

IN THE FAMILY COURT AT BIRMINGHAM

Date: 5 July 2024

Before:

DISTRICT JUDGE CHLOË PHILLIPS

Case Name: HW v WB (Financial Remedies; treatment of post-nuptial agreement)

Between :

HW
- and -
WB

Applicant

Respondent

Richard English (instructed by
Harrison Clark Rickerbys) for the **Applicant**
The Respondent appeared as a Litigant in Person

Hearing dates: 27 and 28 June 2024

Judgment: 5 July 2024

JUDGMENT

This judgment was given in private. The judge gives permission 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 this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

District Judge Chloë Phillips:

Background

1. This is the court's judgment following the final hearing of the applicant husband, H's application for financial remedies. The parties married in August 2013 and the petition for divorce was issued by H on 4 July 2022. This is therefore a marriage of some 9 years. The applicant husband, H is 65 and W is 41. With no disrespect intended, within this judgment HW is referred to as "H" and WB as "W".
2. They have one child, A, aged 10. W's older child, B, aged 19, was treated as a child of the family, having been 6 years old when the parties met, and he also lives with the parties. At the time the parties met, W lived and worked in eastern Europe. H had built up significant assets and the parties signed a post nuptial agreement in August 2013. The parties have continued to live in the former matrimonial home in Worcestershire which is mortgage free and held in H's sole name, with an agreed value of £600,000. Other assets on the Schedule of Assets for the final hearing include H's investments and savings of some £694,000, and £8000 in his bank accounts. In addition, H has acquired shares which he cannot realise until December 2026 with an estimated net value of £365,000 (agreed by W to be his separate property). H's income from his employment is £198,972 net per annum. W is not employed, has no income and her only asset is an apartment in eastern Europe which cannot currently be valued or sold and £2000 in her bank account. H has pension assets valued at around £1.4 million and W has minimal pension.

Proceedings

3. The financial remedy proceedings were issued on 8 June 2023. H has been represented by Harrison Clark Rickerbys Solicitors throughout these proceedings and Mr. English of counsel represented him at the final hearing. W was previously represented by SME solicitors, but prior to the final hearing became a litigant in person and represented herself at the final hearing.
4. The court was provided with a bundle of documents, including two witness statements from each of the parties and expert evidence from IWC Actuarial on pension sharing and the valuation of pension rights on divorce provided on the joint instructions of the parties' solicitors.
5. I heard evidence from both parties at the final hearing and reserved judgement.
6. The issues that the court has to decide are:
 - i. Is the nuptial agreement binding?
 - ii. If so, should the parties be held to the provisions of that agreement? and,
 - iii. what is a fair distribution of the parties' matrimonial assets in all the circumstances?
7. Mr English for H submits that the agreement is binding on the parties and is not unfair. W's position prior to the hearing was that she signed under pressure and that the agreement is not binding and is unfair.

8. Open Offers have been exchanged, with the most recent being as follows.
The primary terms of W's offer by letter dated 28 May are:
- H pays a lump sum to her of £675,051 made up of
 - Housing fund £427,500;
 - Spousal/Child maintenance, 4 years at £3,858 pm, capitalised at £185,184;
 - Education needs £44,092;
 - Legal costs and other debts £16,500;
 - Other capital needs £1,775, (including £850 for puppy or kitten);
 - PSO 13% in her favour as against H's SIPP,
- And otherwise a clean break in capital and income;
9. H's open offer dated 20 June 2024 is to pay a lump sum of £405,000 within 30 days of the date of the order; maintenance of £670 per month for three years capitalised at £24,120; child maintenance for A as assessed by the CMS; and a pension sharing order of 7.4% of his SIPP providing equality of income in retirement in respect of the marital resource. Otherwise, a clean break.

Further relevant background

10. The postnuptial agreement is dated 4 days following the parties' marriage. The parties were advised by separate firms of Solicitors and their signatures on the agreement were witnessed by their Solicitors. Relevant provisions are set out below (using the anonymised version of the parties' names).

The agreement states at Recital 3 that the parties "*acknowledge and agree that they have been advised that under the laws of England and Wales it is not possible, as at the date of this agreement, to exclude the jurisdiction of the court to make orders pursuant to the Matrimonial Causes Act 1973... " ...*
To the extent permitted by law they intend this agreement to be binding upon them".

"Recital 6: W acknowledges that H has acquired all of his separate property independently of and without contribution from W and that he accumulated the majority of his property before he met W."

Separate property is defined at Definition 6.1 and 2 as:

6.1 the property owned by either H or W at the date of the marriage and described respectively in Schedules A and B hereto: and

6.2 any property acquired respectively by either H or W hereafter by way of gift or inheritance, and includes any increase in the value there of,

and For the avoidance of doubt, insofar as either either H or W makes any contribution to the acquisition or enhancement or maintenance of the separate property of the other, he or she shall acquire no interest in such property save insofar as the parties' common intention that he or she should so is recorded in a document signed by both parties."

7 "Joint Property "means:

7.1 the property owned jointly by H and W at the date of the marriage as described in schedule C hereto; and

7.2 any property acquired jointly or separately by H and W thereafter other than by way of gift or inheritance, and in particular

7.3 any funds or assets held by them at the date of the marriage or thereafter in any joint account .

Recital 7:” *H and W agree and acknowledge that they have historically earned their respective income separately and envisage this will continue.*”

Clause 5 of the Deed provides: “*Save in so far as is expressly provided below H and W shall retain their respective separate property.*

Any joint property shall be the legal property of both of them and:

Insofar far as it consists of bank or savings accounts shall be divided between them in equal shares...

In the section headed Financial Provision:

Clause 9 “*In the event of Separation between 2 and 5 years: H will provide sufficient funds to enable W to rent a property suitable for herself, B and any children of the family for a period of 2 years and provide maintenance in the £500 per month for 2 years.*”

Clause 10: “*In the event of Separation after 5 years of the marriage H will provide modest freehold accommodation for the benefit of W. In the event that W should remarry, cohabit, or when any child of the marriage or family reaches the age of 18 years or ceases full-time secondary education, the property is to be sold and any surplus funds in the property... are to be shared between the parties equally in lieu of any maintenance provision for W and there being a clean financial break.*

Clause 11: “*In the event of separation H will provide financial support for B whilst he remains in the UK and in receipt of full-time education up to and including First Degree. The financial support will be calculated by using the same formula that is used by the CSA or the equivalent body*”.

Pensions: Clause 12: “*In the event of separation both H and W are to benefit from any additional pension rights acquired by either party on an equal basis. Any additional pension rights will be determined as follows: the sum of the contributions made by either party during the course of the marriage into all pension schemes.*”

The Parties’ Positions and Evidence

11. W’s case on the Post-Nuptial Agreement (PNA) in her Position Statement for the hearing was that it was “*recognised*” but “*drafted with no consideration of a child to be born, significantly out of date, contradictory, not specific enough, not meet reasonable needs and not fair.*”
12. In evidence, in cross examination in relation to the PNA she said that she understood clearly that H wanted an agreement to protect his property and she had no issue with that. She accepted that H had brought to the marriage the former family home and the value of his investments and his pension. She agreed that the purpose of the agreement was to provide a level of certainty in the event that the marriage ended but said that this was not properly presented in the agreement.

13. In correspondence from SME solicitors who acted for her in relation to the PNA in 2013, her solicitor wrote to H's solicitor that W had excellent English and a quick grasp of technical legal matters and procedures. When this was put to her, W said that prior to coming to the UK from Eastern Europe she obtained general information about the UK process and so understood certain terms but there were others that were not discussed. W said that she knew she was pregnant at this time and the solicitor was aware, but she and H were not sure whether this would happen, so to reflect this, the agreement says that it must be reviewed if a child is born. W said this was a good enough compromise for them both, but the review never happened.
14. Mr English put to her that she had signed the agreement which states that both parties have received independent advice and were fully aware of the rights they are securing/surrendering and freely entering into the agreement. W said that she was not threatened, but "*psychologically I was pressured*". She said that she had one child with no support and another on the way and if she did not sign she would be likely to return back home because she was under immigration control and had no right to stay in the UK. She said that she signed the agreement on the day because she had told H that she would do so, but that does not mean she thought it was fair. When it was put to her that she had not told her solicitors that she was under pressure, W said that she had a conversation that she was generally not happy but would have to sign, and the solicitor had explained the terms. W said she was also aware that the agreement had to be reviewed under certain conditions.
15. In later cross examination, when it was put to her that she was aware that the agreement terms were intended to govern the financial consequences of the marriage, and that it was valid, she said "*it doesn't have binding power – it will be taken into consideration and have certain weight, and because of certain reasons should not be followed 100%*". She set out her view that the agreement does not meet her capital needs and is out of date as it was signed with the assumption that the agreement was concerned only with herself, H and B, but there has been a significant change.
16. With regard to her housing needs, W said that she wants to live in a particular part of Worcesterhire so that she will spend less time travelling between home and A's various activities as currently she drives him to swimming club three times a week and basketball at least once a week and they are members of a tennis club there. Whilst A had said he wanted to go to [X] Secondary School, for which his current primary school is a feeder school, W said she has found that there are other schools which also have good Ofsted ratings and she had produced a map of the area showing five possible state schools, around which she had carried out a property search.
17. When asked about the properties suggested by H in the range of £330,000-£350,000 W was critical of the various examples for reasons which included the fact that they were not currently available, that the property was in a "high density area", opposite a playground area, and/or that the third bedroom was small. Her own detailed criteria for housing needs set out in her open offer include that the property should be within the catchment for a good school, have some space and privacy, not in an overcrowded area, 3 bedrooms with more or less equal second and third bedrooms, medium size garden, not far from a park or nature reserve if possible, and high energy efficiency. As well as seeking £400,000 for a property W seeks £20,000 for appliances and

furniture and purchase costs and additional amounts to cover purchasing a piano/keyboard, basketball hoop and pet dog for A.

18. W's evidence is that she has not worked during the marriage, but she has volunteered with a charity in her free time. Prior to the marriage she obtained a qualification in Applied Psychology in Eastern Europe, (equivalent to a Bachelor of Psychology in the UK) and she has since marriage completed a post graduate certificate course in Eye Movement Desensitisation and Reprocessing (EMDR), therapy, at University. She intends to complete a master's degree in Integrative Psychotherapy on a part-time basis that would take 4 years to complete in order to work as a trauma psychologist. She has accepted an unconditional offer from a Psychotherapy Training Institute to start in October this year and she provided a breakdown of the anticipated costs of completing this course amounting to a total of £44,092. She anticipates being able to obtain work within the NHS and privately following qualification.
19. H's evidence is that he will retire at the end of this year from his position as Managing Director of a limited company for which he has worked for many years and its holding company. He anticipates his retirement income will be £65,000 per annum. In respect of A's expenses (agreed at £900 - £950 pm) H said that in addition to the CMS of £379 (anticipated on the basis of his future £65k pension income) he would expect the extra amount to be split between the two of them, so that he would pay around £300 per month more for A, and W can pay something because she will get child benefit and she can work. In this regard H's evidence was that when he retires at the end of the year, he is looking forward to having more time with A. Currently the agreement is that he has A alternate weekends from Friday to Monday and one night per week and half of the holidays. He said that when he retires he will be able to do sports activities with A and he can take and collect A in the mornings and evenings when he is with him if required, until he is independent.
20. In response to questions from the court H agreed that it is sensible for W to obtain the qualifications she seeks to maximise her income and he made the point that he had previously provided for the cost of training courses that she had wanted to undertake, even though he said a two-year course he had paid for at her request had no utility for her accreditation.

Assessment of witnesses

21. I found both H and W to be credible witnesses, giving straightforward answers to the questions put to them. W was cross examined for a considerable period of time by Mr English and gave lengthy and careful responses.

The Law

22. With regard to how the court should deal with this application in light of the PNA, Mr English referred the court to various relevant authorities including *WC v HC* [2022] EWFC 22, *Cummings v Fawn*, Mostyn J [2023] EWHC 830 and *MN v AN (Prenuptial Agreement)* 2020 3WL0257476.
23. In *WC v HC* [2022] EWFC 22 Peel J referred to *Radmacher v Granatino* [2010] UKSC 42 with approval and set out the principles to be drawn from that case:
 - i) *There is no material distinction between an ante-nuptial agreement and a post-nuptial agreement (para 57)*

ii) *If an ante-nuptial agreement, or indeed a post-nuptial agreement, is to carry full weight, "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).*

iii) *It is to be assumed that each party to a properly negotiated agreement is a grown up and able to look after himself or herself (para 51).*

iv) *The first question will be whether any of the standard vitiating factors, duress, fraud or misrepresentation, is present. Even if the agreement does not have contractual force, those factors will negate any effect the agreement might otherwise have. But unconscionable conduct such as undue pressure (falling short of duress) will also be likely to eliminate the weight to be attached to the agreement, and other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it (para 71). The court may take into account a party's emotional state, and what pressures he or she was under to agree. But that again cannot be considered in isolation from what would have happened had he or she not been under those pressures. (Para 72).*

v) *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. (para 75).*

24. Mr English drew the court's attention to the case of *Cummings v Fawn*, Mostyn J [2023] EWHC 830, in which the court provided a helpful description of what a judge should have in mind when considering this question. The court said at paragraph 36:

"Imagine that the discretionary range is a line of books on a shelf bracketed left and right by book ends. The book-ends may be quite far apart. The right book-end represents a comfortable, perhaps even luxurious, life-style. The left book-end represents a spartan lifestyle catering for not much more than essentials. The space in between is the discretionary range.

When the Supreme Court says that it may not be fair to uphold an agreement which leaves the applicant in a predicament of real need, it is clearly saying that if the result of the agreement would place the applicant in a standard of living to the left of the left-hand bookend, then that would be unfair. It is also saying that to make the agreement fair it should be augmented by no more than is necessary to move the applicants lifestyle just to the right of that left-hand bookend."

25. *MN v AN (Prenuptial Agreement)* [2023] EWHC 613 (Fam) is a decision of Mr. Justice Moor on an application for financial remedies by the wife, which was met by the husband issuing a notice to show cause why the parties should not be held to the terms of their prenuptial agreement. There are many parts of that judgement which are relevant to the case before me.

26. The Judge stated:

53. Although the Court [in Radmacher] declined to lay down rules as to the circumstances in which it would not be fair to hold the parties to their

agreement, saying it would not be desirable to fetter the flexibility that the court requires to reach a fair result, it is fair to note that Mr Granatino was, in effect, held to an agreement that most English family lawyers prior to Radmacher would have considered unfair.

54. Moreover, the Court clearly took the view that it would be easiest to show that an agreement was not unfair if it excluded sharing but did not prevent the court from providing for the reasonable needs of the applicant. At Paragraph 81, the majority say that it is " ...needs and compensation which can most readily render it unfair to hold the parties to an ante-nuptial contract ".

27. At paragraph 60, the judge states that :

60. [Counsel for the husband] also reminds me that it is not unfair or undue pressure to state that you will not get married without an acceptable pre-nuptial agreement (see, for example, KA v MA at [60]). This must be correct as the ability to apply for financial remedies after the breakdown of a relationship is entirely dependent on there having been a marriage. A wife cannot secure the right to apply for financial remedies via a marriage by signing a pre-nuptial agreement only to renounce the agreement thereafter on the basis that she only signed it because he said there would be no marriage if she did not."

28. In that case, the judge found that there was no undue pressure on the wife and therefore that the agreement should not be ignored. He went on to say that:

"86. Nevertheless, I do still have to perform the Brack exercise and take into account the factors in section 25 to see if there is anything in this agreement that leads me to decide that I should vary or amend it in some way. The watchword in financial remedy litigation is fairness. The test therefore is whether it is still fair to hold this Wife to this PNA given the passage of time and the circumstances today, whilst always remembering the significance of the fact that I have found no vitiating factor in relation to the agreement itself. One possible way of characterising this would be to perform the test undertaken when a court hears an appeal. In other words, is the provision that the PNA provides for the Wife and children outside the bracket of reasonable awards that a court might have made, such as to make it unfair."

29. In *Cummings and Fawn* [2023] EWHC 830 (Fam), 2023 WL 02939207, Mr. Justice Mostyn stated:

*"10. The core characteristic of the court's disposal of an application about an agreement is that it is a final hearing of the parties' respective financial remedy applications where the court will consider and give due weight to the agreement. The starting point is that the court should give effect to an 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 (see *Granatino v Radmacher* [2010] UKSC [2011] 1 AC 534 at [75]). This is hardly surprising. The rule of law, on which all social order depends, insists on contracts being generally upheld.*

11. Where no negating factor such as duress, mistake or fraud is alleged, and

where the repudiation of the agreement is based on the imprecise, inchoate ground that it is "unfair" the court is not obliged to consider the financial evidence in granular detail. It is not obliged to tabulate all the assets and liabilities and to work out the precise quantitative or relative outcomes for each party under the agreement. Instead, in a fairly summary manner, the court can instead stand back, survey the evidence broadly, and decide if the agreement meets the standard of basic fairness."

30. A very recent case which emphasises the flexibility of approach is the decision of Peel J in *AH v BH Family Court [2024] EWFC 1257 Jun 2024*. He states at paragraph 50:

50. It seems to me that the Supreme Court in Radmacher and the Court of Appeal in Brack have emphasised the latitude and flexibility available to the judge to meet the demands of fairness in cases where a PMA has been entered into by the parties. That latitude and flexibility applies to the assessment of needs as much as it applies to the other s25 factors. Each case is a highly fact specific evaluation and discretionary exercise. There is a world of difference between, say; (i) a childless couple whose marriage lasts for 2 years, enjoying only a modest lifestyle, at the end of which one party might need no more than short term maintenance or a highly attenuated housing budget (perhaps restricted to time limited rental), and (ii) as here, a couple with 2 young children, where the impecunious wife will have the primary responsibility of bringing up the children for many years to come, leaving the already wealthy husband able to enjoy the fruits of his successful career.

51. The evaluation carried out by judges since Radmacher in these cases demonstrates that, as foreseen by the Supreme Court, hard and fast rules are not appropriate.

61. The PMA represents a constant influence on the case. By that document, signed with full knowledge of its meaning and consequences, and with the benefit of legal advice, W was aware that her claims on divorce would be heavily restricted. Future anticipated circumstances included the birth of children and provision was calibrated in the alternative (children or no children). The marriage was relatively short (just over 5 ½ years including a period of cohabitation). H was independently wealthy at the time of signing the PMA, and clearly (as W acknowledged) wanted to protect that wealth, particularly his business. All of these points weigh in the balance.

62. On the other hand, a factor of considerable (indeed magnetic) significance, and a powerful counterweight to the PMA, is that W will be the primary carer for these children for the rest of their minority. Further, the fact of marrying and having children has had a significant impact upon her.....

63. These are all material changes since the PMA was entered into. True, the parties anticipated having children. But para 20 of the PMA expressly records that the PMA "shall be reviewed" in the event of, among other things, the birth of children. In my judgment that clearly indicates the parties contemplated that it might not be a fair document upon children being born. The fact that it was not reviewed does not prevent this court from considering the overall fairness of the PMA in the light of present circumstances.

64. H no doubt wants the children to be brought up in a happy, stable environment where the children, and by extension W, are financially secure; to do that, he needs to provide not just for the children, but also for W. I do not think it will help anybody in this case if W is left with modest resources of her own, yet is required to do her very best to bring up these children for years to come. If the bookend analogy deployed in Cummings v Fawn (supra) is helpful, I would place the needs of W and the children in this case well to the right of the left-hand bookend."

Analysis and Findings of Fact

Validity of the PNA

31. With regard to the validity of the PNA I accept W's evidence that she had told H in July following her arrival in the UK that she was a pregnant and therefore both parties were aware that their son was on the way at the time of signing the PNA. I also accept her evidence that she promised H that she would sign the agreement after the wedding and that this was the condition of the wedding taking place. Whilst I accept that W felt pressure to sign the agreement, it is clear that she was not forced to sign it and that she did have the benefit of independent legal advice and the terms of the agreement were explained to her by her own solicitor. Indeed she accepted in her evidence that she understood the reasons for the agreement and that she did not have a problem with H protecting his property. It was not clear from the presentation of her case at the final hearing that validity was seriously challenged and her main objection has been that the PNA is out of date and does not meet her needs. I am satisfied on the evidence that the pressure W felt at the time of entering the agreement was not "undue" and I find that there are no vitiating factors which invalidate the agreement.
32. I must therefore go on to consider the section 25 factors to evaluate whether the agreement is unfair, in accordance with *Brack v Brack* [2018] EWCA Civ 2862.

Unfairness

33. In *Brack v Brack* (supra) King LJ stated that "*Even where there is an effective prenuptial agreement, the court remains under an obligation to take into account all the factors found in section 25 (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 2018 EWHC499 (fam) 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.*"
34. Each case turns on its own facts, of course. In this case, of most significance since the PNA was entered into is that the parties have had a child, and more than 10 years have passed. It is also the case that due to W taking on the main caring role for A and supporting H in his career, H has been able to significantly progress his career during

their marriage whilst W has not worked at all in a paid role during the course of the marriage and she does not have her own income.

35. The PNA itself makes no provision for maintenance payments to W in clause 10 which deals with Separation after 5 years; it provides only for the purchase of modest freehold accommodation which would be sold with proceeds divided upon any child of the family reaching 18, or other specified events, in lieu of maintenance. The result of this is that the PNA leaves W with an unknown quantity of capital in no more than 8 years' time when A turns 18 and no maintenance in the intervening years whilst she is the main carer for the parties' son. Her evidence is that the child arrangements agreed mean that she has 72% of the childcare time with A and H has 28%. In my view the PNA is unfair as it leaves W without adequate income and I consider that this falls well to the left of the left book end in Mostyn J's analogy referred to above as it clearly does not meet W's needs. The parties' circumstances are now such that it would clearly not be fair to hold the parties to that agreement without a full consideration of all of the circumstances, particularly as the court's first consideration is the welfare of any children, which in this case is A, who is aged 10. I doubt that this is surprise to H given that his open offer is in excess of the provisions of the PNA.

36. It is the case, however, that W did freely enter into the nuptial agreement, and I consider that it is appropriate for the court to take a needs approach, with needs being assessed in light of the relevant factors in section 25, and keeping in mind the PNA.

S.25 Factors

(a) the income, earning capacity, property and 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;

37. It is relevant to consider the difference in income and capital between the signing of the PNA and Separation. Schedule A of the PNA sets out the disclosure from H stating his income at that time in 2013 as £82,000 per annum net, no liabilities, and ownership of the former family home valued at £500,000; pension arrangements valued at £711,000 and savings and other investments amounting to £176,000.
38. W's statement of disclosure at Schedule B sets out her income as £3800 per annum net which is her Eastern European income, obviously worth significantly more in that country than the UK; no liabilities; ownership of a property in eastern Europe valued at £22,000; no pension, and savings of £800.
39. The agreed ES2 for the final hearing shows that H's investments and savings now total £694,000, and he has £8000 in his bank accounts. Savings and investments have therefore increased by around £526,000 since the date of the agreement. This includes two bonuses received in October 2022 of £68,964 and October 2023 £93,309, post-separation.
40. In addition, H has acquired shares which he cannot realise until December 2026 with an estimated net value of £365,000, which are agreed by W to be separate property as

they relate to his employment prior to their marriage. H is Managing Director of a limited company and has been employed by the same entity for around 26 years. He has enjoyed a very significant increase in his income during the marriage to its current level of £198,972 net per annum. He has given notice that he will retire on 1 January 2025. H has pension assets of £1.4m and anticipates pension income of around £65,000 p.a. H has also paid into a Junior ISA for A which has a value of around £70,000.

41. W has not worked during the marriage. She intends to complete a master's degree in Psychotherapy over the next 4 years starting in October this year. It is anticipated that this will provide her with gross income of £35,000 - £42,000 per annum. W currently has no mortgage capacity.

(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;

42. H owns and lives in the former family home valued at £600,000, where he intends to remain. He states his income need as £5,522 and capital need as £51,325 excluding housing. W makes no claim on the FFH but clearly needs housing for herself and A, and B is 19 and still living at home.
43. A's expenses are estimated by both parties at around £900 - £950 pm and H proposes that after payment of CMS of £379 he will contribute £300 pm, which would leave around £270.
44. In terms of liabilities H has small amounts due on his credit card (currently around £1700), which he pays off monthly. W seeks an amount to cover her outstanding legal fees of £13,500, and an amount of £3000 due in respect of a loan from her friend which is evidenced by an agreement. She has also recorded on the ES2 outstanding loans from H in respect of legal fees and payment of costs of an operation for her father amounting to around £6,000.

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

45. The parties had a comfortable standard of living but not an extravagant lifestyle. They lived in a 4 bedroom detached house in a good area with a large garden and enjoyed regular holidays, usually more frequently than once a year, in the UK and abroad. They did not eat out often. During the marriage H had paid for B to attend a private school.

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

46. H is 65 and W is 41. This is a marriage of 9 years.

47. (e) Neither party has a physical or mental 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;

48. W has been the main carer for A and the current childcare arrangements are that A is with her for just over 70% of the time. H is likely to provide additional help with taking A to and from school and his activities after he retires at the end of this year.

49. (g) *conduct* is not raised as an issue.

(h) *the value to each of the parties to the marriage of any benefits... which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring;*

50. H's pension assets total £1,403,680. W will in due course be entitled to a state pension. In respect of the parties' respective pensions, the expert report of IWC Actuarial states that to provide equality of income in retirement in relation to the marital resource there should be a PSO in favour of W of 7.4% applied to H's SIPP. W submitted her own calculations in respect of her case for a pension sharing order of 13% of H's SIPP. These calculations were not put to the expert. The PNA provides for the parties to benefit from additional pension rights acquired on an equal basis. In the circumstances I find that it is appropriate to rely on the recommendations of the expert as to how to achieve equality of income in retirement, which I find is the fair outcome for the parties in relation to pension provision taking into account the PNA.

Analysis and Distribution

51. S. 25 requires the court to consider all the circumstances of the case, first consideration being given to the welfare whilst a minor of any child of the family who has not attained the age of 18. In this case there is one minor child of the family, A, who is aged 10. The PNA is one of the important circumstances that I bear in mind. I have found that the overall effect of the agreement is unfair when looking at the clauses that apply to separation after five years of marriage. The court can give effect to the parts of the PNA which are not unfair, in particular the provisions which relate to pension and H's retention of the former family home and his premarital assets. One aspect of the agreement which I find should be taken into account as a relevant circumstance is the provision that H agreed at clause 11 to provide financial support for B whilst he remains in the UK and in receipt of full-time education up to and including First Degree. That is to be calculated by using the same formula that is used by the CSA or equivalent body, i.e. CMS. Obviously this is not the same amount as the £27,000 sought by W as a capital need, and it would appear likely to be a figure of around £379 pm which is said to be the likely amount of CMS payable for A based on H's anticipated retirement income (amounting to £4548 p.a). I factor this into my consideration of what is reasonable to award as maintenance to W in respect of her income needs against the background of the PNA not providing for maintenance on separation after 5 years.

52. Dealing first with W's housing needs, I bear in mind the reference to "modest freehold accommodation" in the PNA when considering what is fair in all the circumstances. W accepted in evidence that she could not expect to have the same standard of living after divorce. However, this acceptance was not apparent from her list of criteria for her housing needs that she put to the court which was rather more of

a wish list. I am satisfied on the evidence that W's reasonable housing needs could be met by a property costing £350,000 in the area that she wishes to live in, as suitable examples were provided by H and W's objections were not reasonable. Of course it is understandable that ideally she would want a property which has second and third bedrooms of a similar size but it must be borne in mind that B is now over 18 and therefore not the court's first concern, and the property examples provided are in the area which W wishes to live and reasonably close to good schools for A.

53. Whilst W currently has no mortgage capacity, that will change after she has completed her training and has employment as a Psychologist as she intends. At that point she will have the opportunity to obtain a mortgage and move to a bigger property if she wishes.
54. In respect of additional capital needs, it is understood that no stamp duty will be payable by W. I shall allow £20,000 in respect of the costs of moving and buying appliances and furnishings for the property, which can reasonably include the items which W would like to buy for A's benefit such as a piano/keyboard, basketball hoop and any pets.
55. H accepted that it is reasonable for W to pursue her professional training in order to maximise her income. I find that W's ability to pursue professional development has been curtailed due to her role as the main carer for the parties' son and it is reasonable to allow £44,100 in respect of her educational needs to enable her to become financially independent on completion of this course.
56. In respect of liabilities, the loan amount of £3,000 from a friend is evidenced by a written agreement and requires repayment within 30 days of W receiving her financial settlement. I find that this is a hard debt. W's outstanding legal fees of £13,500 are costs of these proceedings, and the usual position is that each party will bear their own costs. The PNA provides that the parties will bear their own costs in relation to divorce proceedings, "*including obtaining a consent order as to ancillary relief*". The agreement does not specifically deal with contested financial remedy proceedings.
57. I make no allowance for the remaining amounts said to be due to H which I consider to be soft loans.
58. The total capital award is therefore £370,000 housing/furnishing fund, £44,000 for education fund and £3,000 for the hard loan = £417,000.

Income Needs

59. H's open offer is for £670 pm for 3 years which he says is based on the PNA amount of £550 pm in clause 9 (Separation between 2 and 5 years) but adjusted for inflation. The offer is made on the assumption that W can work part time and earn £1500 pm. I find on the evidence that this is not realistic. I accept W's evidence that her course will require 2.5 days per week of time for studying and work placements, and that given her role as the main carer for A this is likely to be spread across 3 or even 4 days.

60. However, I find that from the end of this year H will be undertaking more to-ing and fro-ing for A after his retirement and W will be spending less time driving A to his various activities; after the next school year this will reduce further due to her intention that A will attend one of the schools in the area in which she will live in order to reduce travelling time and to enable A to be able to get to school himself when he is old enough to do so within the next few years. This means that W will have the time to work part time and with extra assistance from H, I find that it is likely that she will be able to complete her studies and clinical work generally within three days per week and it is reasonable to expect that she will be able to undertake paid work for around 10 to 12 hours per week.
61. H provided examples of work which would be entirely suitable and within W's skill set, such as the flexible part time working from home for Amazon which is paid at £12-£25 per hour. Prior to coming to this country W said that she worked in eastern Europe on an "almost full time" basis on websites looking at technical aspects in relation to printers. In response to a question put to her in cross examination about her earning capacity she said that the reason for not working was that she would prefer to work in the area related to her profession (psychology) and that the proposed work would not pay that much and she wanted to concentrate on studying. In submissions she said that she did not want to dramatically affect A's lifestyle and wants to be there for him, and she said it would not be fair for her to have to compromise on that to save money for H.
62. The legal position is that both parties are expected to maximise their earning capacity and that includes whilst undertaking studies. It is not fair to expect H to fund the entirety of her income needs for the next 4 years until the end of the part time training course, and the court is required to consider terminating the financial obligations between the parties as soon as the court considers just and reasonable.
63. I find that W's earning capacity is limited by the fact that she will be undertaking her professional studies, which H supports her doing, but she can reasonably work for 10-12 hours per week from January when H is due to retire and will be available to assist more with A. I consider this is most likely to be at around minimum wage level, therefore: 10 - 12 hours pw at £12 ph = £520 - £624 pm, which I will assess as an average of £500 pm on the basis that such work may vary in hours and availability.
64. W has suffered a disadvantage in earning capacity by reason of the marriage during which the parties agreed that she would be the main carer for the children of the family and H's work commitments were prioritised; he was of course the only breadwinner in the family throughout the marriage. H agrees that W should gain the professional accreditation she seeks in order to maximise her future income and his offer factors in the costs her studies. It is clear that she will require financial support during the period of 4 years when she will have limited earning capacity and will remain the main carer for the parties' child who is 10 years old now and will therefore only be 14 when she finishes this course in around July 2028.
65. H has a very high income, and his level of income has significantly increased during the marriage, which has been possible as a result of being supported by W with childcare.

66. With regard to reasonable income needs I bear in mind the PNA and I must also take into account the section 25 factors and it is relevant that H has a very high income and this provides him with the ability to meet W's reasonable income needs without any difficulty. The standard of living was a comfortable one as a result of H's high earnings. I bear in mind that H is due to retire in 6 months' time. I am therefore assessing income needs with these factors in mind and with a view to striking an appropriate balance between what the parties agreed 10 years ago and the fact that during the marriage there has been a significant increase in H's income and the addition of a child of the family who is now aged 10.
67. The amount sought by W is £3858 pm. Looking at the breakdown of her figures I find that this is certainly in excess of reasonable needs. I consider that reductions are necessary in respect of various amounts including for cleaning, gardening, some maintenance costs, pet expenses (there is currently no pet), holidays and general shopping. Taking a broad brush approach I assess reasonable income needs as £2,500 per month (£30,000 p.a).
68. Taking into account the fact that W will receive on a monthly basis: CMS of £379, child benefit of £111 and I find that she ought to be able to earn £500 per month, the shortfall during the years that she will be studying is around £1500 per month. I therefore find that the appropriate term for payment is for 4 years to enable her to adjust to independence without undue hardship, and thereafter a clean break. It is clear that H can easily meet this shortfall – it is less than 10% of his current net monthly income. In the next six months until retirement he will receive a net amount of £99,486. Capitalisation of payments of £1500 per month over the next four years is a total of £72,000, and this is the amount I find H should pay as capitalised maintenance.
69. The total amount is therefore £417,000 plus capitalised maintenance of £72,000 = £489,000, which shall be paid to W within 30 days of the date of the Order. W should vacate the former family home within 4 months of receipt of this amount, which ought to give sufficient time to purchase an alternative property. The court will expect that H will be reasonable in allowing some amount of limited extra time if there are delays in the moving process which are not the fault of W. If W moves from the family home prior to H's retirement she will be entitled to receive CMS calculated on his current earnings at a much higher rate which will more than cover any delay in her being able to obtain an income from employment.

Pension

70. As set out above, my Order in respect of pension sharing is that there shall be a PSO in favour of W of 7.4% applied to H's SIPP.
71. The net effect of the orders is set out below. I consider that this represents a fair distribution of the marital assets taking into account all of the circumstances.

District Judge Phillips

Net Effect Table

| | | Husband | Wife |
|------------------------|---|----------------|--|
| Capital | FFH net value | 582,000 | |
| | H investments | 694,000 | |
| | Additional shares in Dec 2026 | 375,000 | |
| | Cash at bank | 8000 | 2,000 |
| | W's capital award | | 417,000 |
| Total capital | | 1,659,000 | 419,000 |
| Liabilities | W's hard debts | | 3000 |
| | LS to W | 489,000 | |
| Capital Balance | | 1,170,000 | 416,000 plus £72,000 capitalised maintenance |
| Income | current | £16,581 pm | £0 pm |
| | post Order/ in retirement for H from January 2025 | £65,000 p.a | £30,000 p.a comprising £18k maintenance, child benefit, CMS and £6k earnings |
| COSTS | outstanding | £24,660 | £13,500 |