail below. He is currently barred from cross examining the Wife in person by virtue of his failure to comply with the order of Peel J made on 2 March 2023. He did not attend the committal hearing on 2 March 2023 when findings were made against him (with sentencing adjourned). Accordingly, his failure to attend this hearing stands alongside his non-compliance with directions more generally within these proceedings.

19. It is for those reasons that I decided to continue to hear these financial remedy proceedings notwithstanding the absence of the Husband. I heard evidence from the Wife on 21 April and final submissions by Mr Glaser on 24 April 2023.

The Wife

20. The Wife is aged 33 and is a Swedish national. She is habitually resident in England. She is the Chairman of the Biltema Foundation and a minority shareholder in a family business started and controlled by her grandfather.

21. Her unchallenged evidence within these proceedings is that her assets total £250 million, of which over £190 million is held in liquid funds.

22. Those assets include two properties where the parties lived. The first property ('Property A') is valued by the wife at £12.75 million. That was occupied by the parties together between 2014 and 2018 and is currently occupied by the Husband. The second property ('Property B') was purchased by the Wife for £67 million in 2017 and substantially refurbished. The parties lived there together briefly, between September and December 2020 and then between March and June 2021. The wife currently occupies that property which she values at £88 million. The wife's valuations have not been challenged by the husband in these proceedings and, therefore, no expert evidence has been required.

23. The Wife has not been directed to file any evidence as to her income. This is on the basis, as I understand it, that a) she can meet any spousal or child maintenance award made by the court and b) her level of income is irrelevant to the calculation of any such sums to be ordered.

The Husband

24. The Husband is aged 39 and is also a Swedish national. He too is habitually resident in England.

25. The Husband has filed no evidence within these proceedings and has not, therefore, provided any disclosure of his financial position. He is in breach of orders requiring him, amongst other things, to file a Form E and to file a narrative statement dealing with the matters set out in Section 25 (Matrimonial Causes Act 1973). He attended Court on 14 October 2022 and at the FDR on 25 January 2023 but otherwise has taken no active step in these proceedings save for the filing of his Form A and sending an open offer of settlement shortly before the FDR (see below).

26. In the absence of any financial disclosure by the Husband I am largely reliant on the Wife's evidence for any information about his current financial position alongside any information he has previously provided or that he has supplied or confirmed in correspondence within these proceedings, and any inferences that can properly be drawn from that and other material before the court.

27. The Wife's case is that the Husband is likely to hold assets totalling at least £2.5m. She told me in evidence that she believes the Husband to own watches to the value of £1.5 million. She is able to place this value on the watches for two reasons. The first is that she purchased most of these watches for him, by way of gifts for birthdays and Christmas and at other times. The second is that a list of the watches had been retained for insurance purposes. She has a copy of this list and has been able to search online to obtain the likely resale or auction value for each watch.

28. The Wife also told me in evidence that she believes the Husband to own wine to the value of £500,000. This wine was purchased by her during the marriage. As the wine was kept professionally in storage, they received from time to time updated information about the wine and its value. She told me that she recalled seeing such a valuation as recently as 2021 and then the wine was then worth about £500,000. She recalled that the wine had appeared to appreciate in value by about 18% each year. He also owns, or at least did own, a property in Stockholm.

29. I am also aware that the Husband had invested, during the course of the marriage, in the running of a business which included the purchase of a shareholding in that business. He had invested funds of over £1.7m provided by the Wife. In November 2022 he sold that shareholding for about £500,000. In an email to the court dated 18 November 2022 the Husband confirmed receipt of these funds.

30. Written evidence filed in respect of the company shareholding says that the Husband had also loaned the business a sum of about £234,000 in two tranches towards the end of 2021 and beginning of 2022. I understand that this sum was probably written off as part of the share purchase. These additional sums must have come from the Husband's own resources because they were not paid by the Wife.

31. That written evidence also sets out details of the events leading up to the sale of his shareholding. That evidence was filed by the Wife and has not been challenged by the Husband. The evidence describes how the Husband had made untrue accusations against the other Board members and expressed a loss of faith in them. He had attempted to involve a third party in discussions with them and that third party had also made accusations against them. The Husband appeared intent on running the company to bankruptcy and this is linked to a conversation when he said that he wanted to obtain a low valuation for his shareholding so as to enhance his claims within these proceedings.

32. Shortly after the parties' separation the Wife commenced payments to the Husband at the rate of £20,000 per month. She also agreed to meet housekeeping costs of £11,000 pa and general maintenance costs for Property A (around £48,000 pa) where it was agreed that the Husband would live pending resolution of these financial proceedings. The Wife told me in evidence that it had been at her instigation that she agreed to pay

the housekeeping costs because she wanted to ensure the property was kept in good order. She did not consider, otherwise, that he required a housekeeper. She had anticipated that the Husband would use some of the £20,000 pm payment to fund his legal fees in these proceedings, about £10,000 to £15,000 per month, but there was no evidence he had done so.

33. I am asked to consider, on behalf of the Wife, what additional sums the Husband might have accumulated from the maintenance he has received and / or from his employment. I am told that the payments from the Wife started in September 2021 so that, up to April 2023 the Husband could be expected to have saved £200,000 to £300,000 (at the rate of £10,000 to £15,000 per month). It is also now apparent he is working but the evidence about this is sparse, derived mainly from the letters from his GP that he has supplied. Given his maintenance costs are wholly met by the Wife I am asked to infer he would also have been able to save money from this income, although it is not clear when it commenced or how much he is receiving.

34. The Wife's solicitors and the Court have been notified that the Husband owes his former solicitors, Firm X and Firm Y, £320,000 and £167,000 respectively. The Wife has already paid Firm X £267,000 on account of the Husband's costs. Mr Glaser suggests that the court should be cautious about accepting these figures. So far as Firm X is concerned, the combined figure would mean they have charged almost £600,000 in circumstances where they had not filed a single court document on behalf of the Husband (beyond his Form A), at least in respect of the financial remedy proceedings. Firm Y were, Mr Glaser says, notified at an early stage of their involvement of a potential conflict, something they should have been aware of in any event from a simple conflict check. Mr Glaser argues that it is difficult to see how they could have generated fees at anywhere near this level in these circumstances.

The Pre and Post Marital Agreements

35. As I have said above, the parties entered into agreements under Swedish law to record that the statutory regime for community of property would not be applicable. No expert evidence has been obtained to explain in any greater detail the meaning of these agreements under Swedish law, and in any event, the Swedish agreements have been superseded by the more detailed marital agreements entered into under English legal principles.

36. The Pre-Marital Agreement between the parties is dated 6 July 2015. It is in conventional terms. It records the parties' intentions to confirm their separate property interests and to be determinative as to the division of their assets in the event of relationship breakdown. It records the parties' intention to have children and that this has been taken into account in formulating the terms of the agreement. The agreement says:

"Martin acknowledges and accepts as fair the financial provision to be made for him under this Agreement and he specifically declares that in the event of the Permanent Breakdown of the Relationship he will not claim any interest in the parties' last main home together or such other property as they may be living in at that time (save to the extent that any such property is held in joint names) and he further wishes specifically to record his intention that in the event of the Permanent Breakdown of the Relationship, he will make no claim against Louise's Separate Property or any of the trusts (or assets thereof) in which Louise is a beneficiary or potential beneficiary save as provided for in this Agreement. The parties specifically agree that the English law principles of 'compensation ' and 'sharing' will not apply to the Marriage and that the English law principle of 'reasonable needs' is satisfactorily covered in the Agreement."

37. The agreement continues, so as to provide:

"6.1 Louise and Martin agree that on a Permanent Breakdown of the Relationship the provisions set out below shall have effect.

6.2 Each party shall retain his/her Separate Property free from claim by the other.

6.3 Their Joint Property shall be divided between them in accordance with Article 4 above.

6.4 Neither party shall have any obligation to maintain the other or pay for or contribute towards the other's living expenses.

6.5 Louise shall provide in a tax efficient vehicle for the Reasonable Housing Needs when with Martin of any Children to be met and Martin shall be entitled to reside in such property until such time as the last Child living to do so shall attain the age of 18 years or, if later, shall have ceased full time education or no later than his first degree level. Martin shall vacate the last main home together of the parties within six months of the Permanent Breakdown of the Relationship or earlier if such property as is agreed meets the Reasonable Housing Needs when with Martin or any Children has been made available for Martin's occupation.

6.6 If either Louise or Martin were, notwithstanding the terms of this Agreement, to make any application to a court for any financial provision other than by way of a consent order as provided for in the terms of Articles 6.1 to 6.5 above, Louise and Martin agree that the court should take fully into account the terms of this Agreement."

38. The parties held no joint property.

39. The term 'reasonable housing needs' is defined within the agreement as follows:

> *"'Reasonable Housing Needs' means a home of appropriate size, standards, value and location within reasonably proximity of the parties' last main home together at the Permanent Breakdown of the Relationship suitable to accommodate any Children of the Marriage to include the costs of purchasing and kitting out such a property."*

40. The agreement is silent as to the provision of child maintenance. Mr Glaser accepts on behalf of the Wife that such provision falls outside of the Pre-Marital Agreement.

41. Both parties received legal advice before signing the agreement.

42. The parties also signed a Post-Marital Agreement on 24 February 2016 to "re-confirm" the terms of their agreement. There is nothing new or different from the pre-marital agreement set out in that document. The parties again received legal advice before signing it.

Open Offers

43. The Wife's open position was first set out by Stewarts in their letter dated 7 January 2022. In that letter the Wife proposed:
(1) That she will provide a housing fund of £6.5m, inclusive of the costs of purchase and any necessary works of improvement, in accordance with the terms of paragraph 6.5 of the parties' pre-marital agreement.
(2) She will be responsible for keeping the fabric of the property insured and for any necessary major structural maintenance.
(3) She will make periodical payments to the Husband, for the benefit of their son and during his minority at the rate of £50,000 pa to be index linked by CPI.

44. In a second letter dated 17 February 2023 the Wife further proposed:
(1) The periodical payments for the benefit of their son would be payable until he reaches the age of 16 (recorded as 18 in opening note prepared on behalf of the Wife) or completes his secondary education, whichever is the later.
(2) The parties shall retain the property held in their sole names to include the wine collection purchased by the Wife for the Husband, the watches purchased by her for him and the money he had received from the sale of his shareholding.
(3) The Husband shall reimburse to the Wife the sum of £280,000 that the Wife has paid towards the Husband's legal fees, the sum of £20,000 per month (now amounting to £400,000) that she has paid him in maintenance and the (unquantified) sum that represents the benefit the Husband has taken in using services provided by the Wife.

(4) The Husband shall pay the Wife's costs.
(5) The Wife shall meet their son's school fees and all reasonable school expenses.
(6) There shall be a clean break in life and in death.

45. The Husband's open proposal was set out by him in a letter dated 25 January 2023. He proposed:
(1) He should receive 50% of the value of Property B (this would equate to just over £42.5m).
(2) The Wife shall pay child maintenance payments to him for the benefit of their son at the rate of £30,000 pm.
(3) The Wife shall pay spousal maintenance to him at the rate £20,000 pm for 9 years or, alternatively, a capitalised sum of £2m.
(4) The Wife shall make financial provision for a nanny to enable him to establish his new career when their son is in his care.
(5) The Wife shall pay £500,000 towards his legal fees.

46. In justification for the spousal maintenance claim the Husband says *"I gave up my chance of developing a high earning working career to help manage and look after the family's affairs during our marriage"*. He set out his ambition to establish a career for himself but at age 39 he would need financial assistance from the Wife.

47. There is no reference in his open offer to the marital agreements.

The Law – Marital Agreements

48. The leading authority on the relevance of pre-marital and post-marital agreements remains the decision of the Supreme Court in *Radmacher v Granatino* [2010] UK SC 42.

49. The following principles (relevant to this case) can be derived from this decision:
(1) Prior agreement between the parties does not oust the jurisdiction of the court.
(2) There is no material distinction between pre-marital and post-marital agreements and the court should apply the same principles to each (para 52, para 57, para 60).
(3) For such an agreement to carry full weight both the husband and the wife must enter into it of their own free will, without undue influence or pressure and informed of its implications (para 68). What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end (para 69).
(4) It is natural to infer that parties who enter into a pre-marital agreement to which English law applies intend that weight, and sometimes even decisive weight, will be given to it (para 70). The reason why the court should give weight to a nuptial

agreement is that there should be respect for individual autonomy. It would be paternalistic and patronising to override their agreement simply on the basis that the court knows best (para 78).

(5) An important factor may be whether the marriage would have gone ahead without an agreement, or without the terms which had been agreed (para 72).

(6) The court should give effect to a marital 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 (para 75).

(7) The fact of the agreement is capable of altering what is fair. It is an important factor to be weighed in the balance (para 75).

(8) Section 25 of the 1973 Act provides that first consideration must be given to the welfare while a minor of any child of the family who is under 18. A marital agreement cannot be allowed to prejudice the reasonable requirements of any children of the family (para 77).

(9) Often parties to a marriage will be motivated in concluding a marital agreement by a wish to make provision for existing property owned by one or other, or property that one or other anticipates receiving from a third party. The distinction between such property and matrimonial property accumulated in the course of the marriage is particularly significant where the parties make express agreement as to the disposal of such property in the event of the termination of the marriage. There is nothing inherently unfair in such an agreement and there may be good objective justification for it (para 79).

(10) Where the pre-marital agreement attempts to address the contingencies, unknown and often unforeseen, of the couple's future relationship there is more scope for what happens to them over the years to make it unfair to hold them to their agreement. The circumstances of the parties often change over time in ways or to an extent which either cannot be or simply was not envisaged. The longer the marriage has lasted, the more likely it is that this will be the case (para 80).

(11) Of the three strands identified in *White v White* and *Miller v Miller*, it is the first two, needs and compensation, which can most readily render it unfair to hold the parties to a pre-marital agreement. The parties are unlikely to have intended that their pre-marital agreement should result, in the event of the marriage breaking up, in one partner being left in a predicament of real need, while the other enjoys a sufficiency or more, and such a result is likely to render it unfair to hold the parties to their agreement (para 81).

(12) 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 (para 82).

50. The weight to be given to a marital agreement and whether it is to prove decisive will necessarily depend on the facts of each case. In *Brock v Brock* [2018] EWCA Civ

2862, for example, the Court of Appeal emphasised that the decision in *Radmacher* does not preclude the court, in its section 25 search for a fair outcome, taking into account sharing as well as needs and compensation, so that the fact of a valid pre-marital agreement "does not necessarily (but may) lead inexorably to solely needs-based outcome". Lady Justice King said, at paragraph 103 of her judgment:

> "In my judgment, in the ordinary course of events, where there is a valid prenuptial agreement, the terms of which amount to the wife having contracted out of a division of the assets based on sharing, a court is likely to regard fairness as demanding that she receives a settlement that is limited to that which provides for her needs. But whilst such an outcome may be considered to be more likely than not, that does not prescribe the outcome in every case. 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) MCA 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 an 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."

51. These principles have been applied in many cases across the years that have followed. Recent examples include the decision of Moor J in *CMX v EJX (French Marriage Contract)* [2022] EWFC 136, the decision of Peel J *WC v HC* [2022] EWFC 22 and the decision of Mostyn J in *Cummins v Fawn* [2023] EWHC 830 (Fam), all of which I have read.

The Law – Non-Disclosure

52. In *Moher v Moher* [2019] EWCA Civ 1482 the first instance judge had determined that the husband had failed to provide adequate disclosure and had not complied with court orders. The husband appealed the resulting order. The Court of Appeal, as set out in the leading judgment of Moylan LJ, said as follows:

> "[86] My broad conclusions as to the approach the court should take when dealing with non-disclosure are as follows. They are broad because, as I have sought to emphasise, non-disclosure can take a variety of forms and arise in a variety of circumstances from the very general to the very specific. My remarks are focused on the former, namely a broad failure to comply with the disclosure obligations in respect of a party's financial resources, rather than the latter.

[87] (i) It is clearly appropriate that generally, as required by s 25 of the 1973 Act, the court should seek to determine the extent of the financial resources of the non-disclosing party.

[88] (ii) When undertaking this task the court will, obviously, be entitled to draw such adverse inferences as are justified having regard to the nature and extent of the party's failure to engage properly with the proceedings. However, this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption said, should the court 'engage in pure speculation'. As Otton LJ said in *Baker v Baker*, inferences must be 'properly drawn and reasonable'. This was reiterated by Lady Hale in *Prest v Petrodel Resources Ltd* [2013] UKSC 34, [2013] 2 AC 415, [2013] 2 FLR 732,at para [85]:
'... the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are.'

[89] (iii) This does not mean, contrary to Mr Molyneux's submission, that the court is required to make a specific determination either as to a figure or a bracket. There will be cases where this exercise will not be possible because, the manner in which a party has failed to comply with their disclosure obligations, means that the court is 'unable to quantify the extent of his undisclosed resources', to repeat what Wilson LJ said in *Behzadi v Behzadi*.

[90] (iv) How does this fit within the application of the principles of need and sharing? The answer, in my view, is that, when faced with uncertainty consequent on one party's non-disclosure and when considering what Lady Hale and Lord Sumption called 'the inherent probabilities' the court is entitled, in appropriate cases, to infer that the resources are sufficient or are such that the proposed award does represent a fair outcome. This is, effectively, what Munby J did in both *Al-Khatib v Masry* and *Ben Hashem v Al Shayif* and, in my view, it is a legitimate approach. In that respect I would not endorse what Mostyn J said in *NG v SG (Appeal: Non-Disclosure)* [2011] EWHC 3270 (Fam), [2012] 1 FLR 1211, at para [16](vii).

[91] This approach is both necessary and justified to limit the scope for, what Butler-Sloss LJ accepted could otherwise be, a 'cheat's charter'. As Thorpe J said in *F v F (Divorce: Insolvency: Annulment of Bankruptcy Order)* [1994] 1 FLR 359, although not the court's intention, better an order which may be unfair to the non-disclosing party than an order which is unfair to the other party. This does not mean, as Mostyn J said in *NG v SG*, at para [7], that the court should jump to conclusions as to the extent of the undisclosed wealth simply because of some non-disclosure. It reflects, as he said at para [16](viii),

that the court must be astute to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations."

The Law – Child Maintenance

53. In *Collardeau-Fuchs v Fuchs* [2022] EWFC 135 Mostyn J set out a full review of the legal frameworks which give rise to claims for child maintenance both (as here) under the Matrimonial Causes Act 1973 and under Schedule 1 Children Act 1989. One difference between those two provisions is that under the 1973 Act the court is specifically directed to have regard to the standard of living enjoyed by the family before the breakdown of the marriage. He added:

> "118. In my opinion where a court is considering a claim for child maintenance under the 1973 or 1984 Acts it must have careful regard to the standard of living enjoyed by the family before the breakdown of the marriage because it has been instructed to do so by Parliament. This factor should not however be allowed to dominate the picture as there will be many children, particularly children dealt with under Schedule 1, who will not have experienced a standard of living within a functioning relationship either because the liaison between the parents was very brief, or because the child was born after the relationship had come to an end: see *J v C (Child: Financial Provision)* at [156]. However, in some cases, and this is one of them, the standard of living enjoyed by the whole family before the breakdown of the relationship will be of great importance."

54. As Mostyn J said, there are a variety of circumstances in which a free-standing issue arises as to child maintenance. One such circumstance may be where a pre-marital agreement prevents the applicant from making a personal claim.

55. He set out the principles to be applied in assessing the level of child maintenance as follows:

> "a. When determining a child maintenance application, the welfare of the child must be a constant influence.
>
> b. A child maintenance award can extend beyond the direct expenses of the children. It can additionally meet the expenses of the mother's household, to the extent that the mother cannot cover, or contribute to, those expenses from her own means. Such an award might be referred to as a Household Expenditure Child Support Award ('a HECSA'). The essential principle is that it is permissible to support the child by supporting the mother.

c. But a HECSA cannot meet those expenses of the mother which are directly personal to her and have no reference to her role as carer of the child. An example is a subscription to a nightclub. However, the award can meet the expenses of the mother which are personal to her provided that they are connected to her role as a carer. Examples are the provision of a car or designer clothing.

d. The reasonable level of the mother's household expenses should be judged by reference not only to the present standard of living of the respondent but also, if applicable, to the standard of living enjoyed by the family prior to the breakdown of the relationship. The object of a HECSA is not to replicate either such standard, but to ensure that the child's circumstances "bears some sort of relationship" to them. The standard of living in the parties' home prior to the breakdown of the relationship is "as good a baseline" as any other.

(As will be seen, Moor J in the later *Maktoum* case, expressed the test as being that the children should be entitled to a lifestyle that is "not entirely out of kilter" with that enjoyed by them before the breakdown of the marriage, and that currently enjoyed by the father and his family).

e. The HECSA must be set at such a level that the mother is not burdened by unnecessary financial anxiety.

f. When assessing the mother's budget, the court should paint with a broad brush and not get bogged down in detailed analyses. Rather, the court should achieve a fair and realistic outcome by the application of broad common-sense to the overall circumstances of the particular case."

56. The decision of Mostyn J in *Collardeau-Fuchs v Fuchs* was applied by Cobb J in the more recent decision of *Re Z (No.4) (Schedule 1 award)* [2023] EWFC 25 and by Mostyn J himself in the very recent decision of *James v Seymour* [2023] EWHC 844 (Fam). In all these decisions the court declined to apply a formulaic approach (based upon a CMS assessment extended to cover income above the CMS maximum of £150,000 pa) in situations where the parent has no personal spousal claim (see e.g. para 21 per Cobb J in *Re Z*).

The Husband's Non-Disclosure and its Effect

57. The Husband's failure to provide disclosure within these proceedings has been egregious.

58. His contribution to, and participation in, these proceedings has been limited to the filing of a Form A and open offer, his attendance at the hearing on 14 October 2022

represented by counsel on a public access basis, his attendance at a round table meeting and his attendance unrepresented at the FDR on 25 January 2023.

59. In breach of orders made on 14 October 2022, 21 November 2022, 15 December 2022 and 2 March 2023 he has failed to file, amongst other things, his Form E or s.25 narrative statement. As a result, he has not provided a single piece of financial disclosure within these proceedings.

60. On 2 March 2023, in his absence, Peel J found him to be in contempt of court in respect of 10 separate breaches of court orders. That hearing was adjourned for sentencing until June 2023 with the costs of the contempt proceedings reserved for consideration at that hearing. The contempt findings included not only breaches of directions to progress these proceedings but breaches in respect of information provided by the Husband to third parties contrary to his obligation of confidentiality.

61. The Husband's late email to the court, on the evening of 26 April, expressing disappointment that his adjournment application had not been granted and enclosing documents (previously filed) for the court to read, supports a point made by Mr Glaser that if he had wanted to file a Form E and / or section 25 statement in these proceedings he could have done so.

62. Without any assistance from the Husband I have attempted to piece together what is known about his financial position, drawing such adverse inferences as may be justified but without engaging in speculation. Inevitably, in the circumstances, some of the calculations below have to be broad brush and based on judicial knowledge and experience as well as the evidence available.

63. If I have miscalculated due to the Husband's non-disclosure, then better I should do so in favour of the Wife.

My Conclusions as to the Parties' Assets

64. I accept the evidence of the Wife as to value of the watches and wine held by the Husband. Those values are based not on guesswork or even purchase cost, but on a) her reasonable enquiries as to the resale value with the benefit of the itemised list of watches held for insurance purposes and b) her memory of the wine valuations that the Husband had received, and she had read, during the course of the parties' marriage. Both watches and wine are well known vehicles for investment purposes and are not just chattels or consumables. The values of these together amount to £2m.

65. The Husband has accepted in correspondence receipt of the sum of £500,000 from the sale of his shareholding after the parties' separation.

66. In respect of liabilities, there is evidence that the Husband loaned the company £234,000 before he sold his shareholding. That sum appears to have come from the sale of a watch. It seems unlikely to me that this sum was or is now recoverable.

67. The Husband has accumulated debts to 2 firms of solicitors, Firm X and Firm Y. Both firms have written to the Wife's solicitors and the court to highlight the sums due. Submissions were made in respect of these debts by Mr Glaser and Mr Murray on behalf of the Wife questioning how it is possible for such large fees could have been accumulated. In my view the costs incurred appear to be surprising in the context of the Husband's minimal involvement in these proceedings. They are not reflected in any documents filed or his representation at any hearings within the financial remedy proceedings. The only hearing at which the Husband was represented, the hearing on 14 October 2022, that representation was by way of public access instruction. It is difficult to understand how, therefore, Firm X could have incurred costs of £600,000 on behalf of the Husband (of which £280,000 has been paid and £320,000 is outstanding). Equally, it is difficult to understand how Firm Y could have incurred costs of £167,000 simply to establish that they were prevented from acting by reason of a conflict.

68. However, both firms assert these sums are due and Firm X has obtained a judgment against the Husband. Unless I adjourn these proceedings to make further enquiry (which I was not invited to do and would be disproportionate) I am left in the position of having to accept broadly that these debts exist. I do, however, agree with the point raised by Mr Glaser that some modest reduction may be possible with negotiation, particularly in relation to Firm Y. This would reduce the sum due to about £450,000.

69. I am asked by Mr Glaser and Mr Murray to add in further sums by way of assets held by the Husband as follows:

(1) The Wife's evidence is that she had intended the payments of £20,000 pm to cover not just the maintenance needs of the Husband and of their son when with him, but also a contribution towards his legal costs. She said that, as she was paying the entire cost of maintaining Property A, including housekeeping, separately, she had expected the Husband to be able to use £10,000 to £15,000 pm of the monthly payment towards those legal costs. As he has not done so, he has accumulated (or has been in a position to accumulate) savings during the 20 months of payments. This figure is put at £200,000 to £300,000.

(2) The Husband has also been in employment. Whilst he has not provided any disclosure either as to his level of earnings or the time he has been in employment, I am asked to infer that given the level of maintenance he was receiving he should have been in a position to accumulate further savings as a result of that income.

(3) It is submitted that it is not unreasonable to assume that the Husband would have had some funds when the parties' separated and he also has access to the property in Stockholm (or its proceeds of sale) as set out in the Wife's evidence.

70. Drawing the threads together I find that the capital held by the Husband is likely to be as follows:

(1) Watches £1,500,000

(2) Less watch sold to fund the loan (£234,000)

(3) Wine £500,000

(5) Money from sale of shareholding £500,000

(6) Less debt to solicitors (£450,000)

= £1,816,000

71. There is some force in the submission that the Husband has or should have been able to accumulate savings from the payments of £20,000 per month given that all his accommodation costs have been met separately by the Wife. He has also been in receipt of an income for at least some of the time since separation. However, the total potential savings are likely to be at a more modest level than that proposed by the Wife. My assessment is that he should have been able to make savings of about £4,000 per month from the maintenance (over 20 months). If I take this figure (£80,000) and add in £20,000 from his employment this would provide the Husband with, in total, an additional £100,000.

72. Further, taking into account the Stockholm property and any residual funds available to the Husband upon separation I round up the sum available overall to £2m.

73. The Wife's assets are valued at £250 million as I have said.

My Conclusions as to the Husband's Income and Earning Capacity

74. An analysis of the income and earning capacity of the financially weaker party is often central to the court's determination as to needs and, in particular, income needs.

75. The information I have as to the Husband's income and earning capacity is extremely limited. It amounts to no more than the following:

(a) The Husband disclosed income of £35,000 pa when the parties signed their pre-marital agreement in 2015.

(b) He is currently in employment.

(c) He told the court in his open offer that, at the time the parties married, he had the potential of a high earning career.

(d) He told the court in his open offer that his ambition is to establish a career for himself.

(e) He is aged 39. It is therefore reasonable to assume that he has 25 to 30 working years ahead.

76. From the little I know about the Husband, I do not see him accepting low paid employment or employment below or even at the level he was earning in 2015. It is reasonable to assume that his current employment is paying him at least a gross salary of £50,000. His reference to the potential for a high earning career only 8 years ago, and his expressed ambition now to establish a career leads me to believe his income will increase significantly over future years. However, I accept this will take time.

77. If that is an unfair inference to be drawn from the limited factual information available then the fault lies with the Husband who could simply have provided a Form E, financial disclosure and a s.25 statement.

My Conclusions as to the Agreements

78. The Husband advances no evidence of vitiating or potentially vitiating factors in respect of either agreement. The furthest he gets is to assert in his statement filed within injunction proceedings that *"there are a number of serious deficiencies in those agreements, which undermine significantly their enforceability."* He also suggests there were deficiencies in the financial disclosure provided by the Wife but does not elaborate as to what those deficiencies were or how they would have vitiated his agreement. Had he wished to mount a challenge to the validity of or weight to be attached to these agreements he should have done so on proper written evidence filed within these proceedings and should have made himself available for cross examination.

79. The agreements appear to be in entirely conventional terms. They contain a warning that the parties should not sign the agreements unless they intend to be bound by their terms. The Husband can have been under no illusion as to the wealth (and potential wealth) of the Wife. The certificate signed on behalf of his lawyer says that the Husband was provided with independent legal advice as to the effect of the agreements on his rights. The lawyer concerned is an experienced partner at a well-known firm of solicitors.

80. The agreements were drawn up on the express anticipation that the parties planned to have children. They provided for the financial provision that should follow in that event save that they are silent on the issue of child maintenance.

81. This was not a long marriage. They were married for 6 years and cohabited in total for just over 7 years (2014 to 2021). There was just over 5 years between the post marital agreement and separation.

82. On the evidence before me, these are agreements that must carry full weight. These parties could have done no more to make clear their intentions as to what should happen in the event of separation in terms of their assets and the issue of spousal maintenance.

Fairness

83. Notwithstanding the existence of the marital agreements or, indeed, the Husband's failure to file any evidence or to attend this hearing, the court must still consider separately and independently the question of fairness.

84. Although it remains open to the court (on the authorities above) to make an order based on sharing despite the terms of the agreements, I do not consider that to be the right approach for this case. This was not a long marriage, as I have said. The Wife's wealth derives entirely from money or assets given to her by her grandfather. There is no marital acquest.

85. Moreover, the Husband has already received significant financial benefit from the Wife's wealth. That benefit is represented in the assets he currently holds. He was also the beneficiary of over £2m of funds invested by the Wife on his behalf, or invested from the watch she purchased for him, in the company. On the unchallenged evidence before me, that money was squandered largely as a result of the Husband's behaviour, so that all that remains is the £500,000 the Husband received from the sale of his shareholding.

86. Given this is not a sharing case, and no evidential case is advanced by the Husband on the basis of compensation, the question is whether the provision set out in the marital agreements provides sufficiently for the Husband's needs or, put in the terms expressed by the Supreme Court in *Radmacher*, whether he is left in a predicament of real need.

87. Turning to consider the factors set out at Section 25 MCA 1973 the observations that I make are as follows.

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.

88. I have largely set out my conclusions on these issues above. The Wife has assets of around £250m. The Husband has assets of £2m. The Husband has a current earning capacity of at least £50,000 pa. That earning capacity will increase as his career develops. At age 39 he has plenty of years ahead to maximise that capacity.

The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.

89. Whilst he has caring responsibilities for the parties' son, and until he is in a position to achieve full financial independence, the Husband will have housing needs that can only be met with the assistance of the Wife.

90. The Wife puts those housing needs at £6.5m. She has supplied illustrative property particulars in SW1 in the range of about £5 to £5.5m. Her open offer includes the offer to fund the costs of purchase, any necessary cost of improvement and the cost of 'kitting out' which I take to mean furniture, kitchen appliances, flooring etc. My understanding of this is that the extra funds will be used (up to the ceiling of £6.5m) to ensure that the property would be put in a condition ready for the Husband and the parties' son to move in to.

91. The costs of purchase for such a property will be high (principally stamp duty) and are likely to be between £500,000 and £600,000. That will leave approximately £400,000 to £1m for the cost of any improvements and 'kitting out'.

92. The property particulars supplied are of properties which appear to be in good order, so even at the top of the bracket (£5.5m) it should be possible for the overall cost to fall within the £6.5m budget provided. Given that the Husband has not provided any alternative figures I accept the Wife' evidence that £6.5m is sufficient to meet the Husband's housing needs during their son's minority.

93. The Wife's open offer includes provision for her to pay all necessary sums required to keep the fabric of the property insured and for any necessary major structural maintenance. It seems to me that the Wife's obligation to 'kit out' the property, as set out in the Pre-Marital Agreement must represent an ongoing obligation rather than a one off given the proposal that this property should remain as a home for the Husband and their son for over 15 years.

94. I must also consider the Husband's income needs both in relation to spousal and child maintenance. The Wife has produced a snapshot of the family's expenditure for 2020 which amounts to over £2.8m. I accept that snapshot has limited evidential value. The Wife's evidence was that the family expenditure became inflated as the marriage fell into difficulties. It is also obvious that a significant level of cost was spent

maintaining properties that the Husband will not have responsibility for, funding security and staff, and other expenditure that would not form reasonable expenditure by the Husband living without the Wife. They also include sums for the benefit of the parties' son (e.g. education costs) that the Wife has agreed to meet separately. It is, however, unfortunate and unhelpful that there is no budget available to the court to assess the Husband's reasonable income needs going forward.

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

95. On any view the standard of living enjoyed by this family before the breakdown of the marriage was extremely high, as evidenced by the 2020 family spend analysis. The parties enjoyed the provision of high value London properties, staff, expensive holidays, limitless travel options, and overall, the best that money can provide. This is a highly significant factor.

(d) the age of each party to the marriage and the duration of the marriage;

96. As I have said above, the Wife is 33 and the Husband is 39. This was a 6 year marriage, just over 7 years when including the period of cohabitation.

(e) any physical or mental disability of either of the parties to the marriage;

97. There is no evidence of any or any significant disability.

(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;

98. All the financial contributions to the welfare of the family have been made by the Wife, which has included as I have said, providing funding for the Husband's business venture which has largely been lost. The Husband has made no financial contribution. Both parties have made non-financial contributions by providing care for their son and will continue to do so in the future.

(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;

99. Conduct falling within this part of the s.25 checklist has not been raised by either party in the evidence filed.

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit. . . which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

100. Neither party has raised an issue under this heading.

My Conclusions as to the Husband's Claims for Himself

101. The pre and post marital agreements in this case carry full weight as I have said. There are no vitiating factors nor has there been any material change of circumstances.

102. I do not agree with Mr Glaser's submission that any similarity with the facts of *Radmacher* (or indeed with any other case) inevitably means that the court is compelled to uphold the agreements in their entirety. Each case turns on its own facts and even subtle differences may lead the court to a different outcome.

103. Nonetheless, I agree that in this case the agreements are largely decisive as to the outcome. Fairness does not require the court to depart substantially from the terms of the agreements.

104. On the evidence before me, I conclude that a housing fund of £6.5m is sufficient to enable the Husband and their son to be housed suitably within the right area of London.

105. The Husband's open offer requesting half of the value of property B appears to be based upon sharing rather than need. As I have said, I do not consider this to be a sharing case. It is unfortunate that he has produced no evidence as to need despite being given every opportunity to do so.

106. In submissions I pressed Mr Glaser on the issue of how the Husband is to be housed once their son's needs are no longer relevant so the £6.5m housing provision falls away. In response he raised a number of points including:

(1) This is over 15 years away.

(2) It is not the role of the court to be paternalistic or patronising. Full weight needs to be given to the parties' autonomy exercised with care at the start of their married life.

(3) It is for the Husband to make out his case on needs if he seeks to persuade the court that fairness dictates there should be a departure from the terms of the agreements. He has made no attempt to do so, despite every opportunity.

(4) The Husband will be able to rely upon his own resources at this time. In particular, he will retain the benefit of his own capital resources. From the figures I was given, the Husband's assets of £2m could be expected to appreciate to a figure of £3m or above if invested sensibly over that period. He will also have had time to establish his earning capacity.

107. I agree with those submissions. The Husband has provided no evidence in support of his needs case and the absence of any disclosure leaves open the question of what resources he actually has. 15 years is a considerable time away. The Husband will have the opportunity to develop his career during that time. He will also retain the benefit of his existing capital resources which will appreciate over time. He should have the resources to enable him to rehouse at that time at a reasonable level. He will not therefore be in a predicament of real need.

108. I have reached this conclusion on the basis that the Husband's housing needs for the next 15 plus years will be met by the Wife in accordance with the terms of the agreement as I interpret them. This means that 'kitting out' represents an ongoing obligation rather than a one-off. It requires the Wife to fund not only the structural maintenance of the property but also maintenance of the interior, furnishings and fittings to a reasonable standard. Were I to be wrong about that interpretation, then I would set aside an additional housing fund to meet those costs.

109. That leaves the question of income needs.

110. The Wife has been paying in full the husband's housing costs (including utility bills) alongside payments of £20,000 per month. Although expressly provided outside the terms of the agreement, the Wife has paid those sums voluntarily. This represents some acknowledgment that there must inevitably be a period of adjustment for the Husband following the breakdown of the parties' relationship until such time as he is able to adjust to the termination of his financial dependence without undue hardship (within the terms of s.25A MCA 1973).

111. I do consider that concession to be necessary and realistic. It also represents an acknowledgement of the very high standard of living enjoyed by the parties during their marriage.

112. In my assessment the likely increase in the Husband's income in the future from the assessed current level of £50,000 pa to a position of independence will occur but will take some time to achieve. The Husband himself speaks of development of his career in his open offer. He is only 39.

113. The best I can do with the very limited information available is to adopt a broad brush approach. My assessment is that the Husband should be able to develop his career so as to achieve financial independence within a 6 year period, so by the time their son reaches secondary school age. Financial independence (separate from the question of child maintenance) should be achieved when he achieves a net income of or close to £100,000. In my judgment, the broad figure required to enable the Husband to develop his career to a sufficient extent to be able to adjust without undue hardship is just over £60,000 per year over a 6 year period. I capitalise this to reach the sum of £350,000.

114. Mr Glaser argues that this sum fails to take into account any likely incremental increase in the Husband's income across that 6 year period, so that any sum awarded on a capitalised basis ought to be reduced. This is a point I have considered but it is impossible to chart the progress of the Husband's career any more precisely than I have. There is also the impact of inflation which at its present level significantly reduces the value of any wage increases. Projecting future income increases and when and how they are likely to occur is always a broad brush task, but particularly so in this case. In the light of the extensive wealth of the Wife and the high standard of living of the parties this point is effectively de minimis and I disregard it.

Child maintenance

115. Mr Glaser accepts that, in this case, the court has an unfettered discretion to award the appropriate level of child maintenance and, therefore, this case falls outside of the constraints of the Child Support Act 1991. Had that not been the case then inevitably I would have had to reconsider my decision on spousal maintenance as set out above.

116. When considering child maintenance, I must have particular regard to the welfare of the parties' son. I must have regard to the matters set out in S.25(3) of the MCA 1973 in addition to those under s.25(2). In light of the fact that the Wife offers to meet their son's educational and other specific costs, and I am not aware of their son having any separate financial resources or particular financial needs in the care of the Husband (beyond those that are conventional), there is little more to say under these particular factors. The standard of living enjoyed by the family together remains an important factor.

117. The Wife offers the sum of £50,000 pa by way of child maintenance. Her evidence was that she had calculated this sum by looking at the 2020 family spend figures under the heading of 'children', taken the figures for clothing, etc, leisure and others which amount to just under £35,000 pa and rounded up.

118. I was not convinced by this analysis. Whilst it is primarily for the Husband to put forward a needs budget, it is not unusual in my experience for the paying party to put one forward whether as complementary or competing to that advanced by the receiving party.

119. The only evidence I have as to the Husband's potential needs comes from the 2020 spending budget from which I derive the following information, bearing in mind the standard of living enjoyed by the parties during the marriage and the standard of living that the parties' son will continue to enjoy when with the Wife:

(a) There are the clothing, leisure and other costs identified as above by the Wife at £35,000.

(b) The Wife told me that the costs for Property A of nearly £50,000 pa include service charges and maintenance charges that will either not apply in relation to the new property to be purchased or are covered elsewhere by the agreement as set out above. However, I consider it not unreasonable to anticipate that at least £25,000 per annum will be required going forward for household costs such as utility bills, etc. Whilst I do not accept that the Husband requires a nanny, he may need occasional childcare, particularly during school holidays. I have included an allowance in that sum for this.

(c) There will be additional food and drink costs, which I assess at £20,000 pa (I note the 2020 family spend cost is almost £250,000).

(d) There will be clothing and other personal costs for the Husband, which I assess at £20,000.

(e) There will be costs of purchasing and running a car, or other transport costs, which I assess at £20,000.

(f) There will be, in addition, general discretionary spending. I note the family holiday costs were over £600,000 in 2020. Other general family expenditure was almost £750,000 including almost £100,000 just on restaurants and cafes. Given the very high level of the standard of living enjoyed by these parties I would put discretionary spending including holidays at £100,000 pa.

120. This gives an estimate of total expenditure for the Husband of £220,000 per year.

121. The Husband's current net income is just under £40,000. I have capitalised spousal maintenance to bring this up to a total sum of £100,000 per year. After 5 years the Husband's net income should have increased to about £100,000 to mean he no longer requires spousal support.

122. The shortfall for the Husband's needs budget is therefore £120,000 per year or £10,000 per month.

123. As a cross check, I have considered the sums that the Wife has been paying voluntarily since separation. Given she was financing the parties' lifestyle during the marriage, she was in a position at that time to make an informed assessment as to the reasonable expenditure required by the Husband on his own behalf and for the benefit of the parties' son when with him. The voluntary payments she has been making since separation have been £240,000 per year. She has also been funding his accommodation costs including utility bills, etc in their entirety. Whilst I have accepted that some of the £20,000 per month was intended for use in paying his legal bills, I assessed this sum above as £4,000 per month. The remaining balance of £16,000 per month would equate to £192,000 pa.

124. With the payment of all household costs and utility bills and bearing in mind the effect of inflation this is consistent with my assessed figure of £220,000 for the Husband's income needs (during their son's minority) going forward.

125. I do not accept the submission that the Husband should be required to fund his household income needs from the investment return on his £2m of assets. These should be permitted to accumulate as set out above. If he was forced to draw the income from these savings then the fund will not accumulate or accumulate to the level of just over £3m as set out in the table provided to me on behalf of the Wife.

126. As I have said, I do not accept the Husband's claim to require the assistance of a nanny when caring for the parties' son. He can work when their son is in the care of his mother or at school. I have made some allowance, however, for child care costs as above.

127. The maintenance payments to the Husband for the benefit of their son should be paid for the same term as the agreed housing provision. In other words until he "*shall attain the age of 18 years or, if later, shall have ceased full time education or no later than his first degree level."* Any different provision would be likely to mean remaining in the property would be unaffordable for the Husband and thus would defeat the terms of the agreement that the parties reached in the Pre-Marital Agreement.

128. The maintenance payments should be index linked by CPI as agreed by the Wife. They are in any event variable on the application of either party.

Firm X

129. Firm X has invited me to make an order awarding a sum specifically to the Husband to enable him to discharge his debt to them payable to them rather than to the Husband himself. I have taken this debt into account as set out above in assessing the Husband's assets and am not prepared to make any further order. Firm X has not intervened within these proceedings and for that reason I have not had any formal representations from them or on their behalf. If the judgment stands then it will be enforceable against the Husband in the usual way.

28 April 2023

L. Samuels KC