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

Neutral Citation Number: [2022] EWFC 22

Case No: BV20D0029

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 March 2022

Before :

MR JUSTICE PEEL

- -

Between :

WC

Applicant

- and -

HC

Respondent

- -
- -

Charles Howard QC and Joshua Viney (instructed by Hughes Fowler Carruthers) for the **Applicant**
James Ewins QC and Janine McGuigan (instructed by Stewarts Law) for the **Respondent**

Hearing dates: 7-11 March 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE PEEL

Mr Justice Peel :

Introductory comments

1. I feel obliged to make some comments about the preparation for trial of these financial remedy proceedings:

i) By order made by me at the Pre-Trial Review, the parties' s25 statements were limited to 20 pages of narrative. Para 5.2 of PD27A mandates that narrative statements, among other documents, shall be typed in "a font no smaller than 12 point and with 1 ½ or double spacing". H complied. W's statement purported to comply in that it consisted of 20 pages, but because it used smaller font and spacing it was, in fact, about 27 pages compressed within the 20 page limit provided for by me. The consequence is that her statement was about 33% longer than H's. This is completely unacceptable, and W's legal team should not have permitted it to happen. Court Orders, Practice Directions and Statements of Efficient Conduct are there to be complied with, not ignored. The purpose of the restriction on statement length is partly to focus the parties' minds on relevant evidence, and partly to ensure a level playing field. Why is it fair for one party to follow the rules, but the other party to ignore them? Why is it fair for the complying party to be left with the feeling that the non-complying party has been able to adduce more evidence to his/her apparent advantage?

ii) By para 11 of the High Court Statement of Efficient Conduct of Financial Remedy Proceedings, s25 statements must only contain evidence, and "on no account should contain argument or other rhetoric". In this case, W's over long statement crossed the line and descended into a number of personal, and prejudicial matters, directed at H which, in my view, were irrelevant to the matters at hand. Parties, and their legal advisers, may be under the impression that to describe the other party in pejorative terms, and seek to paint an unfavourable picture, will assist their case. It is high time that parties and their lawyers disabuse themselves of this erroneous notion. Judges will deal with relevant evidence, and will not base decisions on alleged moral turpitude or what Coleridge J once famously described disapprovingly (albeit in a slightly different context) as a "rummage through the attic" of the marriage in **G v G [2002] EWHC (Fam) 1339.**

iii) Approximately 1 week before the trial, I was notified of a bundle issue. W, in putting together the first draft of the bundle index, included a 102 page section of narrative comments by W and fresh property particulars, directed towards the issue of her housing needs. No notice had been given to H, who objected. I was asked to rule on paper. I largely acceded to H's objections, concluding that this was an attempt to introduce fresh evidence, although I allowed the inclusion of W's comments on properties already produced in evidence.

iv) After the parties had exchanged and lodged skeleton arguments, H served updating disclosure. W objected either to the updates being adduced in evidence, or to the updated figures appearing in the composite schedules. I therefore started the trial with competing composite schedules, which was

thoroughly unsatisfactory and defeated the purpose of having composite schedules in the first place.

v) The working day before the hearing, H served on W a financial analysis of matrimonial expenditure through the parties' joint account in 2018 and 2019. The itemised schedule consisted of thousands of entries. W's legal team unsurprisingly objected to late receipt of this analysis. Commendably, in short order, they responded with a schedule of their own in respect of sole accounts so as to give a more complete picture. I deprecate the practice, which appears to be prevalent, of lawyers producing at the eleventh hour spreadsheet analysis of expenditure during the marriage (and/or since separation) based on primary documents such as bank and credit card statements which have been in their possession for many months. If an exercise such as this is to be relied upon, it must be provided well in advance of the final hearing (I suggest before the PTR or final directions hearing) so that the issues, and evidence, can be properly identified and case managed.

2. It seemed to me at the start of the trial that far and away the most material aspect of the case was W's reasonable needs. By the end of the trial, my view on that had not altered. It is a moot point whether the wide-ranging, and at times bad-tempered, inquiry by the parties into a multiplicity of other issues achieved much of value.

Background

3. H is 55 years old. He is a B national who grew up in Switzerland. He is from a very wealthy family which has a significant stake in a publicly quoted company, Company 2. W is 52. She is a UK national. They met in 2001, started living together in 2002 or 2003, and married on 3 September 2004. The marriage came to an end in 2019 so that the period of cohabitation and marriage was about 16 or 17 years.

4. When they started their relationship, W was a PA at Goldman Sachs and H was working in the City. W stopped work when their first child was born. The two children, who are based primarily with W and will continue to be so, are now aged 16 and 13. Child A is diagnosed with 'A' syndrome and has only recently been able to undergo full school days; he sees a psychotherapist every fortnight and a consultant at 'A' institute. Child B experiences severe anxiety, including panic attacks, and has a history of self-harming issues; she sees a psychologist every fortnight. Both require particular care and attention, including attending frequent medical appointments. Both children attend independent day schools in London, respectively School X and School Y. Regrettably, the parties are locked in ongoing child arrangements litigation relating to Child B.

5. Prior to marriage, on 12 August 2004 the parties entered into, and fully executed, a Pre-Marital Agreement, followed thereafter by a supplemental agreement dated 2 September 2004 concerning child maintenance, as well as two Swiss agreements also dated 2 September 2004 which mirrored the English Pre-Marital Agreement. Pursuant to the agreement, upon marriage H transferred into joint names his pre-owned property at 'X' Street, SW5, and transferred into a joint account £1.3m of his own resources. The Pre-Marital Agreement made sliding scale provision for W in the event of divorce up to 1 September 2014, but was silent as to provision thereafter. It provided for a review "if requested by either party on ten years elapsing from the date

of the marriage". In the event, no such review was sought. There was some debate about whether the Pre-Marital Agreement had thereby lapsed or not, but it seems to me that on any view it has been overtaken by subsequent events and I do not need to grapple with that legal nicety. I will, however, need to consider the circumstances in which it was reached as (i) W says she signed it as a result of undue pressure, which H disputes and (ii) the contents of the Pre-Marital Agreement may inform later issues which I must examine. Of note, H's wealth at that time (all non-marital in nature) was put at £4,317,754 which, with RPI, is over £6m in today's terms.

6. After marriage, the parties lived in London at the 'X' Street property. H left the City in 2005, and started to work in the family business, assisting in managing the wider family wealth (which essentially means his father's wealth) and sitting on the Company 2 board. He spent increasing amounts of time in Switzerland, from where the family office was run. In 2009, he bought a property in Y town. In 2010, W and the children moved to join H in Switzerland.

7. The standard of living was very affluent, albeit not, it seems to me, of the extravagant super-rich variety. They have had the benefit of access to a fine property in the U area owned by H's father, as well as their own properties in London, Y town and Z town. But their expenditure was not of the eye-watering variety often seen at High Court level, and they did not enjoy expensive trappings such as high-end cars or valuable chattels. Their homes in London and Y town are comfortable, and in sought after areas, but not vastly expensive. The competing expenditure schedules demonstrated, broadly, that in 2019 the total family budget on everything (in England, Switzerland and elsewhere, and including all children's costs) exceeded £600,000 which, in my judgment, gives a helpful guide to the standard of living.

8. The family lifestyle was largely funded by the generosity of H's very wealthy father albeit the provision of annual gifts was a tax efficient way of rewarding H for his work. Although the sums varied from year to year, H says in his Form E that "Over the course of the last three years I have received from my father donations totalling £1.17m", which is about £370,000pa. In the schedule attached to the Post-Marital Agreement referred to below, he said that he received gifts from his father of £500,000-£600,000pa.

9. From about 2015 onwards, the parties contemplated, and by 2017 agreed, that the children should attend school in England, feeling that both needed a more challenging academic environment than they were receiving in Switzerland. In March 2017, the children were offered places at London schools and in April 2017, notice was given on their Swiss schools. The intention was for W and the children to live in England, initially at 'X' Street, albeit there was an expectation of travel to and from Switzerland where H would continue to be based.

10. On 24 June 2017, H raised with W the idea of entering into a Post-Marital Agreement, to which W was clearly opposed from the outset. Nevertheless, both parties engaged lawyers, a first draft was prepared by H's solicitors on 21 July 2017, and the parties, and their lawyers, attended a without prejudice meeting on 8 August 2017 at the offices of W's solicitors, Hughes Fowler Carruthers, in London, which lasted most of the day. Further correspondence ensued and on 22 August 2017 agreement was undoubtedly reached. Arrangements were made for the document to be signed on 29

August 2017. In the event, W declined to do so, although her solicitor signed the relevant Certificate Annexe.

11. Broadly, the Post-Marital Agreement provided for W to receive a total of, in today's terms, about £7.1m plus child provision. It recorded the parties' assets as follows:

i) Husband £12,444,101
£2,230,000 mortgage liability
£10,214,101 net

In addition, it recorded the receipt by H of £500,000-£600,000pa from his father and his anticipated inheritance prospects exceeding €100m.

ii) Wife **£2,360,191 net**

12. Thus, of the combined net assets of £12,574,292 (excluding prospective inheritance), W's entitlement under the Post-Marital Agreement in the event of divorce was about 56% thereof.

13. W, having decided not to sign on 29 August 2017, left Switzerland the next day to take Child A to a school induction day in London. They returned that weekend. A day or two later, W and the children travelled to England where they lived at 'X' Street. H lived at Y town but at weekends during term time flew to London. During holidays, W and the children joined H in Y town, Z town and the U area. All three properties were being used and it seems to me that they had two main family homes, in London and Y town. After the parties separated in 2019, W and the children moved into rented accommodation in late 2020 in London; the tenancy expires in November, with a break clause which has bene exercisable since June 2021.

14. In circumstances to which I will return, H says that his father has now ceased the previous annual payments to him, and has side-lined H from his role in the family office.

15. On or about 21 January 2019, before the parties separated, H's father transferred assets worth about €23m into a trust of which the father is the principal beneficiary and H is a discretionary beneficiary; these monies were intended to benefit H, his siblings and their issue in due course on his father's death. In January 2020, W's petition was served. On 21 February 2020, the assets were transferred out of the trust and back to H's father pursuant to an instrument of partial revocation. I will need to consider these transactions in more detail.

Computation

16. Inevitably, the attrition of litigation has dented the parties' resources. Putting to one side the disputed territory of potential future wealth accretion by H from his father, the net assets are:

Joint property ('X' Street)	£2,045,791
H property: Y town	£640,564
H property: Z town	£2,546,530
H properties: B property (ignoring usufruct)	£2,818,489

Joint bank accounts	£21,634
H bank accounts	£285,334
H investments	£3,519,065
H personal assets/cash	£21,890
H Company 3 liquidation	-£18,018
H pension	£80,011
H liabilities	-£204,621
W bank accounts	£990,103
W investments	£15,343
W liabilities	-£399,847
W pension	£117,036
GRAND TOTAL	**£12,479,304**

This schedule is based on figures which are largely agreed. I have taken H's updated figures for his own resources, notwithstanding W's objections, because it seems to me, they give a more accurate picture. The total of H's assets is reduced by about £461,000 since the previous round of disclosure because of legal fees and general living expenses, as well as the recent decline in stock market values. A detailed explanation has been given by counsel for the reduction which I am willing to accept. I make clear that the outcome of my decision, based as it is on W's needs, would be the same whether allowing for these reduced figures or not.

17. H's earned income is modest; his non-executive director salary at Company 2 is €49,000pa net, and last year his dividend share was €15,600 net. In reality, he, and by extension W and the children, have lived off the very significant largesse of his father. I am satisfied that his earning capacity at his age, and outside his work for the family office which has now reduced, is not particularly high; for nearly 20 years he has depended on his father's munificence. I am also satisfied that W has no meaningful earning capacity.

Sharing principle

18. Almost the entirety of the wealth available to the parties originates from gifts and inheritances on H's side during the marriage and/or was owned by H before the marriage:

i) 'X' Street was bought by H in 1999 with monies gifted to him by his father. It was subsequently transferred from H's sole name into the parties' joint names pursuant to the Pre-Marital Agreement.

ii) The B properties came to H as a result of inheritances and family transfers in his favour between 1987 and 2011.

iii) The Z town flat was bought by H in 1992, long before the marriage.

iv) H received an inheritance of CHF 500,000 in 2009 which was used to renovate his property in Y town, and his father subsidised the purchase in the sum of about CHF 1m.

v) The bulk of the liquid investments (and I do not consider I need to be absolutely precise) were gifted to H by his father and grandfather.

19. The sharp delineation between marital and non-marital assets at the time of gift or inheritance has blurred over time as a result of (i) the length of the marriage, and (ii) the fact that the funds have been used to fund the family's needs and lifestyle, and (iii) the use of some of the properties as matrimonial homes. Since both parties approach this case principally by reference to needs, I do not therefore need to embark on an attempt to delineate between marital and non-marital property. However, the general background of non-marital wealth sourced on H's side is separately relevant in two ways:

    i) First, it informs, or may inform, the circumstances surrounding the Pre-Marital and Post-Martial Agreements; and

    ii) Second, it is, or may be, relevant to an assessment of W's needs.

The Issues

20. The main issues before me are:

    i) The circumstances surrounding the Pre-Marital Agreement, and whether any weight should be attached to it.

    ii) The circumstances surrounding the unsigned Post-Marital Agreement, and whether any weight should be attached to it.

    iii) Whether H can anticipate a resumption of the inter vivos gifts previously received from his father.

    iv) Whether prospective inheritance from H's father is a relevant factor.

    v) W's needs.

The Law

21. The general law which I apply is as follows:

    i) As a matter of practice, the court will usually embark on a two-stage exercise, (i) computation and (ii) distribution; **Charman v Charman** [**2007] EWCA Civ 503.**

    ii) The objective of the court is to achieve an outcome which ought to be "as fair as possible in all the circumstances"; per Lord Nicholls at 983H in **White v White [2000] 2 FLR 981**.

    iii) There is no place for discrimination between husband and wife and their respective roles; **White v White** at 989C.

    iv) In an evaluation of fairness, the court is required to have regard to the s25 criteria, first consideration being given to any child of the family.

v) S25A is a powerful encouragement towards a clean break, as explained by Baroness Hale at [133] of **Miller v Miller; McFarlane v McFarlane [2006] 1 FLR 1186.**

vi) The three essential principles at play are needs, compensation and sharing; **Miller; McFarlane**.

vii) In practice, compensation is a very rare creature indeed. Since **Miller; McFarlane** it has only been applied in one first instance reported case at a final hearing of financial remedies, a decision of Moor J in **RC v JC [2020] EWHC 466** (although there are one or two examples of its use on variation applications).

viii) Where the result suggested by the needs principle is an award greater than the result suggested by the sharing principle, the former shall in principle prevail; **Charman v Charman.**

ix) In the vast majority of cases the enquiry will begin and end with the parties' needs. It is only in those cases where there is a surplus of assets over needs that the sharing principle is engaged.

x) Pursuant to the sharing principle, (i) the parties ordinarily are entitled to an equal division of the marital assets and (ii) non-marital assets are ordinarily to be retained by the party to whom they belong absent good reason to the contrary; **Scatliffe v Scatliffe [2017] 2 FLR 933** at [25]. In practice, needs will generally be the only justification for a spouse pursuing a claim against non-marital assets. As was famously pointed out by Wilson LJ in **K v L [2011] 2 FLR 980** at [22] there was at that time no reported case in which the applicant had secured an award against non-matrimonial assets in excess of her needs. As far as I am aware, that holds true to this day.

xi) The evaluation by the court of the demarcation between marital and non-martial assets is not always easy. It must be carried out with the degree of particularity or generality appropriate in each case; **Hart v Hart [2018] 1 FLR 1283**. Usually, non-marital wealth has one or more of 3 origins, namely (i) property brought into the marriage by one or other party, (ii) property generated by one or other party after separation (for example by significant earnings) and/or (iii) inheritances or gifts received by one or other party. Difficult questions can arise as to whether and to what extent property which starts out as non-marital acquires a marital character requiring it to be divided under the sharing principle. It will all depend on the circumstances, and the court will look at when the property was acquired, how it has been used, whether it has been mingled with the family finances and what the parties intended.

xii) Needs are an elastic concept. They cannot be looked at in isolation. In **Charman (supra)** at [70] the court said:

"The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties (s.25(2)(b); of the standard of

living enjoyed by the family before the breakdown of the marriage (s.25(2)(c); of the age of each party (half of s.25(2)(d); and of any physical or mental disability of either of them (s.25(2)(e)".

xiii) The Family Justice Council in its Guidance on Financial Needs has stated that:

"In an appropriate case, typically a long marriage, and subject to sufficient financial resources being available, courts have taken the view that the lifestyle (i.e "standard of living") the couple had together should be reflected, as far as possible, in the sort of level of income and housing each should have as a single person afterwards. So too it is generally accepted that it is not appropriate for the divorce to entail a sudden and dramatic disparity in the parties' lifestyle."

xiv) In **Miller/McFarlane** Baroness Hale referred to setting needs "at a level as close as possible to the standard of living which they enjoyed during the marriage". A number of other cases have endorsed the utility of setting the standard of living as a benchmark which is relevant to the assessment of needs: for example, **G v G [2012] 2 FLR 48** and **BD v FD [2017] 1 FLR 1420.**

xv) That said, standard of living is not an immutable guide. Each case is fact-specific. As Mostyn J said in **FF v KF [2017] EWHC 1093** at [18];
"The main drivers in the discretionary exercise are the scale of the payer's wealth, the length of the marriage, the applicant's age and health, and the standard of living, although the latter factor cannot be allowed to dominate the exercise".

xvi) I would add that the source of the wealth is also relevant to needs. If it is substantially non-marital, then in my judgment it would be unfair not to weigh that factor in the balance. Mostyn J made a similar observation in **N v F [2011] 2 FLR 533** at [17-19].

The Law: Pre-Marital and Post-Marital Agreements

22. I do not need to look beyond **Radmacher v Granatino [2010] UKSC 42** from which the following essential propositions can be drawn:

i) There is no material distinction between an ante-nuptial agreement and a post-nuptial agreement (para 57).

ii) If an ante-nuptial agreement, or indeed a post-nuptial agreement, is to carry full weight, "what is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end" (para 69).

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

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

v) The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement. (para 75).

The Law: inter vivos subvention

23. I addressed this topic in **M v M [2020] EWFC 41** where I said as follows:

"65. Should a court inquire into the willingness of the wider family to assist one or both spouses?

66. To my mind there are 2 main categories of cases:

(i) Where a spouse has an interest in an asset together with other family members, and the court frames its order so as to "*judiciously encourage*" the other family members to assist in extraction by the spouse of value referable to his or her interest. The court should not cross the boundary of improper pressure in so doing. This is the so-called **Thomas v Thomas** doctrine (**Thomas v Thomas [1995] 2 FLR 668)**. Importantly, it applies when the spouse has an actual interest in an asset shared with third parties (e.g. family) but is confronted by liquidity difficulties.

(ii) Where family members, who are gratuitous donors, are willing to make funds available by gift or loan to the relevant spouse. In this instance, the spouse has no legal or beneficial interest; it is a pure act of generosity for a person under no obligation to do so.

68. [In respect of the second category] I apply the following principles:

(i) The starting point is that there is absolutely no obligation on a third-party family member to provide funds from his or her personal resources. As Holman J vividly said in **Luckwell v Limata [2014] EWHC 502** at para 6: "*I wish to stress with the utmost clarity that neither the wife's father nor her mother are under the slightest legal obligation whatsoever to pay a single penny to, or for, their daughter, nor their grandchildren, nor, still less, their son-in-law."* This statement is wholly consistent with law and fairness. The court's function is to distribute the parties' resources, not the resources of wider families; see paras 66 and 67 of **Alireza v Radwan [2017] EWCA Civ 1545.**

(ii) That said, on occasions wider family members may show themselves prepared to assist, willingly and under no pressure from the court to do so. Two distinct scenarios spring to mind;

(a) Whether a spouse's family will be likely, if requested, to come to his or her aid in meeting specific needs personal to the spouse in question and;

(b) Whether a spouse's family will be likely, if requested, to come to his or her aid in making a payment to the other spouse to assist in bringing financial remedy proceedings to a conclusion.

(iii) The first scenario is not uncommon. If means are available, the wider family, although under no legal obligation to do so, may willingly help with buying a house or meeting income needs if the alternative is homelessness and penury. But the evidence of willingness to do so must be clear. Mere speculation, or optimistic assumption, is insufficient.

(iv) The second scenario is rarer, for obvious reasons, although it can unlock cases and bring about settlement. For example, the family of a spouse may offer to pay the receiving spouse a lump sum to avoid sale of the marital home. Again, in my judgment, there must be clear evidence to justify such a finding. Speculation and optimistic assumption will not suffice.

(v) The court should not place pressure on the third party who is perfectly entitled to decline to provide support. As Deputy High Court Judge Nicholas Mostyn QC (as he was then) said in **TL v ML [2005] EWHC 2860** at para 101:

"The correct view must be this. If the court is satisfied on the balance of probabilities that an outsider will provide money to meet an award that a party cannot meet from his absolute property then the court can, if it is fair to do so, make an award on that footing. But if it is clear that the outsider, being a person who has only historically supplied bounty, will not, reasonably or unreasonably, come to the aid of the payer then there is precious little the court can do about it."

The judge was there addressing the second of my suggested two scenarios, but in my view his remarks apply with equal force to the first scenario.

(vi) In either scenario, where the evidence shows, to the requisite standard of proof, that third party family members will likely provide financial support to one or other of the spouses, that, in my judgment, constitutes a resource that a court is entitled to take into account. To do otherwise would be artificial. As to the sort of evidence which the court will evaluate when deciding upon the likelihood of future assistance:

(a) Usually, the court will look to see whether bounty has been provided in the past, in what quantity and over what amounts of time, as evidence of a pattern.

(b) Additionally, the court can look at specific offers of long-term future financial support made to a spouse before or after marital breakdown.

(c) Offers of interim provision to tide the spouse over with assistance towards legal fees and income needs during the period of litigation will be of very limited evidential relevance to the question of whether long-term future support will be forthcoming. Usually, such payments are transitory in nature, designed to assist the recipient spouse with the demands of the litigation.

(d) Absent clear evidence establishing (i) a track record of historic payment and/or (ii) reliable representations of future subvention, the court will be hard pressed to be satisfied of this class of resource."

The Law: inheritance

24. In **Alireza v Radwan [2018] 1 FLR 1333** King LJ reviewed the principles pertaining to inherited wealth, including where forced heirship applies.

> "32. The first question therefore is 'does the wife's father's wealth/ the wife's inheritance prospects constitute a financial resource which she has or is likely to have in the foreseeable future?'
> 33. Mr Peel says not and reminds the court that in the ordinary course of events a party's inheritance prospects are disregarded by the court. In *Michael v Michael* [1986] 2 FLR 389 Nourse LJ said (at 395):
> "I am of the clear opinion that s.25(20(a) of the Act of 1973 as amended, whilst it is primarily concerned with property and financial resources in which there is a vested or contingent interest, is not exclusively so concerned. Indeed, its broad and somewhat informal language demonstrates that it was intended to operate at large and not in some strait-jacket tailored to the sober uniforms of property law. Thus, there can be no doubt that it could in certain circumstances extend to something which in the language of the law is a mere expectancy or spes successionis, for example and interest which might be taken under the will of a living person.
> 34. Nourse LJ went on to give an example of a case where there was clear evidence that a person had a terminal illness, that property was left to the respondent in his will and that it was highly improbable the testator would revoke the will. Having given such an example he went on (at 396)
> "…. However those facts, being extremely special demonstrate that the occasions on which such an interest will fall within s,.25(2)(a) of the Act of 1973 as amended, are likely to be rare. In the normal case uncertainties both as to the fact of inheritance and as to the times at which it will occur will make it impossible to hold that the property is property which is likely to be had in the foreseeable future."
> 35. Mr Todd for his part relies on the decision of Munby J (as he then was) in *C v C (ancillary relief trust fund) (C v C)* [2010] 1 FLR 337.
> 36. In *C v C* the husband had a vested interest in property in that, upon the death of his widowed step mother, he and his three siblings would inherit an estate as tenants in common in equal shares. This was not a discretionary trust. The trustees had no power to appoint 'even a farthing' [19] to the husband except with the written consent of the widow who could give it or withhold at her 'unfettered and uncontrolled' discretion. As Munby J said:
> "…and the husband and the court have to take the widow as they find her. As against the widow there can be no question of exerting any 'judicious encouragement' (see *Thomas v Thomas* [1995] 2 FLR 668 at 670), as there might be if what was in issue was the exercise by the trustees of their powers if they had any that were relevant."
> 37. Given that the husband's interest was vested and the likelihood was that the reversion would fall in in about 15 years (that being the actuarial life expectancy of the widow), Munby J concluded:
> "I confess that on this crucial issue my mind has wavered. On any view, as it seems to me, this case is at or very close to the outer extremity of what can properly be considered a 'financial resource' which a spouse is 'likely to have in the foreseeable future'. At best it is, to adopt Cumming-Bruce LJ's metaphor, only dimly visible. But on balance I have concluded that… the husband's interest is indeed such a resource. In other words, I am persuaded though I have to say without much enthusiasm, that the question posed… is to be answered in the affirmative. "

38. Munby J said that his decision would have been different had the likelihood been of the husband receiving substantially less than the current value of the estate on the death of the widow, or had the widow's life expectancy been greater than he found it to be. Munby J went on to put his decision that the husband's vested interest was a resource in context:
"[66] I must emphasise that, consistently with the terms of the preliminary issue, all I have decided is that the husband's interest in the trust fund is a 'financial resource' which he is 'likely to have in the foreseeable future'. I have not decided that it would in fact be appropriate to make an order of the kind made in *Priest v Priest* and *Milne v Milne* or, indeed, appropriate to make any order at all in relation to his interest in the trust fund. All I have decided is that his interest in the trust fund is, within the meaning of s 25(2)(a), a 'financial resource' which he is 'likely to have in the foreseeable future', and, accordingly, something which s 25(2) requires the judge at the final hearing to 'have regard to'. Having had regard to it, the judge may decide to make some order in relation to the husband's interest under the trust. On the other hand, the judge, having had regard to it, may decide not to make any order at all in relation to the husband's interest under the trust. It is entirely a matter for the judge who is called upon, as I have not been, to exercise the discretion conferred by ss 24 and 25."
39. In my judgment the words of Nourse LJ in *Michael* hold good 30 years on and in the ordinary course of events uncertainties both as to the fact of inheritance and as to the times at which it will occur, will make it impossible to hold that an inheritance prospect is property which is "likely to be had in the foreseeable future."
40. The present case is different. The wife's inheritance prospects do not have the inherent uncertainty found where a will is made in a country such as England where there is no concept of forced heirship. In my view, a prospective inheritance which has the certainty brought to it by the laws of forced heirship, is capable of being a "financial resource" which the wife "has or is likely to have in the foreseeable future".
41. Mr Peel sought to persuade the court that there remained uncertainties which should mean that, notwithstanding the forced heirship laws, the court should disregard the wife's inheritance prospects. He suggested by way of example that the father could give all his money away to charity or there could be some sort of cataclysmic political event which would mean he would lose his wealth. There was no evidence before the court to that effect and the wife chose not to call her father to give evidence. In those circumstances a court would be entitled to conclude, as the judge did, that a portion of the father's estate would indeed come to the wife in 16+years.
42. Having said that, as Munby J explained in *C v C*, all that such a finding does is to conclude that the prospective inheritance is a section 25(2)(a) resource; it does not mean that it is inevitably appropriate for the court to make an order whereby the meeting of the needs of the wife is in any way dependant on the prospective inheritance."

My findings and the parties' evidence

25. I turn to my conclusions on the primary issues. In so doing I have considered the totality of the written and oral material before me, weighing it up holistically and assessing how it interlocks.

26. Each party was robustly cross examined for a full day. Both, I am confident, did their best to tell the truth; occasional confusing, or apparently inconsistent, sentences in narrative statements did not undermine their overall credibility. In particular, I reject

the submission that H was dishonest on a number of matters, including colluding with his father (a "charade" as was submitted on W's behalf) about the current unavailability of support from that quarter. On the contrary, I thought he was candid and frank, for example in acknowledging the pressure which W was under in respect of the Post-Marital Agreement. W was notably more anxious in the witness box, and H more composed. I felt that W is, underneath her undoubted nervousness, determined and resolute, particularly with regard to the children. Where there were disputes of evidence, they were, in my judgment, the product of different perspectives, or misunderstandings.

27. Both, I am sure, have been placed under enormous strain by these proceedings. The emotional toll on them, their relationship and, indirectly, the children cannot be underestimated.

The Pre-Marital Agreement

28. This Agreement was the product of discussions which lasted a number of months (the parties first discussed it in January 2004, their lawyers started corresponding in June 2004, and the first draft was prepared on 23 June 2004). Both parties had the benefit of English and Swiss legal advice; in W's case her English lawyers were Macfarlanes. It is dated 12 August 2004, about 3 weeks before the marriage, and signed by the parties. The marriage had been delayed to enable a 3 week cooling off period after signing. Equivalent Swiss documents were entered into. It is clear that the impetus for the agreement, as with so many pre-marital agreements, came from extended family, in this case H's father, who required its execution and made it plain that he would "take measures" if it was not signed. Both parties' evidence was that had they not signed, the marriage would not have taken place. As W's solicitors of the time said in correspondence, it was "always under the shadow of what [H's] father was prepared to agree". I was told that H's sister had disagreed with H's father about her own pre-marital agreement, and H's father refused to see her for years thereafter, such was his anger.

29. The agreement itself contains certificates signed by each party's solicitor. The certificate of W's solicitor states: "[W] stated to me, and it appeared to me, that she entered into the said agreement willingly and without any pressure, duress, undue influence or deception on the part of any other person, including [H]".

30. A letter dated 18 August 2004 from her solicitors stated that "[W] confirmed to us… that she was signing the agreement of her own free will. However, she also made clear that she had felt extremely stressed during the preceding weeks….", and for that reason the word "stress" had been removed from the solicitor's certificate. To my mind, this shows the care taken by W's solicitor to be satisfied of W's instructions when entering into the agreement.

31. I am confident that both H and W were under pressure from H's father. That is hardly surprising given that H's father was a man of immense wealth who saw it as his duty to ensure that the family wealth passed through the generations in a dynastic manner. Moreover, coming from a Swiss and B background, where such agreements were commonplace, it is likely that H's father was more comfortable with the notion of a pre-marital agreement than W, from an English background where, certainly at the time, such agreements were rare indeed. I am equally confident that W felt under

stress and was uncomfortable with the process. The intended agreement was a source of tension for both W and H. However, in my judgment, none of the vitiating factors set out in **Radmacher** apply and I see no reason to discard, or ignore ab initio, the Pre-Marital Agreement:

i) I am satisfied that although W and H were under pressure, W was not under undue pressure to enter into it. In almost every Pre or Post Marital Agreement one or other, or both, parties are under a degree of pressure, and emotions may run high. The collision of the excitement engendered by prospective marriage, and the hard realities of negotiating for the breakdown of such a marriage, can be acutely difficult for parties. Tension and disagreement may ensue. If, as here, one side of the family is applying pressure, the difficulties are accentuated. But in the end, each party has to make a choice and unless undue pressure can be demonstrated, the court will ordinarily uphold the agreement. In my judgment, W cannot so demonstrate here.

ii) It included clauses that the agreement was entered into "of their own free will without undue influence or duress" and that "they would not be getting married unless they had entered into the agreement". I have already commented that their solicitors signed certificates to similar effect, and W's solicitor corresponded to H's solicitor saying that W was freely entering into the agreement.

iii) It was considered, discussed and negotiated over a period measured in months. W had the benefit of lawyers in both England and Switzerland.

iv) Immediately after the marriage, and in accordance with the agreement, 'X' Street and £1.3m were placed in joint names in accordance with the Pre-Marital Agreement. W thereby benefited from its immediate implementation.

32. I have already indicated that this document has largely been overtaken by events. Nevertheless, of relevance is the exposition within the agreement of why the parties were entering into a Pre-Marital Agreement. It expressly recorded at Clause I that all dynastic property already acquired by H or acquired during the marriage should be free of claims by W save as necessary to implement the agreement, and that each should retain their own separate property. The section "Genesis of the Agreement" at Clause K(i) specifically refers to the past receipt by H of family monies, and the anticipated future receipt of dynastic assets which are intended to be excluded. Self-evidently, the agreement had one eye on the future wealth which was expected to cascade down to H.

The Post-Marital Agreement

33. There are two main issues:

i) Whether W was placed under undue pressure such that it should be disregarded.

ii) Further, or alternatively, whether the fact that it was not signed by W, dictates that it should be disregarded.

34. The factual background, and circumstances, as I find them, are as follows:

i) By March/April 2017 the parties' plan for the children to be educated in England was settled, and the children were being prepared for the move.

ii) There was some dispute about whether W told H on one occasion that if he did not let her and the children go to London, she would divorce him. I suspect this was a product of misunderstanding. Probably W made unguarded comments which were misinterpreted by H. However it came about, I am confident that H was concerned about the possibility of the marriage coming to an end, even if that was not part of W's thinking at the time.

iii) H first raised with W the subject of a Post-Marital Agreement on 24 June 2017 i.e after the children's move to be educated in England had been agreed. Her opposition is clear from an email to H that very day: "[H], just to confirm in writing what you have repeated to me verbally tonight; that unless I sign the documents you wish, namely a financial post-nup and post divorce custodial rights, you will not allow the children to attend school in the UK this autumn. Terrible we have come to this!". H told me, and I accept, that the motivation for a Post-Marital Agreement came entirely from him. His father was not involved, beyond saying that he thought H was naïve to let W go to London, and expressing annoyance with W.

iv) I am satisfied that H told W she could not go to London without signing a Post-Marital Agreement. In so doing, he threw into doubt the London schooling arrangements which were in place. He also told W that he would only agree to her having a bigger house in London if she signed the agreement.

v) W, on or about 5 July 2017, instructed English solicitors, Hughes Fowler Carruthers. She also instructed Swiss lawyers. H likewise instructed lawyers in England and Switzerland. Despite W's reservations, they entered into negotiations.

vi) The first draft of a Post-Marital Agreement was supplied by H's solicitors on 21 July 2017.

vii) On 8 August 2017 the parties and their lawyers attended a without prejudice meeting which lasted the full day. No heads of agreement were signed. I was not made privy to the course of the discussions, although it appears that significant progress was made, and W seemed to be under the impression in her evidence that agreement had been reached on headline numbers.

viii) According to W (and a WhatsApp communication with a close friend to whom she unburdened refers to this), on 16 Aug 2017 H told her that if she tried to leave the country without signing the documents, he would call the police. Having heard the parties I am confident that H told W he <u>could</u> go to the police, not that he <u>would</u> do so. This was a misunderstanding during overwrought and emotional conversations. In any event, even though W did not sign the document, she left unimpeded on 30 August 2017 to attend a school induction day with Child A, returned to Switzerland immediately afterwards and, a day or two later flew to London permanently with the

children. H saw them off at the airport and did not call the police or attempt to stop them.

ix) During this period there were some exchanges by WhatsApp between W and a close friend which, it is said, are corroborative of the pressure W felt under. For example, on 4 August 2017 W said that the pressure was unbearable, on 17 August 2017 she referred to her "head spinning", on 20 August 2017 she said, "this has been traumatic" and on 28 August 2017 she told her friend of feeling "blackmailed…powerless…cornered and tired and abused". I regard these communications from W as being secondary, rather than primary material. They are indicative of her state of mind but do not really add to that which is apparent from what I have read, and W's own oral evidence, that (a) she wanted to leave Switzerland with the children, (b) she felt under real pressure to sign the agreement to achieve her aim, (c) she was anxious, and (d) relations between her and H were low.

x) On 21 August 2017 H's solicitors sent a revised draft agreement.

xi) On 22 August 2017 W's solicitors wrote saying "Thank you for your letter of yesterday's date and for providing a final version of the agreement, the terms of which are approved". In my judgment, an agreement was reached at that point, notwithstanding W in evidence being a little reluctant to so concede; she told me that "I did not approve the terms, but if the letter was sent in my name, I stand by it". The document was comprehensive, clear and detailed. The reasoning from W's perspective, as the letter stated, was that "[W's] primary goal is to ensure the children are able to settle in England for the start of the school year" which, I note, she subsequently achieved.

xii) On 23 August 2017, H's solicitors replied acknowledging the agreement which had been reached.

xiii) The intention was, as before, for mirror agreements in Switzerland to be drawn up.

xiv) Arrangements were made for the agreement to be signed by the parties before a notary in Switzerland on 29 August 2017 at 4pm. That morning W saw a different Swiss lawyer. At about lunchtime W, apparently on the advice of the Swiss lawyer, but not mentioned to H, went to see a GP who wrote a letter (curiously not disclosed until April 2021) in which he certified that W was showing "true mental distress" with a "major anxiety component" and as a result the mental attitude required for calm decision making "is not currently fulfilled". I do not doubt that W felt anxious and worried at that time; she was about to sign an important document, and wanted to leave forthwith to England. But agreement had been reached on 22 August 2017 (a week before) and I am not persuaded that this medical note undermines the agreement reached one week previously.

xv) At about 1.30pm (possibly after she had seen the GP), W told H by email that she would not attend to sign, referring in particular to being worried about signing mirror Swiss documents which she had not yet seen:

"I really am unhappy about signing the English documents today without even seeing the Swiss documents…".

xvi) She sent a follow up email saying that she had no intention of renegotiating, and that she planned to sign the document, although she did not in fact do so:

"I am not looking to change the English documents, or re-negotiate them, I just want to be able to sign them as a package whenever all the documents are ready, and without the time pressures of having to do so before the children are allowed to begin school".
"I want to reassure you that I have no intention of getting to London to start renegotiating the post nup….There is no tactic…"

xvii) W did not sign, although her solicitor signed a certificate confirming that she had given W independent legal advice on the agreement.

xviii) It is of note, in my judgment, that nowhere during these events of 29 August 2017 did W complain about the circumstances in which agreement had been reached on 22 August 2017, or the terms thereof. Her concern was not being able to see the Swiss mirror documents before signing.

xix) As I have indicated, on 30 August 2017 W flew to London with Child A for his school induction day; H travelled to the airport to see them off just as they were going through the departure gates. They returned that weekend. A day or two later W and the children travelled permanently to England; H accompanied them to the airport.

xx) In a sense, W achieved her goal. She was able to leave for London with the children. She was not prevented from doing so by H. And, ultimately, she did not sign the agreement.

35. Although there is no doubt W was placed under pressure by H to sign (as he fairly acknowledged in his oral evidence) I reject the contention that W was placed under undue (my emphasis) pressure, let alone duress, to sign, as was urged upon me by her counsel in closing submissions. Both parties were under pressure for different reasons. It cannot have been an easy process for either. W wanted to move to London and start afresh with the children. From her point of view the Post-Marital Agreement represented a significant potential block; either she signed, or H would not agree to the planned move. H raised the need for a Post-Marital Agreement only after the plans had been laid, and school places secured; W did not want to let the children down. For H, there were concerns about W and the children leaving their home in Switzerland, the impact on their relationship as a couple and the possible impact on the family as a whole. As he saw it, there were other available options in Switzerland, and he was uncomfortable about the move to London; his father's attitude probably contributed.

36. I readily accept that each party was under pressure. I readily accept that both parties (particularly W) were tense and anxious. I reject the contention (raised in W's statement but not really pursued in oral evidence) that this was part of a long standing pattern of controlling and domineering behaviour by H which in some way overbore

her will, and I reject W's case that the agreement was reached as a result of undue pressure. The parties were in communication, through their lawyers, about the Post-Marital Agreement for some two months. The document (to which W assented in correspondence) explicitly records at clause 8.8 that each party enters into the agreement "of their own free will without undue influence or duress and without any promise or representation other than as set out in the Agreement, and neither has suffered inequality of bargaining power". W's solicitor signed it. At no time did her solicitors say that the agreement was being conducted under undue pressure. I have not seen or heard anything to suggest that she thought at the time that the terms were unfair; rather, her concern seems to have been the lack of mirror Swiss documents. In the end, W elected not to sign, as was her right.

37. W says (and it does not seem to be disputed) that thereafter there were continuing discussions (which she describes as negotiations) between the parties in respect of the Post-Marital Agreement. During this period, she was provided with the Swiss mirror documents about which she had previously been exercised. Thus, she says, no agreement can in fact have been reached because otherwise why would they have been in ongoing discussions? I reject that submission:

i) The post agreement discussions were privileged, and the parties have not waived privilege to permit me to see them. I have no idea what they contain and whether they do, as W says, represent an ongoing chain of negotiations which did not achieve consensus on a final version of the Post-Marital Agreement.

ii) Far from undermining the agreement, in my view the fact that some form of without prejudice discussion took place after the agreement was reached demonstrates vividly that agreement had in fact been reached; otherwise, why attempt to renegotiate it?

iii) In any event, the correspondence to which I have referred explicitly confirms that agreement was reached on 22 August 2017. If there was an attempt to re-negotiate, nothing before me suggests that a supplemental agreement, or variation of agreement, was entered into.

38. A more powerful argument for W, in my judgment, is that the agreement was not in fact signed by the parties. Article 1 provides that "This Agreement shall come into force on the date upon which the last of [H] and [W] signed the Agreement", and the preamble to the Post-Marital Agreement contains the usual notice "Do not sign this agreement unless you intend to be bound by its terms".

39. Normally, an agreement will take effect as a result of both parties signing. The principle of autonomy, articulated by Mostyn J in **BN v MA [2014] EWHC 2450** when emphasising the importance of a party signing (and, I suggest, by corollary, <u>not</u> signing) is relevant. I would not want, however, to lay down an immutable law. Each case is fact specific. It may be, for example, that parties agree in correspondence that agreement has been reached, and signatures are not required. It may be that parties do not sign, but clearly consider themselves bound and act accordingly. But in this case, it seems to me to be unreasonable for an agreement to be formally binding upon W in the absence of her signature when that very same agreement expressly, and in terms,

only takes effect upon both parties signing. The purpose of such agreements is to achieve as much certainty as possible, and it strikes me as unfair for W to be strictly held to a document which was carefully drawn up to require, as an express clause of the agreement, both parties' signatures.

40. I am satisfied therefore that it is not a formally arrived at agreement in the Radmacher sense, whereby the presumption is that it should be given effect to unless in the circumstances it would not be fair to hold W to its terms. In other words, I decline to find that it binds W unless she can demonstrate it operates unfairly.

41. But nor am I willing simply to discard and ignore it, as W submits. To do so runs contrary to the s25 requirement to take account of all the circumstances of the case. Although not a strict Radmacher agreement, this was an agreement reached by the parties, with the benefit of legal advice, and upon full disclosure. Even though W did not sign it, in my judgment I am entitled to take it into account and attach such weight to it as I think fit. It is one of the factors, to be considered in the mix. The terms agreed in 2017 are relevant, albeit not determinative.

42. I therefore conclude that:

i) The Post-Marital Agreement is not vitiated or tainted by undue pressure or duress.

ii) The absence of W's signature, in circumstances where she consciously decided not to sign, takes the agreement outside the Radmacher category of cases.

iii) The agreement falls to be considered as one of the factors in this case, but it is not presumptively dispositive as would be the case if it fell into the Radmacher category.

Inter vivos subventions by H's father

43. Despite the very handsome provision made by H's father over the years, that has now ceased entirely since these divorce proceedings. H has been, I find, marginalised by his father from his wealth management role in the family office, where he used to work full-time but now goes only once or twice a week.

44. Separately, but linked, H's father has taken steps in relation to a dynastic trust to remove from H the possibility of benefiting from €23m of dynastic money:

i) On 3 June 2014 H's father settled a trust known as the X Trust, governed by Guernsey law:

a) H's father was the settlor and is the protector.
b) H's father is the named principal beneficiary.
c) H is one of the discretionary beneficiaries.
d) It is fully discretionary.

ii) H has received no distributions or loans from the trust.

iii) On or about 21 January 2019, before the separation, H's father transferred 170,300 shares in a company known as Company 1, which in turn owns about

30% of the shareholding in Company 2, into the trust pursuant to a trust resolution dated 6 September 2018. The value of the introduced shares was about €23m.

iv) In January 2020 W's petition was served.

v) On 21 February 2020 the shares were transferred out of the trust and back to H's father pursuant to an instrument of partial revocation executed by him as settlor.

vi) I assume that the original intention was to place monies in the trust by way of potential advance inheritance. The monies never became H's, and it was never suggested that the monies would have been distributed during H's father's lifetime; rather, they were intended to pass down on death. H, I accept, was not party to the discussions at the time, but simply made aware of the transactions after they had taken place. Everything was done by, and at the behest of H's father who is clearly a domineering and controlling character, and ignored H.

vii) By an instrument of amendment, clearly instigated by H's father, dated 24 April 2020, the trust terms were amended irrevocably to ensure that no monies may be paid or lent to anybody who is not an "eligible beneficiary". At the risk of speculating, it seems likely that this was designed to prevent trust monies being used for the benefit of W.

viii) Currently the trust has assets of no more than about £1,000.

45. I am confident (and nobody disputes) that these events (the annual payments ceasing, and the reversal of the funding of the trust) were principally caused by the divorce proceedings brought by W. Contrary to W's case, this was instigated by H's father, and is not the product of collusion between H and his father.

46. There is an additional factor which H says makes the prospect of monies once more being gifted to him by his father much less certain. His father has formed a relationship with a woman who is 38 years younger, to whom he has given about £8m. H says that he and his sisters are now barely on speaking terms with his father, and told me about a very difficult conversation between them all in January this year when they told their father they were contemplating taking proceedings against their father and his partner. They had also commissioned a Private Investigator report which angered their father. H and his siblings believe that their father is incapacitous when with his partner, manipulated and controlled by her. They believe that he might jeopardise the family wealth and their future inheritances. Since that conversation, they have now instituted legal proceedings in France and Switzerland; the claim against their father is akin to a Court of Protection action. Having heard the evidence, I accept that there is a major family breakdown underway between H, his sisters and his father. H's father has ceased any support for H's sisters as well as for H. H told me, and I accept, that his father sees them as the enemy.

47. Given the current disputes within the family, I do not find that in the foreseeable future H's father is likely to resurrect the previous level of payments. The ongoing Swiss litigation suggests to me that any such payments are some way off, and, if

made, could well be at a lower level than before. I doubt whether H's father will, as W suggests, immediately replace in the dynastic trust the sums previously removed, or anything like it. I am not satisfied that I can or should take this prospective resource (i.e ongoing support provided by H's father) into account in any meaningful way, save that I doubt he would want to see his son destitute; in other words, I view the father, in the background, as a safety net in the event of calamity rather than in the foreground as a foreseeable ongoing resource. I remind myself that this is entirely in the gift of H's father. It is not for me to try and encourage him to restore the inter vivos payments; to do so would be to trespass on his autonomy. I make it clear, however, that even had I concluded that monies of up to c£600,000pa will shortly be made over to H once again, my conclusions on the appropriate order would be the same.

Prospective inheritance

48. H's father is 89 years old and in good health. His life expectancy according to At A Glance is 4.5 years, although of course he may well live appreciably longer. In cross examination, H indicated that his father is worth not less than €400m, all of which appears to be in his name rather than held via trust arrangements. The generational approach of the family is to preserve wealth dynastically, not to squander it, and H's father has made no direct threat to disinherit H.

49. W submits that H will likely receive by inheritance vast sums from his father. H in his Form E said that "I anticipate I will benefit at some point in the future (whether outright or as a beneficiary of trusts, or otherwise) from his estate or inter vivos gifts. I do not know the exact amount by which I may benefit although I anticipate it will be substantial wealth in excess of €100m. There is an expectation I will preserve this wealth for future generations just as my father and ancestors have done. If my father dies in Switzerland then forced heirship provisions will apply. However my father is not Swiss and he may well move to another country before his death". Unlike in **Alireza** there is some evidence here that H's father may seek to disestablish himself from forced heirship. The current family dispute, and his severance of funds for any of his children, no doubt causes them disquiet. The general proposition of law, per **Michael,** is that the fact and timing of inheritance are ordinarily so uncertain that it cannot be viewed as a resource. The dicta in **Alireza** move the dial a little in the direction of greater certainty as to <u>fact</u> although not as to <u>timing</u>, in cases of forced heirship. It seems to me, on the facts of this case, that although I cannot ignore the possibility that a family meltdown of such magnitude will take place that H's father will take active steps to avoid forced heirship and disentitle his children, it is, on balance, more likely that at some point H will indeed receive a significant inheritance. However;

i) Such inheritance would be entirely non-matrimonial, received long after separation;

ii) It has always been understood by the parties, as recorded in the two agreements, that future inheritances should be excluded from claims by the other party;

iii) In terms of foreseeability of resource, it may be several years away, and is unlikely to be of immediate assistance to H. At best, it gives me confidence that H will not want for money in the long term.

The parties' proposals

50. The figures have been affected as time has passed by legal fees and the costs involved in maintaining two households on an interim basis.

51. The net effect of H's proposal is that W would have total net assets (after payment of all her outstanding legal costs), of about £7.15 million. That sum, on his proposal, is entirely liquid, apart from £117,000 of pension provision, and incorporates 'X' Street at £2.045m and the balance in cash. Broadly, this is consistent with the unsigned Post Marital Agreement, to which H has adhered since his first proposal in July 2020, although it was worth more to W then, before the corrosive effect of costs.

52. W's position has altered over time:

i) In her first proposal of July 2021, she sought a net effect total of about £10m.
ii) In November 2021, she repeated the substance of her proposal, seeking £10m.
iii) By her most recent proposal dated 3 February 2022, she seeks about £10.6m.

Needs and outcome

53. I finally turn to the appropriate award which is based principally on an assessment of W's needs, although I emphasise that I have considered all the material before me in the round. I have had in mind in particular the length of the relationship, the primacy of the children's needs, the available resources, the standard of living and the origins of the wealth. I also factor in the Post-Marital Agreement in circumstances where, although W did not sign it, agreement was reached and there is nothing to suggest she was discontented with the terms at the time.

54. W seeks an appropriate central London property with 4 bedrooms and of an appropriate size. She puts forward two examples in SW3; 'A' Street (2,213 sq ft) at £4m and 'B' Street (2,322 sq ft) at £4.5m, although neither, as she told me, are perfectly configured. H, by contrast, suggests SW6/SW10, putting forward a number of well appointed properties ranging between 1,913 sq ft and 3,047 sq ft, all in a price bracket between £3m and £3.75m. As usual, it is the location which accounts for the main variable element.

55. I accept that 'X' Street (valued at about £2.175m gross) is not a realistic benchmark. It is cramped at 1,302 square feet and seems to me to be too small for family living. In fairness, H does not press for a housing fund at that level. It is, however, notable that this property, which W lived in for some years, is in X area whereas W now has her sights set on more expensive A/B area.

56. I note that in her Form E, W did not fill in her capital needs requirement. I ordered her to do so, and she put forward a London house need at £6m-£6.5m which seems to me to have always been on the ambitious side.

57. I bear in mind that H proposes to carry on living at his home in Y town which is worth about £2.9m, albeit subject to a large mortgage.

58. Given that the children are at School X and School Y, each round trip to the schools from SW3 would be about 1 ½ hours, compared to a much shorter trip from H's proposed areas of G area or F area.

59. Essentially, what W seeks is a familiar trade-off in terms of location and space. She does not want to start all over again, and move to SW6 where she would have to re-settle herself and the family. She told me that she prefers the location of SW3, as do the children, although I am confident that the children would adapt well to any reasonable area in a nice house with the love and support of their mother.

60. On balance, having listened very carefully to W, and having considered the various property particulars, I have reached the conclusion that G area/F area are appropriate areas. In my judgment, greater space would be of benefit to the children, and these are comfortable areas near to the schools. I conclude that an appropriate housing sum for W is £3.5m. To that should be added stamp duty which I calculate at £333,750. W needs funds to complete the purchase, move and renovate a new property. I will therefore round up this sum to **£4m.** That said, W will be able to spend more on a property if she so chooses, whether in SW3 or elsewhere, but would have to tailor her income fund accordingly.

61. I reject W's case that she reasonably requires a second home in Switzerland costing £1.8m-£2m. True, she and the children are used to spending time in London and Switzerland, although it was only between 2017 and 2019 that they spent substantial time during the marriage in both countries. But the children will be able to see H in Switzerland at his home (which is also their home), and in any event their needs do not as a matter of law extend for more than perhaps another 10 years. I was told that when the children go to stay with H, W also travels to Switzerland in case of an emergency; I sincerely hope and expect that she will not need to make these trips for much longer, and do not regard this aspect of the case as supporting W's request for a second home. W will have ample funds to travel there, stay in hotels and/or rent if she chooses. Given that the children are based in London, one is only talking about holiday time (18 weeks a year), of which about half is likely to spent by the children with H; the time spent by W, and particularly the children, in a second home would be limited. Provision for a second home in Switzerland was not included in the Post-Marital Agreement and, in my judgment, would be an unreasonable need. W would, as it happens, have enough funds to purchase a second property if she wishes, particularly if she scales back her London aspirations, but that must be a matter of choice for her rather than an expense attributable solely to H. Further, on my findings, I am unconvinced that H has liquidity to pay for a second home as sought by W and, moreover, were he to do so his ability to meet his own needs would be severely affected.

62. As for income needs, W's claimed budget for herself (excluding costs directly referable to the children) is £251,010pa, a sum which includes the cost of running properties in both London and Switzerland; deducting the cost of running a second home in Switzerland brings the budget down to about £224,000pa. As a comparison H's budget (similarly excluding costs directly referable to the children) is £233,215pa, albeit including £43,225pa of mortgage costs on the Y town property; excluding mortgage costs brings his budget down to £189,990pa, although H told me he will

have to reconsider certain items depending on affordability, such as retaining a boat and membership fees for a club in the U area.

63. In the Post-Marital Agreement, and indeed referenced in her earlier open proposals, the budget deemed appropriate for W was £110,000pa (uprated for inflation). In her most recent proposal, W seeks a Duxbury of £3.4m which equates to about £155,000pa. It does seem to me that £110,000pa (uprated with inflation), would be inadequate in the light of the standard of living, the historic expenditure by the parties, and H's own budget. It seems to me that an appropriate sum is £150,000 per year which, in accordance with the Duxbury tables, is capitalised at **£3,319,000** (UK state pension, for which W has minimal provision, is ignored for the purpose of the calculation). True, at times W's budget may be higher, but at other times it may be lower and in the long term she will have a valuable property which she can trade down to release money if she so chooses. She will not, however, have to do so. In reaching this conclusion, I have also taken into account that such a sum would be referable to W's personal costs alone, and H will, in addition, be paying a very high level of agreed expenditure for the children.

i) £44,000pa child maintenance (£22,000 per child).
ii) £80,000 of directly paid costs.
iii) £50,000 school fees.

That is a total of about £174,000pa. Added to £150,000pa for W gives a total figure for W and the children of £324,000 per year.

64. The total needs based on the above is **£7,319,000**. I propose to increase that sum to a total of **£7.45m** to allow for unforeseen contingencies.

65. The structure of the award shall include a transfer of 'X' Street to W, as the Post-Marital Agreement envisaged. It is more logical for her to have the property, and sell it how and when she wants. In any event, I do not consider that H can pay the entire award in liquid cash. Thus, the award shall comprise:

i)	'X' Street	£2,045,791
ii)	W bank accounts	£990,103
iii)	W investments	£15,343
iv)	W pension	£117,036
v)	W liabilities	-£399,847
vi)	Balance to be paid by H	£4,681,574

Such sum shall be payable by H as follows, within a timeframe which he accepted he could comply with:

i) £3.5m by 14 June 2022.
ii) The balance of £1,181,574 by 14 September 2022.

This will enable W to buy a London property, without needing to sell 'X' Street until such time as it suits her.

66. Other matters:

i) I reject the claim by W that H should meet her projected costs of the Children Act proceedings which are said to be £173,000. I know nothing about those proceedings, including how proportionately or reasonably each party is conducting the litigation. In my judgment, each must bear responsibility for their own costs. It will be a matter for the judge hearing those proceedings to decide if a cost order one way or the other is warranted.

ii) I shall order child maintenance in accordance with W's proposal, together with the agreed extra items. H shall pay the school fees and, when applicable, university tuition fees.

iii) Chattels shall be divided by agreement.

iv) The interim arrangements shall continue until payment of the first lump sum of £3.5m.

v) The joint bank account ending …6196 (containing £17,269) shall be transferred to H for administrative purposes, with W receiving/retaining the monies in the account. Strictly, this takes W a touch above my determination of her needs requirement, but it is a modest sum.

vi) The rental deposit is to be repaid by W to H.

vii) I shall not provide for the additional miscellaneous costs sought by W.

viii) Airmiles to be divided equally.

ix) There shall be a clean break.

Conclusion

67. This award provides W with £7.45m net which is about 60% of the present total of £12.47m. H will make a very high level of financial commitment for the children. Stepping back and looking at it in the round, in the light of all the s25 criteria, with the children as my first consideration, I am confident that this is a fair outcome for both parties. It approximates to that which was contained within the Post-Marital Agreement, but goes beyond it so as to meet what I consider to be W's needs judged against all the relevant factors. I am confident that H will be able to meet his own needs under this order.

Costs

68. The combined costs are just over £1.6m (W's £917,000 and H's £709,000), which is about 13% of the assets and more or less comprises the difference between the parties in their open proposals. I will deal with any costs application separately.