Neutral Citation Number: [2024] EWCA Civ 84

Case No: CA 2023 001078

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE
Sir Jonathan Cohen
[2023] EWFC 50

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2024

Before:

LORD JUSTICE BEAN
LADY JUSTICE KING
and
LORD JUSTICE MOYLAN

- -

Between:

Lazaros Panagiotis Xanthopoulos	**Appellant/ Claimant**
- and –	
Alla Aleksandrovna Rakshina	**Respondent/ Defendant**

- -
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Philip Cayford KC and William Tyzack (instructed by **Hall Brown Family Law**) for the **Appellant**
Lucy Stone KC and Helen Williams (instructed by **Family Law in Partnership Ltd**) for the **Respondent**

Hearing dates: 1-2 November 2023

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Approved Judgment

This judgment was handed down remotely at 11.00am on 8 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice King:

1. This is an appeal against a financial remedies order made by Sir Jonathan Cohen ("the judge") on 17 May 2023 under section 17 of Part III of the Matrimonial and Family Proceedings Act 1984 ("MFPA 1984") ("Part III"). The order follows his judgment dated 4 April 2023 by which he made financial provision for the appellant, Lazaros Panagiotis Xanthopoulos ("the husband") following his divorce in Russia on 11 March 2021 from his wife, Alla Aleksandrovna Rakshina ("the wife").

2. Part III provides for a party, with the leave of the court, to apply for financial relief in England and Wales after an overseas divorce. In broad terms the judge's order provided for the husband to have a life interest in a property in Greece to be purchased by the wife, at a cost of no more than €600,000 together with €60,000 for furnishings and periodical payments of approximately £60,000 pa for a period of four years. In addition, various orders for costs which had been made against the husband during the litigation in favour of the wife and her brother, Evgeny Aleksandrovich Rakshin ("the brother") approaching £1.04m were ordered, not to be enforced without the leave of the court.

3. The issue before this Court is whether the order made by the judge is, as contended on behalf of the husband, unfair as it is too low and leaves the husband in debt and in a position of real need.

The Legal Jurisdictional Backdrop

4. The jurisdiction for Part III applications for the purposes of these proceedings is found between sections 12 and 18 MFPA 1984. By section 16(1) MFPA 1984, the court must consider whether it is appropriate 'in all the circumstances of the case' for a court in England or Wales to make an order for financial remedy. Section 16(2) sets out a number of factors to which the court shall have regard. In the present case, where the parties have agreed that the husband's award shall be made by reference to Part III and there is no question of an order being made in Russia, the relevant matters are found at section 16(2)(a – c) which require the court to have regard to the parties' connection to: "this jurisdiction, the country which dissolved the marriage and any other country outside England and Wales".

5. Section 17 MFPA 1984 incorporates the principles of sections 25 and 25A of the Matrimonial Causes Act 1973 ("MCA 1973"), including the obligation where the court is considering whether and in what manner to exercise its powers under the Act, to consider whether a clean break is appropriate.

6. Finally for the purposes of the present case, section 18 MFPA 1984 sets out the matters to which the court is to have regard in exercising its powers under section 17. Section 18(2) requires the court to "have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen." Once again, the MFPA incorporates the MCA 1973, as section 18(3) requires the court to have regard to the matters mentioned in section 25(2) of MCA 1973. I set these out for completeness as follows:

> "25. (2) As regards the exercise of the powers of the court under section 23(1)(*a*), (*b*) or (*c*), 24 , 24A , 24B or 24E above in

> relation to a party to the marriage, the court shall in particular have regard to the following matters—
>
> (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
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> (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;
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> (c) the standard of living enjoyed by the family before the breakdown of the marriage;
>
> (d) the age of each party to the marriage and the duration of the marriage;
>
> (e) any physical or mental disability of either of the parties to the marriage;
>
> (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
>
> (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
>
> (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."

7. I should note that the appeal itself focused on the husband's desire to reargue the case on its facts by reference to what he argued was new material and upon his general assertion that the outcome had been unfair. The law was taken as read and the Court was not, to any extent, taken to the authorities bundle.

8. In this context I emphasise that in so far as the trial was an exercise in primary fact finding, it can only be challenged if the Judge's conclusion is rationally unsupportable: see *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 481 at [2] per Lewison LJ.

Background

9. The husband is aged 44. He was born in Russia and moved to Athens as a child. The wife is aged 43 and was born in Siberia where she still lives. The parties met in 1999 while studying at a university in Moscow and got married in March 2006.

10. There are two children of the marriage. The elder daughter ("A") is now aged 17 and lives in London with a nanny in a flat, owned by the wife, whilst she attends school here. Since the breakdown of the marriage, A and the husband have been estranged. The younger child ("S") is aged 7 and lives in Siberia with the wife. S has been the subject of almost continuous proceedings between the parties.

11. From 2008, the wife has worked full-time in her family supermarket business in Siberia called "Maria-Ra". Her title is that of Chief Finance Officer ("CFO") although her role, as found by the judge, is more administrative rather than strategic. The shareholding of the business is held as to 25% each by the wife and her father, brother and mother (who is divorced from her father). Dividends are paid irregularly and the wife's case was that she is a mere nominee shareholder acting entirely on her father and brother's direction. This includes whether she does or does not retain, for her own use, any dividends paid to her.

12. For about 18 months beginning in late 2006, the husband worked in the family business. This is the last paid employment that the husband has had. Although the husband has from time to time assisted with property deals for friends and relatives, his failure to obtain paid employment was, according to the wife, an issue which caused considerable tension within the marriage.

13. In the summer of 2011, the parties first moved to England as they wished for their elder daughter, A, to be educated here. They lived in a rented property and divided their time between London and Siberia. The wife continued to work in her family business and the husband and their daughter spent the school term times in London, whilst the wife travelled between Russia and England. Holiday times were spent at home in Russia or elsewhere out of the UK.

14. In 2013 the family returned to Russia to live and in November 2013, while in Moscow together, the husband and wife visited a notary to enter into a post-nuptial agreement ("PNA"). The key terms of the agreement can be found at para.[111] below.

15. In 2016, the family once again returned to London in order for A to resume her education in this country. In February 2016, the wife with funds from her family and her own savings, bought for £6.25m a substantial flat in Ennismore Gardens ("the Ennismore Gardens flat").

16. From 2016 until 2020, the wife continued to work in Siberia and the husband remained without any employment or other source of income, spending much of his time during term time in London. On 1 September 2020, the wife completed the purchase of another flat in Ennismore Gardens. As the judge subsequently found at the conclusion of a preliminary issue trial heard in July 2022, that property although registered in the wife's name, is held by her on trust for her brother. That finding was not the subject of an appeal by the husband. The judgment can be found at [2022] EWFC 110. Significantly, the husband participated fully in the preliminary issue hearing. In addition to the wife and the brother, he gave oral evidence, as did a friend of his, and his two professional witnesses, the parties' accountant and the conveyancing solicitor.

17. The husband was ordered to pay the costs of the wife, assessed at £292,856, and those of the brother assessed at £334,903. This was in addition to his own costs quantified at £296,705; a total of £924,464 was therefore spent on this preliminary issue.

18. In October 2020, the husband commenced divorce proceedings in England.

19. The parties' marriage was brought to an end by a decree of divorce granted in Russia on 11 March 2021. Permission to apply under Part III was given by consent on 15 June 2021.

20. Litigation between the parties began on 21 September 2020 when the husband issued, but did not serve, a petition for divorce in England. On 2 October 2020, he obtained a without notice freezing order and, having obtained the order, served his divorce petition and the freezing order later that same night when the wife came back into this country from working in Siberia. The effect of the freezing order was to leave the wife's principal bank account with Coutts frozen. Following the return date on 15 October 2020, in a reserved judgment dated 19 October 2020, the District Judge (DDJ Hodson) in his judgment, described how he had had concerns about making the *ex parte* order and that there had been at that time, a lack of information which he would have expected. By the time the matter came before him again on the return date, the picture, he said, was "quite different". The District Judge at para.[18] was "satisfied that there was much which should have been disclosed on the without notice application." He had not, he said, seen anything which established that there was "any dire emergency requiring the very significant steps taken by the court office and judiciary for an order to be made that afternoon or within a matter of hours".

21. Accordingly, the freezing order was discharged upon an undertaking from the wife to give 95 days' notice before any intended withdrawal from the Coutts account (the notice period required under the terms of the account in question). The District Judge made an order for costs against the husband assessed at £42,500. This was the first of many orders for costs made against the husband in the light of what was to become his persistent litigation misconduct.

22. The account in question ("the Coutts account") held £12.7m which had been given to the wife by her mother. The judge accepted that this money, whilst not held by way of any formal trust, was part of the grandmother's own divorce settlement and was intended to be used for the benefit of her two grandchildren. The judge noted that other than the interest, the capital sum had been untouched for almost ten years until 2021. It was only then, when the wife had exhausted all her personal savings and borrowed £1.367m from the grandmother to pay her own and the husband's costs, that she started to use the capital to fund both sides of the litigation. By the time of the trial, the balance in the account had shrunk to £7.7m.

23. On 13 October 2020, the wife issued a divorce petition in Russia. An application for a *Hemain* injunction was heard by Nicholas Cusworth KC sitting as a Deputy High Court Judge, on 1 December 2020. An order was made requiring the wife to take all necessary steps to seek a stay of the proceedings in Russia. The following day the wife wrote to the Russian court seeking to stay her proceedings.

24. Uninvited by the court, the wife and subsequently the husband have, following receipt of the draft of this judgment, sent to the Court extensive submissions in support of their respective contentions as to whether the wife was or was not, in breach of either the terms or the spirit of the *Hemain* injunction. It is neither necessary nor appropriate to determine the issue which is simply a further example of the bitterness surrounding this atrocious litigation. Whatever the truth may be, what matters is that (i) the Part III

proceedings were issued by consent and (ii) the Court had in mind that the wife is not immune from criticism she having removed S from the country in breach of a court order (see para. [28] below).

25. In December 2020, the Russian proceedings were suspended due to Covid restrictions, but a decree of divorce was subsequently made in Russia on 8 March 2021. As a consequence, the jurisdiction dispute was never resolved before the English courts. Subsequently, an agreement was reached between the parties that leave should be granted by consent for financial remedy proceedings to continue in this country by way of Part III. Whilst the wife strenuously denies having been in breach of the *Hemain* injunction, on the face of it it is hard to see any other interpretation of her actions. Unsurprisingly, those representing the husband lay heavy emphasis on this piece of litigation misconduct on the part of the wife.

26. On 22 January 2021, an order was made for the wife to pay interim periodical payments of £10,000 pcm for the rent of a property in Battersea for the husband together with £10,000 pcm for general maintenance. It is unclear how much time the husband has spent at the flat. The judge at para.[113] referred to his 'impression' that the husband spent the bulk of his time in Greece. That order for maintenance would have come to an end upon the making of the order subject to this appeal and, pursuant to the judge's order, would have been replaced with an order for maintenance of £60,000 pa for four years (with an additional £15,000 for the first year to cover medical and relocation costs). In the event, as a stay was ordered upon the granting of permission to appeal, the husband has continued to receive £20,000 pcm for a further 9 months, money which has had to come from the Coutts account.

27. At the conclusion of a nine day Children Act hearing, the judge held that the children were habitually resident in Russia and made an order on 12 January 2022 granting the wife's application for the recognition of a Russian court order which had provided for the children to live with her wherever she chooses. Permission to appeal was refused on 14 April 2022.

28. The matter came before the judge again on the husband's application on 13 May 2022. The husband applied to adjourn the hearing. The judge refused to do so and dismissed the totality of these renewed Children Act applications on the basis that they were an attempt to revisit his January findings and his order permitting the wife to take S to Russia. The husband made an urgent application to appeal and for a stay preventing the wife from leaving on the flights which, in the light of the January order, had been booked for the wife to return with the S to Russia. The stay was granted on 17 May 2022, but in breach of the stay the wife left as planned. The husband's appeal against Cohen J's dismissal of his Children Act applications, was subsequently dismissed on 19 August 2022 at [2022] EWCA Civ 1167 and the stay was lifted.

29. There remains a breach in the relationship between the husband and A and he has not seen S since May 2022.

30. I refer to the Children Act proceedings only to demonstrate that the Court has in mind that the wife took S out of the country when the stay on the order permitting her to do so was still in force.

31. The financial remedy trial finally took place on 15 March 2023 in the absence of the husband, he having failed to attend.

The husband's approach to the litigation:

32. It is unnecessary to set out in detail the countless hearings that have been held in these proceedings which have included applications by the husband for the judge to recuse himself and regular applications for adjournments. The flavour of the husband's approach can be gleaned from the fact that from September 2020 when the proceedings started, he has instructed seven firms of solicitors, twelve King's Counsel and numerous junior counsel in the divorce, money and children proceedings. He has made a total of eleven applications for legal funding granted by way of Legal Service Payment Orders ("LSPO") and was awarded a total of £3.12m in relation to jurisdictional, children and financial proceedings. Despite this substantial sum, there has been an overspend on his behalf of £877,281 ("the overspend") spread between five different solicitors, all of which is outstanding. By the time of the appeal, the costs incurred in the proceedings overall amounted to an astonishing £9.5m.

33. In addition to the outstanding overspend owed to legal advisors, there are also multiple costs orders amounting to approximately £1.04m, orders which have been made against the husband in favour of the wife and her brother as a consequence of his litigation misconduct. There are, in addition, a number of orders reserving costs.

34. The husband's chaotic approach to litigation with scant regard for court orders has continued in respect of this appeal. The office has been bombarded by emails and ancillary applications (five in all) such that half a day had to be added to the time estimate in order to deal with them. On the one hand, the husband filed an unagreed bundle of over 900 pages, virtually none of which has been referred to in argument, and on the other hand he refused to agree to a document which contained the responses to questions which had been raised with the single joint expert (Kirill Saskov) being included in the appeal bundle on the basis that it was not a 'report'. This necessitated that document together with other unexceptional material, having to be included in a "Respondent's unagreed bundle".

35. At lunch time on the day before the appeal hearing, yet another application was made by the husband to rely on a second unagreed bundle. This bundle compromised chronologies, including one which Mr Cayford KC on behalf of the husband, accepted as being 'highly partisan' in relation to the wife's alleged litigation misconduct, together with various schedules. One schedule was a complex document purporting to show that the wife had undisclosed assets or assets which had not been accounted for. As the wife's legal advisors had no opportunity to analyse this document, which in any event seemed to the court to be made up of precisely the information that should have been put in cross examination had the husband chosen to take part in the trial, the court refused to consider that schedule, but agreed to look at the other schedules and chronologies *de bene esse.*

36. It came as no surprise when 10 days after the hearing the husband's solicitors submitted and asked the Court to consider a "Clarification and correction note filed on behalf of the Appellant". The wife was given the opportunity to reply and equally unsurprisingly, protested in the strongest terms.

37. The document filed by the husband is not a "Clarification and correction note". It is a substantial document running to five pages making detailed additional submissions as to why "Sir Jonathan Cohen was plainly wrong in both his computation of the assets, and in his designation or characterisation of them (which in turn influences the analysis of the extent of H's sharing claim)".

38. I shall not be taking this document into account save to the extent that it clarifies what I understood to be the case in any event, namely that the husband does not accept that this is a case to be decided by reference to his needs and that, although he believes that only a retrial would meet the justice of his case, he would be content for this court to substitute its own order, ideally in the terms of the open offer made by him the day before the appeal commenced.

39. Inevitably, the litigation has taken a considerable toll on the parties. The husband has found the breach in his relationship with his elder daughter very difficult and has found the absence of his younger daughter hard to bear.

40. I have well in mind that the husband has suffered from depression, at one stage sufficiently serious for him to require inpatient treatment for a month between October and November 2022. Any court will feel compassion for a litigant who is suffering significant mental health issues, no doubt occasioned in part as a reaction to the strain of the breakdown of the marriage and subsequent litigation. That does not, however, excuse the litigation conduct of the husband. He has had the great good fortune, because of the wife's liquidity, to have been able to instruct some of the leading and most highly respected specialist solicitors and counsel in the country, all of whom are familiar not only with litigation of this type, but also of representing clients with the sort of health issues from which the husband has suffered. Notwithstanding their various expertise, huge costs have been run up and order after order breached.

Litigation misconduct

41. It is undoubtedly the case that the wife has been guilty of some litigation misconduct, regardless of whether she was in breach of the *Hemain* injunction, she removed S to Russia before the dismissal of the husband's appeal against the order giving her permission to relocate. She has also been late in making payments to the husband, on a number of occasions, money which he was due to be paid either by way of maintenance or under LSPOs.

42. The wife's conduct is obviously open to justified criticism. I read *de bene esse*, a schedule produced by the husband without permission and without the wife having an opportunity properly to comment, which purported to show the wife's litigation misconduct. Mr Cayford put it, that the litigation misconduct: 'cuts both ways'. I disagree. The wife's misconduct pales in significance when compared with that of the husband, whose behaviour in these proceedings has been egregious. It is he who has been substantially responsible for the frankly horrifying level of costs. The fact that orders for costs have been made against the husband approaching £1.04m speaks for itself in a jurisdiction where the general rule is that costs land where they fall.

43. It should be borne in mind that under the Family Procedure Rules 2010 r.28.3(5) ("FPR 2010") the general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party. Further, some of the

orders for costs made against the husband are in relation to the Children Act proceedings. Orders for costs in children cases are rare and ordinarily only made where a party has been guilty of reprehensible behaviour because, as MacDonald J said in *K v K* [2016] EWHC 2002 at para.[30 vi)]: "the general practice of not awarding costs against a party in family proceedings in the absence of reprehensible behaviour or an unreasonable stance is one that accords with the ends of justice (*Re T (Costs: Care Proceedings: Serious Allegation Not Proved)* [2013] 1 FLR 133 at para.[44])."

44. It follows therefore that the orders for costs made against the husband in these proceedings were made under FPR r.28.3(6) which provides that:

> "(6) The court may make an order requiring one party to pay the costs of another party at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them)."

45. A total of eight separate costs orders were made against the husband between October 2020 and 16 September 2022.

46. Mostyn J gave a judgment on 12 April 2022 following one of the husband's applications for a LSPO. The judgment can be found at [2022] EWFC 30. Mostyn J expressed his frustration at the parties' failure to comply with the rules, a feeling with which I have considerable sympathy given the way the husband has behaved in relation to this appeal. Mostyn J said at para.[3]: "It should be understood that the deliberate flouting of orders, guidance and procedure is a form of forensic cheating, and should be treated as such."

47. Mostyn J rightly described the level of costs at para.[12] as 'beyond nihilistic' and as 'apocalyptic'. Unfortunately, it would appear that Mostyn J's excoriating judgment had little or no effect on the husband's behaviour, as by the time the matter came to trial, Mostyn J's worst predictions had been justified and the costs were approaching £9m.

48. The judge in his judgment held as follows in relation to the husband's litigation conduct and costs:

> "Litigation conduct and costs
>
> 141. It is well established by *Rothschild v De Souza* [2020] EWCA Civ 1215 that litigation conduct (or misconduct) can be taken into account as conduct within the terms of Section 25(2)(g) Matrimonial Causes Act 1973. Conduct can lead to a party receiving less than their needs.
>
> 142. If the conduct in relation to costs was bad in *Rothschild*, that case does not begin to approach what has happened in this case.
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> 143. The extent of the costs in the children litigation is horrifying but I cannot take them further into consideration. Each party litigated furiously in England and Russia. Very limited costs orders were made in those proceedings and in general terms I did

not find that either party's stance in them to have been unreasonable.

144. However, the costs incurred in these proceedings by H in prosecuting his application for financial remedies is wholly disproportionate in many different ways and has caused W to incur excessive and unnecessary expense.

145. What has H done with his expenditure of £2.49m? He has filed a Form A; he produced an excessively lengthy questionnaire on the day or day before the first directions appointment so that W had no time to consider it; he produced some but defective answers to a questionnaire and a notice to admit facts served on him. He has taken no other substantive step in these proceedings except to serve a report, for which there was no provision, from a shadow expert on 8 March 2023, two working days before this hearing was due to begin, the first draft of which had been in his possession since November 2022 and a large part of which was in Russian.

146. He has changed solicitors on 7 occasions. Each set of solicitors has had to read in to the case, duplicating enormously the costs.

147. There have been no less than 11 LSPO applications made by H, normally without a budget or one provided very late, and sometimes without a formal application ever having been issued.

148. H has breached nearly every order that has been made. The schedule prepared by counsel for W recites 35 breaches of 15 orders made, all bar one by me, at 12 different hearings.

149. I have not the slightest doubt that this litigation would never have been conducted by H in the way that it has been if he was paying his costs from his own pocket.

150. *The peak of H's profligacy can be seen in the grant of £483k provided by way of LSPO to his last set of solicitors in early February 2023. They remained acting for him until their departure on the first effective day of the trial. In that time they did not produce one of the ordered documents. They provided two medical reports and that of the shadow expert to whom I have just referred. In short, they have added next to nothing to this case. I stress that this is not a criticism of those lawyers. They are bound by their instructions (or lack of them).* I accept that they have done a lot of work in a short time – but W's funds have been significantly further eroded for no benefit." *(my emphasis)*

The Injunction - privileged documents

49. The husband's continuing attitude to the litigation was further exemplified by his behaviour in relation to certain privileged documents which were disclosed in error to his solicitors on 4 February 2023. The few relevant privileged documents were found towards the end of a 7,000 page bundle sent to the husband's solicitors (by then his 7th firm of solicitors) in order to assist them in reading into the case at speed. The solicitors, as is required in such circumstances, deleted the material unread. The husband who had perfectly properly been sent the bundle, however refused to do so, and expressed his intention to use the material. There inevitably followed an application for an injunction. The injunction order was made on 1 March 2023 which prohibited him from "sharing, taking copies of, or referring to "the privileged documents"". He was also ordered to provide written details of anyone to whom he had shown copies. He did not do so.

50. The injunction order on 1 March 2023 was continued on 9 March 2023 and again on 17 May 2023.

51. On 9 March 2023, it became apparent that the husband's friend, Ms Francesca Gillard, had been provided with copies. The husband was ordered to use his best endeavours to ensure the copies were deleted and if in hard copy, returned to the wife's solicitors. The husband was further ordered to confirm in writing whether he sought to rely on any of the documents and if so which. The husband has failed to comply and the injunction remains in place.

52. The impact of the extraordinary level of costs on the ultimate award to the husband is further considered below.

The task facing the judge:

53. The judge had an unenviable task; not only did he have to deal with the wholesale failure of the husband to respect the authority of the court and comply with its orders, but the case itself threw up a number of issues any one of which would have added a layer of complexity to what would otherwise have appeared to be a relatively straightforward 'needs' case. They were: (i) that these were Part III proceedings; (ii) the wife's interest in the family business with the related preliminary issue; (iii) the post nuptial agreement; (iv) the husband's litigation misconduct; (v) the approaching £900,000 debt the husband owed to various solicitors and the outstanding orders for costs made against him of £1.04m.

54. Before considering whether the judge, having woven his way through these various issues, reached an order which cannot now be successfully challenged, consideration must first be given as to whether the judge should have proceeded with the trial in the first place.

The application for an adjournment 9 March 2023: *the medical evidence*

55. On 14 November 2022 at a directions hearing, an application was made for the final hearing listed for March 2023 to be adjourned on the basis of the husband's asserted ill health. No medical evidence was produced. The judge refused the order and directed that any further application must be supported by "proper and admissible" medical evidence.

56. On 19 January 2023, the husband appeared in person and declined to specify the nature of his illness, but said that he intended to make an application in relation to medical matters. The order specifically recorded that the court found the husband to be "competent". The judge made an order that if the husband wished to make an application in relation to medical matters, he must include an unredacted report and unredacted medical records from 1 November 2022 to the date of the application. Unredacted medical records were not supplied.

57. The husband's current solicitors had been instructed on 2 February 2023. At the hearing on 9 February 2023, the court made a LSPO amounting to £634,000 to enable these most recent solicitors to prepare the matter for trial on 13 March 2023. The first £434,000 was paid. All of the money was spent without any of the court's directions having been complied with.

58. A further application to adjourn the trial was refused on 9 February 2023. The husband had failed to serve any medical evidence and refused to permit the court to read any report unless the court agreed that it should not be disclosed to the wife or her advisors.

59. A hearing had already been listed for 9 March 2023 which was intended to be the return date for the injunction in relation to the privileged material the judge had made on 1 March 2023.

60. In the event, on 7 March 2023, an application was made for the final hearing due to start on 13 March 2023 to be vacated on medical grounds. This was the husband's fourth application to adjourn the final hearing.

61. The husband had obtained, but did not serve, a report from a psychiatrist, Dr Mynors-Wallis, dated 27 February 2023. Dr Mynors-Wallis had examined the husband three days previously. He expressed the opinion that the husband was suffering from a major depressive disorder of moderate severity, but that he was able to participate in the proceedings. The husband, he said, would need help from his legal team in weighing up relevant information and his reduced concentration may mean that he needed additional time to do so.

62. Having received that report, those representing the husband went back to Dr Mynors-Wallis to ask him about transitioning medications which had been suggested by him as possibly being beneficial. More relevantly, Dr Mynors-Wallis was asked whether the husband could participate in the proceedings when he would be required to give evidence and be cross examined. Dr Mynors-Wallis was told that the husband would be cross examined for perhaps "2 to 4 days, during which time he will be unable to communicate with his legal team at all". It is unfortunate that the information was expressed in such a way in circumstances where the witness time template showed cross examination was anticipated to last for only one day, plus time for slippage.

63. Dr Mynors-Wallis filed a second report dated 6 March 2023, in which he said that as a result of his illness, the husband would be at a disadvantage in cross examination as poor concentration is a key feature of his depression. He noted however that there was also a need for court proceedings to continue where possible and that the completion of the proceedings "may be beneficial for all parties involved". Both reports were served on 7 March 2020.

64. The judge heard and dismissed the application on 9 March 2023. Notwithstanding that he had been ordered to attend in person, the husband attended the hearing remotely, but did not put his camera on. It was thought that he was in Greece. Against the backdrop of Dr Mynors-Wallis' opinion that the husband was fit to participate in the proceedings but may need more time due to poor concentration, the judge put in place a number of measures which were designed to assist him to cope with the pressures of the hearing, in particular he: (i) put back the hearing by two days to 15 March 2023; (ii) did not require the applicant to be in isolation from his advisors during cross-examination; (iii) suggested that the court would sit for shorter days so that the applicant's legal team would have the opportunity to take instructions on the evidence as it happened; (iv) if required, the husband would be provided with breaks; (v) such other measures as the court thought appropriate as the hearing progressed.

65. The judge said at para.[9], in the judgment which is the subject of this appeal, that he was convinced that these measures would allow the husband to have a fair trial: "The fairness of the proceedings was the touchstone for my determination."

66. The husband was given until 14 March 2023, the day before the trial was now due to begin, to file his position statement. The wife was to file hers first giving the husband time to respond to it. It may be thought that the judge was being generous in that respect given that other than a Form E, the husband had failed to comply with virtually every direction made by the court which included a failure to file the critically important "section 25" statement: the narrative statement in which a party sets out their position in relation to the s25 factors which includes their assessment of their needs for the future. The husband had also failed to make an open offer contrary to FPR 2010 r.9.28 which provides for the duty to make open proposals not less than 14 days before the final hearing.

67. The judge's dismissal of the application to adjourn was not appealed but now forms part of the Grounds of Appeal.

68. On 13 July 2023, the husband made an application to admit three pieces of medical evidence into the appeal. They were (i) email correspondence with the secretary of a Professor Ikkos dated 10 March 2023 confirming that the husband had contacted the Professor for support following the recommendations of Dr Mynors-Wallis for a change of medication; (ii) a report from a Dr Agorgianitis dated 16 March which describes the husband as suffering from severe anxiety and self-destructive ideation; and (iii) admission/discharge notes relating to a short admission to a cardiology unit in April 2023 with supraventricular tachycardia resulting from "psychotic syndrome".

69. The Court agreed to read these reports *de bene esse*, but having heard submissions the application to admit them was refused. The reasons can be stated briefly: so far as the email correspondence is concerned, it was available on 15 March 2023 when Counsel attended the trial on behalf of the husband. In any event, there is no evidence that Dr Ikkos has ever seen or had contact with the husband. The report of Dr Agorgianitis is capable of being misleading. Whilst it is dated the 16 March, the day after the trial started and a matter of days after the application to adjourn was refused, in fact it was not clear whether the Doctor had seen the husband since 16 January 2023. There was no evidence in this document (which was not in proper form) that the doctor had re-examined the husband for the purposes of the March report and Mr Cayford did not submit to the contrary.

70. Finally, the admission/discharge notes (again not in proper form) relate to matters which occurred after the trial and give no evidence that the husband was, contrary to the opinion of Dr Mynors-Wallis, suffering from illness at the time of the hearing which would have prevented him from participating in the trial with the safeguards provided by the judge in place, should he have chosen to do so.

71. All these documents must be seen against the backdrop of the fully compliant report of Dr Mynors-Wallis saying that that the husband was fit to attend and participate in the trial which had led to the refusal to adjourn the trial on 9 March, a refusal which was not appealed. No information put forward by the husband's legal team on 15 March suggested that there had been a deterioration in his health over the weekend which would have prevented him from attending the hearing.

The Events of 15 March 2023

72. On the morning of the trial, leading and junior counsel together with instructing solicitors attended at court without the husband. They had been in contact with the husband as late as the 13 March 2023. No application was made by them to adjourn the trial. Leading counsel said in what the judge described at para.[13] as "carefully drafted words":

> "It would not be right to tell the court that we are completely without instructions. But such instructions as we have received mean that we – the whole team – are unable to discharge our professional obligations. Sadly, as a consequence and having checked our professional duties very carefully, Miss Wood and I have no choice but to withdraw.
>
> Miles Preston are also in the same position and they, through me, make an application in the face of the court to come off the court record."

73. A position statement had been prepared, but the husband had not given consent for it to be filed. No message was received from the husband as to why he had not attended as required under the order and no one communicated with the court on his behalf. As the judge commented at para.[15] "He simply vanished". Mr Cayford told this Court that when the adjournment had not been granted on 9 March, the husband had 'suffered a mental collapse' and left the UK and gone to Greece.

74. The judge refused an application made on behalf of the wife to strike out the husband's claim under FPR 2010 r.4.4 and made the decision to continue the trial in his absence saying:

> "17. Although H's absence was regrettable, it impeded the conduct of the hearing less than might be imagined. I say that for the following reasons:
>
> i) I had H's Form E after December 2021 and his (incomplete) replies to questionnaire from June 2022.

ii) W accepted that H had no significant resources of his own. So far as liabilities were concerned, I had an up-to-date schedule of what he owed his lawyer, in so far as known to W's lawyers.

iii) I had conducted the preliminary issue hearing in July/August 2022 where much of the material relevant to these proceedings had already been given in evidence, both written and oral.

iv) The issues that arose had been very well ventilated in many other previous court proceedings including the children proceedings and they were known to me.

v) I did my best to put to the witnesses the questions which I felt H would have wished to have had asked and I imposed a similar obligation on W's lawyers".

75. So it was that the trial commenced on 15 March 2023 in the absence of the husband, he having failed to attend and not having asked his legal team or a friend or a relative to inform the court of that intention. Moor J in *Pierburg v Pierburg* [2022] EWHC 2701 (Fam); [2023] 2 FLR 81 *("Pierburg")* a Part III case where there was a post nuptial agreement, had been faced with a similar dilemma. He summarised the proper approach to the situation he found himself in as follows:

> "45. The Husband has not attended court, notwithstanding an order that he should do so, although he has appeared by his lawyers. He has not given evidence. He has not submitted himself to cross-examination. He has not answered the focussed questionnaire that I directed he answer. He has merely given an overall outline of his wealth. The only evidence I have had is from the Wife, as well as Dr Maschmeier and Valentin in relation to the agreement. Of course, the absence of the Husband does not mean that I simply accept everything the Wife says. I must consider the evidence critically and make appropriate findings of fact. I can, of course, if I consider it appropriate, draw inferences from the failure of the Husband to attend and give evidence, but they must be appropriate inferences that I can properly draw. As Moylan LJ said in Moher v Moher [2019] EWCA Civ 1482:-
>
> > *"88. 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*, at [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."*"

76. In my judgment, the judge cannot be criticised either for refusing the application to adjourn made on 9 March 2023 or for proceeding with the trial on 15 March 2023. The only credible medical evidence brought before the court had said unequivocally that the husband was fit to participate in the proceedings. The judge had well in mind that the husband had mental health issues of the type which are required to be taken into account under the FPR 2010 Part 3A in relation to Vulnerable Persons and accordingly he made appropriate adjustments to ensure that the husband was fully able to participate in the trial.

77. There was no appeal against that order and no further application was made for an adjournment on 15 March 2023. On that occasion, the husband's legal representatives found themselves in the position that they were professionally embarrassed and obliged to apply to come off the record and the husband failed to attend. The judge gave cogent reasons as to why the trial should proceed.

The Expert Evidence

Birch Legal: the shadow expert

78. At the heart of this case is the husband's unwavering belief that the wife as a 25% shareholder in the family supermarket business is, or is potentially, a fabulously wealthy woman. On 10 June 2022, the judge however had made a case management decision refusing the husband's application to order a single joint expert report in relation to the wife's 25% interest in the family business. Permission to appeal from that order was refused by the Court of Appeal.

79. The judge did however provide funds under a LSPO for the husband to instruct a shadow expert to consider the wife's financial disclosure. Birch Legal were instructed by the husband. Notwithstanding the limitation on the extent of the permission granted, Birch Legal were instructed on a far wider basis than that which had been anticipated by the judge and their report purported to provide a valuation of the wife's interests in the Russian family business.

80. On 3 October 2022, the husband was ordered to file and serve the report of Birch Legal by 7 November 2022. He did not do so then, nor upon any of the three further opportunities he was given to file the report between November 2022 and 9 February 2023. This was the case notwithstanding that he had the report since 11 November 2022 and had, following questions having been asked, received an addendum on 28 February 2023 (which addendum, Mr Cayford told the court, had not altered the report to any significant extent). Mr Cayford could offer no explanation as to why there had been no compliance with the orders to file the report.

81. On 20 October 2022, the judge gave directions for the instruction of Kirill Saskov, a single joint expert, to report on the wife's rights under Russian company law as a 25% shareholder in relation to the realisation of her business interests and in relation to any restrictions there may be to such a realisation. His report was filed on 5 December 2022.

82. On 31 December 2022, Mr Saskov responded to a number of questions asked on behalf of the wife.

83. The husband's shadow Birch Legal report was never served. On 7 March 2023, the husband made an application to rely on the second report of Birch Legal dated 28 February 2023 and to adduce the report into evidence.

84. The judge refused the application. There was no appeal from the order but, as with the judge's refusal to grant an adjournment on 9 March 2023, it now forms one of the grounds of appeal before this court.

85. Notwithstanding that there had been no appeal against the judge's refusal to admit the Birch Legal report and that it now formed part of the Grounds of Appeal, the husband in addition made an application for permission to rely on the Birch Legal reports as fresh evidence in the appeal, (later amended to limit the application to the February report). Mr Cayford rightly accepted that this was, in reality, an appeal from the judge's refusal to admit the report. For that reason alone, we would have refused to admit the report. In any event, it cannot begin to satisfy the test in *Ladd v Marshall* [1954] 1 WLR 1489; [1954] 3 All ER 745. The report cannot on any view be regarded as fresh evidence; it was not only available at trial, but in existence many months earlier. The report could have been part of the evidence at trial had the husband not failed to disclose the report despite several orders requiring that to be done.

86. Further, the report dealt with issues for which permission had not been granted and also addresses different issues from those in the report of the single joint expert which had been limited to a consideration of the wife's rights under Russian law.

87. The trial had therefore proceeded with evidence being heard only from the wife, her borther and the single joint expert. The judge did however use the Birch Legal report as, what Mr Cayford described as, an *aide memoire* with which to test the evidence of the single joint expert in the absence of the husband at the hearing. The judge had been, Mr Cayford accepted, right to do so and he had by his approach, in my view, struck the balance between blind acceptance of what the wife was saying on the one hand and avoiding a 'disproportionate enquiry' on the other. I do not accept as was submitted on behalf of the husband, that the judge's limited use of the report in this way amounted to his having allowed the report to be adduced in evidence and that on that basis the present application and the appeal in relation to the Birch Legal report should be allowed.

88. Mr Saskov gave evidence at the trial, tested as described above. His evidence was that there is a relatively widespread practice in Russia of including in the participants (shareholders) of an LLC a 'natural person' who does not have a business interest of their own and does not participate in the management, but follows the instructions of other participants. The practice is known as 'nominal participant.' The real beneficiary, Mr Saskov explained, may require the nominal participant to receive and use a dividend in a certain way. He explained that often the nominal participant is given rewards in other forms such as employment, cars, houses etc and by being allowed to retain some of the funds received from the company.

89. Mr Saskov gave evidence that in Russia there is no market for a minority participatory interest and that as a rule only controlling stakes are part of transactions. It is therefore extremely difficult to sell a minority interest in Russia in the absence of consensus between all participants.

90. It was against this expert evidence that the judge made his findings as to the wife's interest in the family business.

The Judge's findings in relation to the family business:

91. The judge described how, from 2010, the wife's father began to spread out the shareholding in the group of companies between himself, the wife, her mother and the brother. The judge set out the wife's case in relation to her shareholding at para.[75] as follows:

> "My father and my brother believed that breaking his shareholding down into minority 25% holdings would avoid a takeover bid. Minority holdings are not attractive as they lack any meaningful rights and carry significant discounts. My father and my brother did not discuss the transfer of shares into my name with me. It was not done in one transfer but gradually over a number of years. It was done simply to assist them in their business affairs. I did not pay for the shares and do not consider them to be mine. My father and my brother certainly do not consider them to be mine.
>
> It is common in Russian culture, and this is true for my family, for the men to dictate to the women the extent to which they have any financial autonomy. My father and my brother considered that by employing me in their companies, they were giving me a chance to earn a living. They dictate if and when I receive dividends. I have no control over the shareholding. In just the same way the shares are held in my name but they retain full control and I have no power to sell them (the shares)".

92. The judge made the following critical findings of fact between paras.[82] - [88]

i) The business is run entirely by the brother and the wife's father who make all the strategic decisions without any consultation with the wife and the 'long-divorced' grandmother.

ii) In the future, the wife is never going to be the real owner of the shares in the sense that she will never be able to realise them.

iii) Whilst not disagreeing with the single joint expert that in Russian law the wife has the same rights as she would in England, the evidence "compels [him] to conclude that W does indeed hold her shares as nominee for her father and subject to his direction."

iv) The Single Joint expert described this arrangement as "quite normal practice" and that whilst not a legal concept, nominee shareholders are part of a widespread practice.

v) The wife's income is modest and not consistent with any sort of control, but she is capable and hardworking. When the litigation is over, and she can devote

herself to work in a way impossible over the last 2.5 years, there is a "strong possibility" that her rewards will increase.

93. The judge having in the absence of the husband, tested the evidence in so far as was appropriate, at para.[94] concluded that there was no realisable financial value of the wife's shareholding to her and that her interest does not represent "an asset that is or will be available, for her to realise".

94. That left the question of the dividend payments which had been made to the wife as a 25% shareholder. The judge set out at para.[99] the sums which had been paid to the wife by way of dividend between 2012 and the present. They were: 2012: £3.1m, 2014: £5.3m, 2015: £46k, 2016: £1m and 2020: £7m.

95. The evidence was that the wife had, at her father's instruction, repaid the 2020 dividend to him. The judge at para.[100] took into account that on the face of it, the repayment to her father of this substantial sum was suspicious given that at that time, the marriage was "in its death throes". He held however that on the evidence overall, that suspicion was displaced, and he accepted that the wife's mother had similarly been instructed to repay her dividend, in her case to the brother.

96. In her oral evidence, the wife said that she had also returned the dividend she had received in 2014. The judge did not mention this specifically in his judgment but given his findings in relation to the 2020 dividend, there is no reason to believe that his view would have been any different.

97. The judge went on to consider the payment of future dividends to the wife within his analysis of the wife's earning capacity, holding that from time to time it would be likely that the wife would be paid a dividend. The judge treated these prospective future dividends as funds she would need to rebuild the Coutts savings account and to repay the £1.37m she had borrowed from her mother towards costs, sums, he said at para.[97] which she would not "otherwise make up".

98. It was against these findings that the judge concluded at para.[131] that the wife's total assets amounted to **£12.9m**. This was made up of three properties in Russia worth £1.9m, the former matrimonial home in London valued at £4.9m, plus the £7.7m which then remained in the Coutts account. From that had to be deducted the money the wife owed to her mother, money the judge was satisfied and found at para.[70], had to be repaid.

99. The sum of £12.9m was on the judge's findings therefore the totality of the assets available for distribution before any allowance was made for the husband's debts to solicitors or the outstanding costs orders.

The parties' positions at trial and on appeal

100. Between 10 September 2020 and 10 November 2020, the husband incurred costs with Messrs Vardags of £223,249, all of which remains outstanding. On 11 May 2021, by which time the husband was being represented by his third set of solicitors, he had run up a further £257,537.53 and £136,726 respectively, a total therefore of £617,512 in costs before Forms E had even been filed. It was against this disturbing backdrop that the wife made an open offer on 14 May 2021, modified on 17 May 2021, by which she

offered to transfer the former matrimonial home in Ennismore Gardens (which she estimated then to be worth £7m) to the husband on account of his claims. The offer records that the purchase of the property was funded by money advanced by the wife's family. The offer went on: "Whilst we accept, as the matrimonial home, it is likely to be subject to sharing, the entire purchase price is non-matrimonial and that will impact on your client's overall claim".

101. The letter explained that the offer was made in order to "openly illustrate to the court that our client wishes to meet your client's needs claim, generously, to avoid the haemorrhaging of money on legal fees which the family cannot afford. Your client had been at pains to paint our client as some sort of Russian oligarch with unlimited money. He knows this is not true. If these proceedings continue, it will become plain that our client has **some** financial support from her family, but it has limits". (original emphasis)

102. That offer was never responded to, a decision which the husband undoubtedly regrets as matters have turned out, but which was made at a time when his case was that the wife was worth at least £100m.

103. No open proposals were put before the court by the husband before trial. It was only on 31 October 2023, the day before the hearing of this appeal, that there appeared in a second "unagreed bundle" filed on behalf of the husband, a document which was described as an open offer. In it the husband offered to settle the matter before the appeal, listed to be heard the following day, on the basis of a clean break order on the following terms: the Ennismore Gardens flat (now valued at £4.858m) was to be transferred to the husband together with £6.9m being the remaining balance in the Coutts account, a total of £11.758m. In addition, the outstanding costs orders against the husband of £1.04m in respect of the wife's and the brother's costs would be discharged. If the wife was unable to procure the brother's consent to discharge the order in respect of his costs, then a further lump sum of £334,903 was to be paid by the wife to the husband. The total value of the offer was therefore £12,798,000.

104. It follows that the husband rejects entirely the findings of the judge who had held the wife's total capital assets to be £12.9m.

The Judge's Order:

105. The judge adopted a conventional approach to determining the order, considering each of the Section 25 factors in turn at para.[63] onwards. The judge accepted at para.[109] that the parties' contribution to their children had been equal, "albeit hugely assisted by staff". He took into account that given the husband's mental health difficulties and the toll the litigation had taken on him, it would take some time before the husband would be able properly to exercise his earning potential.

106. The judge regarded the case as one where the order should be calculated by reference to the husband's needs rather than by way of the sharing of the assets. He noted that the wife had made all the financial contribution and she alone had worked but that in so far as the acquisition of capital was concerned, that was not as a result of her work, but came from family gifts and the legal ownership of shares.

107. The judge rejected as 'ridiculously inflated' the husband's desire for a housing fund of £8.5m to provide a primary home in London and a second home in Greece: para.[112].

The judge's impression was that the husband has spent the bulk of his time in Greece and that it was unlikely that he would make his future in England: para.[114]. The wife produced estate agent particulars for properties in an Athens suburb at a cost of between €500k and €560k and in London for between £770,000 and £900,000. Notwithstanding orders having been made for the husband to provide particulars of alternative suitable properties, he had failed to do so. The judge having held that the husband was likely to live in Greece, ordered the wife to provide €600k to enable a property to be bought there which the husband would be entitled to occupy for life. In addition, she was to provide €60k for furnishings.

108. So far as income was concerned, the judge ordered the wife to pay to the husband four years of maintenance at the rate of approximately £60k pa as by that stage, the husband would be able to support himself. In addition, the judge allowed £15k for the first year to cover the costs of medical treatment and relocation.

109. On the basis of this order, the wife agreed that the orders for costs made against the husband would not be enforced without the leave of the court and that she would forgo costs in respect of various other matters where costs had been reserved.

110. The judge said that he had adopted a 'needs-light' approach which he regarded as consistent with the application of the post nuptial agreement and the merits of the case. It is therefore necessary to move on to consider the approach of the judge to the other features of the case.

Post-nuptial Agreement

111. The judge, between paras.[33] and [45] of his judgment, set out the background and circumstances which had led to the making of the post-nuptial agreement on 22 November 2013. The agreement was reached at a time when the marriage was "not running smoothly". The main bones of contention on the part of the wife were said by her to be the husband's failure to stop smoking, or to obtain work, or to provide other than limited help with the children. This had led to her fearing that the husband had married her for her money. The wife's case, as was accepted by the judge, was that the husband's response to her having expressed these fears, was a proposal by him that in order to prove to her that that theirs was a love match, he would enter into an agreement that in the event of divorce he would make no claim against her.

112. The husband, the judge found, followed this up by making arrangements for them to see a notary when they were in Moscow for a conference in November 2013. At that meeting, the judge accepted, the husband had declined an offer made by the wife that she would pay him $1m if she instituted divorce proceedings.

113. Prior to the agreement being made there was no financial disclosure by the wife and neither party had independent legal advice. The critical part of the agreement as translated said:

> "2.3 In the event of the dissolution of the marriage, the spouses agree that the property acquired during their marriage and which is the subject of their respective separate property, shall remain the property of the spouse in question without any payment or

> other compensation, and this property shall not be subject to division."

114. The circumstances in which the agreement came about was one of the only areas where the judge had any sort of evidential picture of the husband's case as he had filed a narrative of his account of the circumstances in which the agreement came to be made in a written response to the wife's Notice to Admit Facts. In that response he wholly rejected the wife's account and said that the wife had arranged the meeting with the notary, had given instructions to the notary and that he, the husband, had had no opportunity to express a contrary view.

115. The husband however accepted that he had entered into the post-nuptial agreement on 22 November 2013 and, as he recorded in his Form E dated 22 December 2021, he was well aware that it stated that he was to "receive no financial remedy following the termination of our marriage."

116. At trial, the judge in the absence of the husband, tested the wife's evidence by putting to the wife that the agreement might appear to be unfair in the sense that it left the husband with "little or nothing". The wife in response, told the judge that it was what the husband had wanted and that it was fair given that: "She was brought up on the philosophy that you only earn or save by working. The husband was young and able. He was perfectly able to work. If the husband was determined not to work or contribute to the family finances that was his decision".

117. The judge made the following findings in relation to the PNA:

    i) Each party fully understood what they were doing and each knew the financial position of the other.

    ii) That it was an "unlikely scenario" that the husband had been unable to express a view given the judge's experience of him in numerous hearings over the preceding couple of years where the husband had "never been short of things to say" and both parties had been "absolutely clear about their own views and do not take easily to being deterred." I note that in his judgment in relation to the preliminary issue, the judge having heard evidence from both parties, had said at para [48]: "Each were quite determined to have his/her say and brooked no interruption…. H was inclined to make allegations without any evidential basis".

    iii) The agreement was one freely entered into by the husband and wife.

118. Mr Cayford submitted that the post nuptial agreement should have been wholly disregarded by the judge. He acknowledged that he was in difficulty in going behind the judge's findings as to who had initiated entering into an agreement, but submitted that there had been no disclosure and "in this country a document with those provisions would not be upheld". English law, he rightly observed, applies to this Part III application and the court has a complete discretion to ignore the agreement if it is unfair.

119. *Radmacher (formerly Granatino) v Granatino* [2010] UKSC 42; [2010] 2 FLR 190 established that the absence of legal advice is not fatal if the unrepresented party has a proper appreciation of the agreement reached. The judge found that the husband not

only appreciated what the agreement meant, but had rejected an offer of $1m in order to prove his point that his marriage was a love match.

120. The court was taken to *Pierburg*: a case heard under Part III in which a wife had many years earlier told her German fiancé that she was marrying for love not money. At her request, an agreement was drawn up excluding her from any financial provision. There was no disclosure and the wife received no legal advice. The parties separated 34 years later and reached a fresh agreement ("the Dusseldorf agreement") giving her a life interest in their (relatively) modest London home, lifetime maintenance and a lump sum of €3m. The wife sought to repudiate the agreement, seeking a substantial lump sum and a clean break.

121. At the time of trial, the husband in *Pierburg* was worth €180m. The judge concluded that the wife's connection with England was modest and that therefore a 'needs light' award was appropriate as had been the case in *MA v SK; S Investments v MA (Financial Relief following Saudi Divorce)* [2015] EWHC 887; [2016] 1 FLR 310 (paras. [62]-[66]).

122. Notwithstanding that in *Pierburg* the husband could have comfortably capitalised any order, the judge held that given the terms of the post nuptial Dusseldorf agreement which provided for an order for maintenance for life, an order for lifetime maintenance was fair. Notwithstanding the husband's wealth, the court, as in *Radmacher*, did not order the husband to transfer a capital sum to the wife in order for her to buy a property which she would own, but rather granted the wife secure lifetime occupation of her London home.

123. In the present case, the parties entered into the agreement when they were still only 32. The judge was considering the situation a decade later and had to decide whether it was fair to leave the husband with nothing in circumstances where he had not worked in any sort of structured way during the marriage and was now in his forties.

124. In *Zimina v Zimin* [2017] EWCA Civ 1429 *("Zimina")* the Court, as in *Pierburg*, was faced with the interrelation between Part III and the making of an earlier foreign agreement. In that case the agreement had been incorporated into a Russian consent order. The issue arose as to whether the adequacy of the provision should be assessed at the date of the agreement or at the date of the trial.

125. In my judgment in *Zimina,* I said at para.[63] that where there is a significant delay between the divorce (here the agreement) and the Part III proceedings, the wording of section 18 unequivocally requires the court to take into account all the circumstances as they are at the date of the trial, and at para.[64], I said that: "Further, the husband's means and the adequacy of the provision as assessed at trial will, in any event, be but one part of the overall picture, which will be considered against the backdrop of the provision at the date of the divorce", (here agreement).

126. In line with para.[61] of *Radmacher* that "it is not right to proceed on the premise that there will always be a significant difference between an ante- and a post-nuptial agreement." this approach applies equally to a consideration of the terms of either a pre or post nuptial agreement. The date at which to determine whether or not the needs of a party are met is the date of the trial, albeit considered against the backdrop of the provision agreed between the parties at the date of the agreement.

127. As Lord Phillips said in *Radmacher:*

> "73. If the terms of the agreement are unfair from the start, this will reduce its weight, although this question will be subsumed in practice in the question of whether the agreement operates unfairly having regard to the circumstances prevailing at the time of the breakdown of the marriage."

128. In the present case a decade has passed, the wife remains the only effective breadwinner and she has received substantial capital from her family in the intervening period. No doubt it is those features, together with the fact that the husband at present is incapable financially to provide for his own needs, and her approach to the Ennismore Gardens flat as set out in the offer of May 2021, that meant that the wife has at no stage sought to impose in full the draconian terms of the postnuptial agreement. That approach reflects Lord Phillips' observation at para.[81] of *Radmacher* that: "The parties are unlikely to have intended that their ante-nuptial 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."

129. The fact that the wife had not sought to hold the husband to the strict terms of the agreement does not however mean that the judge should have disregarded the PNA or that he was not entitled to take into account the agreement between the parties, made with full understanding on both sides, that in the event that their marriage failed, they would each walk away with the assets each individually acquired during the marriage. Such an approach accords with Lord Phillips' observations at para.[78] of the need to respect individual autonomy and that the court should respect the decision of the couple as to the manner in which their financial affairs were to be regulated.

Grounds of Appeal

130. There are nine grounds of appeal all of which fall under the essential banner as articulated in Ground 1 that the award was too low and left the husband in debt and in real need. A free-standing ground, Ground 2, that the award was discriminatory has, although not specifically abandoned, rightly not been pursued. The remaining seven grounds can be summarised as follows:

    i) Ground 3: The judge took inadequate account of the s25(2) MCA 1973 factors including (a) the considerable assets available to the wife, the absence of any assets available to the husband including his debts to his various solicitors (b) his needs including discharge of his debts and rehousing in a country of his choice (c) the standard of living and length of the marriage (d) the husband's mental health and the husband's non-financial contribution to the marriage.

    ii) Ground 4: Housing. It was wrong in principle for the judge to have prescribed a particular area, the purchase price was too low and it was wrong in principle for the house to be held in the wife's name with the husband to have the use of it for his lifetime rather than for him to be given an outright capital sum.

iii) Ground 5: The wife's wealth. The judge was wrong to find that the wife had no interest or equity in the family business and that the bulk of the UK assets were non-marital and therefore to be excluded from the distributive process.

iv) Ground 6: The judge took insufficient account of the clean break principle.

v) Ground 7: The post-nuptial agreement. The judge misapplied *Radmacher v Granatino* in relation to the principles applicable to pre and post nuptial agreements.

vi) Ground 8: Mental health. The judge took insufficient notice of the husband's mental health and should have adjourned the financial proceedings and should not have permitted the final hearing to proceed in his absence.

vii) Ground 9: Birch Legal. The judge was wrong to refuse to permit into evidence the Birch Legal report dated 28 February 2023.

The proper approach to the issues on appeal.

131. It seems to me that the best way to approach the appeal which will in turn provide the answer to the Grounds of Appeal is as follows:

i) Was the judge wrong to proceed with the trial on 15 March 2023 in the absence of the husband?

ii) If he was wrong and the trial should have been adjourned at the hearing on 9 March on medical grounds, or on 15 March when the husband failed to attend, then it is hard to see how it could be fair to uphold the findings of fact made by the judge and, horrifying though it is with costs now standing at something over £9.5m, there could be no fair alternative but to order a retrial.

iii) If, however, the judge was right in refusing the application to adjourn and was right to proceed with the trial, then unless the findings of fact cannot rationally be sustained, this court will not go behind them. Mr Cayford deserves considerable credit for the expertise he showed in prosecuting this appeal. He made no attempt to avoid the undoubtedly difficult issues he had to face which were occasioned largely as a result of the husband's litigation misconduct together with his failure to file evidence in support of his case or to attend the trial. Notwithstanding those difficulties, he put forward his lay client's case with skill and tenacity. Mr Cayford acknowledged that for a husband to fail to turn up for his own trial without any notice or explanation was a "bad thing" and he accepted that the judge "had to do his best in an impossible situation" but, he submitted, at the end of the day the conclusion reached by the judge had been "wrong and unfair".

iv) If as I find, the judge had been right to proceed with the trial for the reasons set out in this judgment, then this court is bound by the judge's findings of fact. The husband now wholly disputes many of those findings and has, at the last minute, produced rafts of documents and schedules (including after the hearing of this appeal) which he says would support his case that the wife's financial position is very different from that found by the judge. All that material was available

and was appropriate for first instance consideration and the cross examination of the wife, but not for appeal. Further, the husband has been guilty of profound litigation misconduct and, absent his having complied with numerous case management orders and attended the trial which would have allowed him to test the wife's disclosure, how could the wife possibly respond to the closely worked spread sheet produced and seen for the first time the day before the hearing? There is no basis for this court to go behind the findings the judge made, he having seen the wife, her brother and importantly, the single joint expert, each give evidence.

132. That then disposes of Ground 5 (the wife's wealth), Ground 8 (the refusal to adjourn the case on 9 March 2023) and Ground 9 (the Birch Legal report).

133. That leaves the court with the task, as identified by Mr Cayford, of deciding whether the order made by the judge in these challenging and complex circumstances, was outside the range of orders he could have made within his wide discretion such that he had been wrong to make the order he did.

134. In my judgment this is a case where the order was always one which should be limited to that which will meet the needs of the husband, all the available capital having come from the family of the wife. Although the husband now says that his settlement should not be so limited, such an approach sits uneasily with his Ground 3 which is specifically drafted by reference to a needs assessment and none of the Grounds of Appeal assert that the judge was wrong in determining the case by reference to needs or that he should have approached the case as a sharing case.

135. The features which would impact upon the level of order to be made in this case, are as follows:

a) What impact if any does the fact that this is a Part III case rather than a Matrimonial Causes Act 1973 case have on any order?

b) What is the impact of the post-nuptial agreement in the light of the judge's findings:

i) Was the judge right, per *Radmacher* and *Pierburg*, to meet the husband's housing needs by way of a life interest in a property which would continue to be owned by the wife?

ii) Even if that was the right form of order, was the judge wrong in requiring the husband to live in Greece?

iii) The judge having found that it would not be fair to hold the husband to the precise terms of the agreement, was his order nevertheless unfair and did it leave the husband in "a predicament of real need".

c) What, if any, reduction in his award should the judge's findings as to the husband's litigation conduct have?

d) How should the orders for costs made against the husband in relation to his conduct throughout the proceedings standing now at about £1.04m due to the wife and her brother, be reflected in any award?

e) Should the wife now be expected to meet the approximately £900,000 overspend as part of an award?

Part III claims:

136. Arguments as to the difference, if any, of the level of award which was appropriate in this, a Part III case, as opposed to that which the husband would have received under the MCA 1973 had the divorce taken place in England, played little or no part in the judge's analysis. Passing reference was made to *Agbaje v Agbaje* [2010] UKSC 13; [2010] 1 AC 628 with the judge noting that the legislative purpose of Part III is to alleviate the adverse consequences of "no or no adequate financial provision".

137. Ms Stone KC on behalf of the wife, submitted that when considering what order should be made, there was for the purposes of section 16(2)(a) MFPA, only a limited connection with this country as the family were here only for the purposes of education and only during term time. Further, Ms Stone said, the wife at all times has continued to work full time in Siberia where the family's principal home has been and where as a consequence, pursuant to section 16(2)(b), the family has the stronger connection.

138. The judge at para.[134] considered the parties' connection with England and Wales to be "in the middle ground between the very close and tenuous". The connection was to educate the children in this country and to that end they owned their home here, but on the other hand they were, he held, only here in term time and the judge found that their main home was in Russia. In my judgment, although the judge had found that the children were habitually resident in Russia, any suggestion that the property at Ennismore Gardens was other than a matrimonial home is unsustainable given the use made of the property and the terms of the open offer made on behalf of the wife in May 2021.

139. The judge put the fact that this is a Part III application and that the degree of connection with this country was in his view in 'the middle ground' into the balance in this way:

> "135. Whilst in some cases the degree of connection can be determinative, in this case the factor is eclipsed by the impact of the PNA, above all, but also by H's litigation conduct and the costs resulting therefrom, and by the very modest matrimonial element of the assets."

140. For my part, I would also add into the equation the fact that the divorce was only obtained by the wife in Russia at a time when the husband was pursuing, first in time, divorce proceedings in England. There having been a Russian divorce the jurisdiction dispute between the parties was never resolved. The parties, in the only sensible compromise reached during the course of this ruinous litigation, agreed that the matter should proceed by way of a Part III claim. In those circumstances, it would seem to me that the judge was right to take the view that the fact that the application proceeded by way of Part III was "eclipsed" by the other features of the case, not least the postnuptial agreement and the husband's litigation misconduct.

141. Putting together all these features the judge determined that the proper order was one which was, as it was described in respect of the Part III claim in *Pierburg* and in *MA v SK* [2015] EWHC 887, as 'needs light'.

142. In *MA v SK,* Moor J again dealing with a Part III case where there was a pre-existing agreement held as follows:

> "108. I have come to the clear conclusion that I should provide for the Wife on a "needs light" basis. I do not consider this should be restricted to the *Radmacher v Granatino* [2010] UKSC 42; [2010] 2 FLR 1900 concept of merely ensuring that a party is not left in a ""predicament of real need"". After all, it could be said that even the £1,689,613 that she has remaining is sufficient to escape from such a predicament. It would not, however, be nearly sufficient given the other factors, such as the length of the marriage, the contributions, the wealth of the Husband and the standard of living enjoyed."

143. In my judgment, notwithstanding the features adverse to the husband which the judge factored into the equation, he was right not to restrict the husband to the *Radmacher* concept of ensuring only that the recipient is not left in a "predicament of real need". The question remains however whether the order made, even if not, as asserted on behalf of the husband, leaving him in a 'predicament of real need', was insufficient given all the other factors including the length of the marriage, the recognition by the judge of the husband's non-financial contribution and the standard of living they had enjoyed, regardless of whether that standard of living is judged by reference to that portrayed by the husband, or by reference to the more modest lifestyle described by the wife.

What is the impact of the post-nuptial agreement

144. The question is therefore whether the 'needs light' order made by the judge left the husband in a predicament of real need and even if not whether it was fair in all the circumstances of the case.

145. In my judgment, the husband was not left in a predicament of real need. First and foremost, in my view, when considered against the backdrop of his findings in relation to the agreement, the judge cannot be criticised for making the husband's housing provision by way of a life interest. Such an order is entirely in line with both *Radmacher* and *Pierburg.* This is reinforced by the fact that as a consequence of the husband's litigation conduct, the assets available are significantly less than they otherwise would be and providing for the husband's housing needs by way of a life interest ameliorates, to some limited extent, the financial damage the husband's behaviour has caused to the wife whilst ensuring that the husband has secure accommodation for the rest of his life.

146. In my view, the judge was however in error in effectively requiring the husband to live in Greece and in providing him with only such sum to fund the purchase of a house as would be sufficient to provide him with an appropriate home near Athens, but not in London. It would seem that, quite understandably, the judge had what has been described by the parties as a 'wobble' after he had given judgment and until dissuaded by those representing the wife, had proposed to substitute by reference to the property

particulars provided by the wife, the sum of £850,000 for the €600.000 he had put in his draft judgement in order to allow the husband to live in London or in Athens. In my judgment, the judge's instincts were sound and he would have been right to have reconsidered the matter in that way.

147. This was a truly international family, with time being spent variously in London, Greece and Russia. In my judgment, the judge fell into error in making provision which deprived the husband of choosing where he would wish to live in the future. This was all the more so when the wife's case leading up to the trial was set out on the basis that the husband might live in either country. Having regard in particular to the value of the matrimonial home in London, and that the wife had put forward property particulars on flats on sale of £900,000, I would substitute an order providing the husband with £1m to purchase a property whether in Greece or London to be owned by the wife but in which the husband will have a life interest.

148. In those circumstances, given that Mr Cayford's instructions are that the husband intends to live in London, it seems sensible to express the furnishing fund in sterling rather than euros so that the fund ordered to be provided by the wife would at today's rates be (rounded up) £52,300 but which given inflation since the making of the order, I would increase to £75,000 payable on the same terms as the judge's order.

149. So far as income is concerned, the husband's case is that he has done some property work for friends and family during the course of the marriage and would in the future, wish to produce an income for himself in the property world in London. In those circumstances, I can see nothing wrong with the judge's order that the husband should receive periodical payments for a period of four years. It follows that as the four years was calculated by reference to the date of the judge's order, the four years should now be recalculated from the 1st of the month following the sealing of this court's order. He should of course receive in addition a further sum, as the judge allocated to the husband for his health and relocation needs, which I would increase to £25,000.

150. So far as quantum of maintenance is concerned, in my judgment the judge fell into error with regard to the dividends. Even if they are received only erratically and distributed at the whim of the wife's father and brother, they are a financial resource which the wife is likely to have in the future pursuant to section 25(2)(a) (as incorporated into Part III proceedings by section 18(3) MFPA 1984). The judge recognised that that would be the case, but seemed to regard future dividends as a means for the wife to recoup her capital following the haemorrhage of capital consequent upon these proceedings. Whilst having sympathy with his view, in my judgment it did not reflect the proper approach to the dividends.

151. I have in mind all the submissions made by Ms Stone and in reaching this conclusion I am not going behind the judge's findings in respect of the wife's entitlement to dividends. The fact remains however that the judge found that the wife had received significant dividends between 2012 and 2016 which she retained. Whilst the wife has not herself retained any dividends since then, there is no reason to believe that this is as a result of a downturn in the family business given that each of the four shareholders were allocated a dividend of £7m in 2020 albeit that the wife had to return hers to her father.

152. The family's lifestyle of private school fees, a nanny, a substantial flat in London and a home in Russia, together with substantial outgoings, could not have been maintained without that dividend income. The wife intends to continue to live her life on substantially the same basis including retaining a property in London for so long as either of the children are being educated here.

153. In those circumstances, a fairer figure to meet the needs of the husband, even on a 'needs light' basis for the period of time he needs to adjust towards financial independence (which I would maintain at a period of four years) would be £115,000pa. I appreciate that the husband's maintenance will have to be paid from the Coutts account, but the judge found at para.[97] "that from time to time it is likely that a dividend will be paid from which she will benefit" and in the meantime the wife has the resources from which to satisfy this relatively short-term order.

Litigation misconduct

154. In *Rothschild v De Souza* [2020] EWCA Civ 1215 *("Rothschild")* a case referred to by the judge, Moylan LJ had considered the impact of litigation misconduct on a needs assessment. Moylan LJ noted at para.[65] that whilst the general approach is that litigation misconduct within financial proceedings will be reflected if appropriate in a costs order, there are cases in which one party's conduct has been such that it should be taken into account in determining its award. He went on at para.[78] to say:

> "The depletion of matrimonial assets through litigation misconduct will plainly not always be remedied by an order for costs. As I have said, such an order simply reallocates the remaining assets between the parties and does not necessarily remedy the effect of there being less wealth to be distributed between the parties. What is important is that, whether by taking the effect of the conduct into account when determining the distribution of the parties' financial resources (both income and capital) and/or by making an order for costs, the outcome which is achieved is a fair outcome which properly reflects all the relevant circumstances and gives first consideration to the welfare of any minor children."

155. He concluded by saying at para.[80] that "an order *can* be made which does not meet needs because to exclude that option would be to give a licence… to litigate entirely unreasonably".

156. It goes without saying that the husband's appalling litigation conduct cannot be remedied by any further orders for costs. The husband's litigation conduct however can and was, rightly fed into the judge's conclusion. In the light of Moylan LJ's observations in *Rothschild* the judge could arguably have made an order which would not meet the needs of the husband; he did not do so and he was entitled to decide that the fair outcome was a 'needs light' award in all the circumstances of the case.

The orders for costs:

157. In his final order of 17 May 2023, the judge set out at para.[12] a list of orders for costs which had been made against the husband during the course of the proceedings all of

which remain unpaid. Those orders were not to be enforced against the husband without the leave of the court. The modest costs order made against the wife by Moor J in May 2022 for a total of £5,000 was to be set off against the husband's outstanding costs.

158. The judge held that what he described at para.[6] as the "grossly exorbitant" use of the court's time and the wife's money was "contributed to in significant part by H's failure to comply with court directions and the repeated LSPO applications consequent upon the various changes of solicitors." It was suggested on behalf of the wife that each change of solicitor cost about £50,000 when one took into account the time needed to read in by the solicitors and the latest King's Counsel.

159. The judge in his judgment observed at para.[3] that the series of costs orders made against the husband presented "'particular difficulties in this case". I agree, and in my judgment the debt the husband owes to the wife, which was occasioned by his litigation misconduct, must inevitably be reflected in the award made in order to meet his needs.

160. An order must be fair to both sides. Whilst the wife has by no means behaved perfectly, including her late payments in breach of the terms of various orders and in having removed S from the jurisdiction in breach of a Court of Appeal order, she has suffered very significant financial damage as a result of the husband's litigation misconduct. It should be borne in mind that there are two minor children for whom she is solely financially responsible. The wife sensibly recognises that the husband is not in a position to hand over £1m to meet the costs orders made against him. But in my view, if the costs orders are to be written off, the capital sum awarded to the husband can and should reflect this.

The Overspend:

161. That leaves the question as to whether the wife should have to pay the husband an additional £900,000 (or such figure as can be negotiated) to settle the overspend incurred by five different firms of solicitors.

162. In *Azarmi-Movafagh v Bassiri-Dezfouli* [2021] EWCA Civ 1184 the issue of the treatment of costs in needs cases arose. At para.[53], I said that:

> "All these cases turn on their own individual facts and in my judgment the most significant principle to be drawn from them, either individually or collectively, is that the judge at first instance has a wide discretion as to the extent to which it is appropriate to order an enhanced lump sum to a party in receipt of a needs award designed wholly or in part to satisfy <u>their</u> outstanding costs bills." (my emphasis)

163. I went on at para.[63]:

> "….in my judgment in cases where it is argued that an order substantially in excess of the sum required to meet a party's assessed needs is sought in order to settle the outstanding costs (or debts referrable to costs) of that party, the judge should:

> i) Consider whether in any event the case is one in which consideration should be given as to the making of an order for costs under FPR 28(6) and (7) in particular by reference to FPR PD 28 para 4.4;
>
> ii) Whilst not carrying out a full costs analysis, the judge should have firmly in mind what the order which they propose to make by way of additional lump sum to meet a party's costs would represent if expressed in terms of an order for costs. To do this would act as a cross check of the fairness of the proposed order."

164. On the one hand, the husband's needs must on some level be provided for after a 15 year marriage, on the other in order to give the husband a debt free start, the wife would have to give him up to £1m to clear the overspend, as well as forgiving the over £1m he owes to her as a consequence of his litigation misconduct. One presumes that the £334,903 owed to the brother would remain unenforced. All of that when the wife has already funded the entirety of the litigation in all of the proceedings including of the appeal to the tune of approximately £9.5m. In my judgment, there can be no question of the wife having to bear the responsibility for the overspend either in whole or in part.

165. The husband seeks 'a sharing order' to include the transfer of the matrimonial home and a substantial lump sum which would provide him with an income and enable him to pay off the overspend. For the reasons given, the judge was right to make a needs light order structured to provide the husband with a life interest in a property and term maintenance. An order requiring the wife in addition to satisfy the overspend would amount to an order for costs being made against her and would be wholly unfair given the circumstances in which the debt was incurred and that she has complied with the LSPOs made throughout these proceedings, which orders were made based on the budgets put forward by those same solicitors. If (which is not known but may well be the case) the overspends arose in whole or in part as a consequence of the husband making unreasonable demands of his legal advisors, all the more reason that the wife should not now bear any responsibility for those outstanding fees.

166. In reaching this conclusion, I use as a cross check the wife's effective concession in her open offer of May 2021 that the former matrimonial home would be subject to the sharing principle notwithstanding that it was financed entirely by her, see *Miller v Miller and McFarlane v McFarlane* [2006] UKHL 24 at para.[22]. The net equity in the property is £4.858m, a half interest would therefore amount to £2.429m. The substitute order I intend to make, subject to the views of my Lords is <u>in money or money's worth</u>, as follows:

    i) Housing £1m. The husband will choose whether he wishes a property to be bought in England or in Greece and will have a life interest on the same terms which had been approved at first instance, save for any adjustments which may have to be made consequent upon the legal requirements of either of the two countries.

    ii) A furnishing fund of £75,000 and a health/relocation fund of £25,000.

iii) Maintenance at the rate of £115,000 pa for four years from the date of the sealing of this order ie a total of £460,000 payable over 4 years.

iv) All costs outstanding to the wife and her brother amounting to approximately £1.04m not to enforced without the leave of the court.

Total: £2,600,00

167. The total award which the husband will have available to meet his needs, that is to say £1.56m, therefore corresponds to approximately £170,000 more than half the value of the Ennismore Gardens property less the amount of the costs orders outstanding against him.

168. That leaves the sum of just under £900,000 owed by the husband to five sets of his previous solicitors in respect of which, for the reasons set out at para.[159] above, I am satisfied the wife should bear no responsibility.

169. This is not the occasion for this Court to express a view as to how an overspend over and above the budgets given by solicitors in support of an application for a LSPO should be treated in a case where the appropriate order would otherwise be for the spouse in debt to receive a capital sum. That is not this case and I am satisfied that in this case the overspend is not the responsibility of the wife.

170. I would say however that there are lessons to be learned. It is surprising that solicitors, when overspending by such substantial amounts, did not regard it as a matter of urgency to return to the court in order to explain and to seek further funds. It may be that one of the difficulties here was that there were repeated applications for LSPOs as the husband changed solicitors' firms on numerous occasions, rather than the more usual way of dealing with LSPOs, whereby an order is made to provide sufficient funds to cover costs up to and including the Financial Dispute Resolution hearing and then, if that fails, for a further order to be made to take the matter to trial.

Outcome:

171. In summary therefore, the judge was right to treat the case as one where a 'needs light' award was appropriate and in his general approach to the post-nuptial agreement and the husband's litigation conduct together with the outstanding orders for costs which had been made against him. The correct structure was one which provided the husband with a life interest in a property and term maintenance. In my judgment however, the judge fell into error in the quantum of the husband's housing need by, in particular, limiting it to one which would be appropriate for Greece rather than approaching it, as the wife had done in the materials she had put before the judge, by allowing a sum which would buy a property in either London or Greece. Further the judge was in error in treating future dividends as a means for the wife to recoup some of her lost capital as opposed to future income which would to some extent support the lifestyle of herself and the children.

172. To this limited extent the appeal is allowed in respect to those parts of Ground 1 (quantum), Ground 3 (s25 factors) and Ground 4 (housing) which relate to those features. Ground 2, 6 and 7 are dismissed in addition to dismissal of Grounds 5, 8 and 9 referred to at para.[130] above.

Lord Justice Moylan:

173. I agree.

Lord Justice Bean:

174. I also agree.