ThoughtLeaders4 HNW Divorce • June 2025

HNW Divorce MAGAZINE

ISSUE 21

WHERE THE RISING VOICES SHAPE TOMORROW'S HNW DIVORCE PRACTICE

INTRODUCTION

"From heartbreak to breakthrough: Divorce in a new era"

- Anonymous

Welcome to the Next Gen Edition of HNW Divorce Magazine, Issue 21, where we explore the intersection of love, law, and finances in high-net-worth divorces. This edition explores critical issues such as perspectives on co-parenting, outdated legal frameworks, the growing role of mediation and other important matters. We feature thought leaders from the community who are shaping the future of divorce with empathy, clarity, and innovation. Additionally, we have included our first HNW Divorce Trivia, fill in to redeem a 15% discount to one of our HNW Divorce events.

The ThoughtLeaders4 HNW Divorce Team

Paul Barford
Founder/Managing Director
020 3398 8510
email Paul

Chris Leese
Founder/Chief Commercial Officer
020 3398 8554
email Chris

Danushka De Alwis
Founder/Chief Operating Officer
020 3580 5891
email Danushka

Maddi Briggs
Strategic Partnership Senior Manager
020 3398 8545
email Maddi

Rachael Mowle
Strategic Partnership Manager - Private Client
020 3398 8560
email Rachael

Seth Fleming
Conference Producer Associate
020 3433 2282
email Seth

Dan Sullivan
Business Development & Partnership Manager
020 3059 9524
email Dan

Jamie Biggam
Strategic Partnership Executive
020 3398 8592
email Jamie

CONTRIBUTORS

Olivia Stiles, **Kinglsey Napley**

Felicia Munde, **Stewarts**

Sophie Chapman, **Stewarts**

Lula Barlow, **Knights Professional Services**

Olalla Garcia-Arreciado, **Howard Kennedy**

Emma Diack, **Clarence Family Law**

Polly Calver, **Forsters**

Clare Pilsworth, **Tees Law**

Laura Tanguay, **Birketts**

Leora Taratula-Lyons, **Burgess Mee**

Joe Ferguson, **Myerson Solicitors**

Grace Parry, **Myerson Solicitors**

Emily Venn, **Harbottle & Lewis**

Francesca Skakel, **Birketts**

David Hardstaff, **BCL Solicitors**

Rishi Joshi, **BCL Solicitors**

Evie Smyth, **Russell Cooke**

Ciara McHale, **Alvarez & Marsal**

CONTENTS

HNW Divorce

QUARTERLY EVENT ROUND UP

THE 3RD ANNUAL HNW DIVORCE NEXT GEN SUMMIT

The 3rd Annual HNW Divorce Next Gen Summit concluded with a series of exceptional and truly thought-provoking sessions this afternoon, led by our esteemed panel of speakers

We ended the evening on a celebratory note by extending our special thanks to Maltin PR for helping facilitate our drinks reception. We would like to once again extend a huge thank you to our amazing co-chairs, Jennifer Dickson and Max Turnell, as well as our event partners Birketts LLP, EY, Evelyn Partners, Pump Court Chambers, The Soke, Seddons GSC, 7IM and Maltin PR, for all their amazing support! We are looking forward to welcoming you all back next year for the 4th annual summit!

TRUSTS IN DIVORCE: THE 2ND ANNUAL PRACTITIONER'S FORUM

We would like to extend another huge thank you to our amazing co-chairs, Jessica Henson and Abby Buckland, and to our event partners, Turcan Connell, Seddons GSC and Nedbank Private Wealth, for all support!

We hope to see you again next year for the 3rd Annual forum!

HNW DIVORCE CIRCLE

HNW Divorce Circle returned for its fourth successful year at the elegant Down Hall.

This exclusive, invitation-only event spanned one and a half days and featured expertly facilitated, highly interactive discussions. Guided by our esteemed Advisory Board, the programme brought together 40 leading practitioners for a dynamic and relevant agenda. Designed to be inclusive and participant-led, the event fostered meaningful dialogue and collaboration among top professionals in the field.

HNW Divorce

Upcoming Events

The International HNW Divorce & Children Summit

1-2 July 2025 | The Grande Real Villa Itália Hotel, Cascais, Portugal

HNW Divorce Litigation - 5th Annual Flagship Conference

20 November 2025 | Central London

The Non-Court Dispute Resolution Forum

14 Oct 2025 | Central London

Trusts in Divorce: The 3rd Annual Practitioner's Forum

February 2026 | The Clermont, Charring Cross

HNW Divorce Circle

5 - 6 March 2026 | UK

The 4th Annual HNW Divorce Next Gen Summit

March 2026 | Central London

For Partnership enquiries please contact
Dan on +44 (0) 20 3059 9524 or
email dan@thoughtleaders4.com

1 EXPERT, 2 EXPERTS, 3 EXPERTS, MORE?

KINGSLEY NAPLEY
WHEN IT MATTERS MOST

CORPORATE PARTNER

RECENT CASES ON SJES AND SHADOW EXPERTS

Authored by: Olivia Stiles (Senior Associate) - Kingsley Napley

The recent cases of BR v BR [2025] EWFC 88; [2024] EWFC 11, HO v TL [2023] EWFC 215 and GA v EL [2023] EWFC 187 examine, inter alia, the use of experts in the context of business valuations and serve as a useful reminder of the court's strong preference that 'wherever possible' expert evidence should be obtained from a single joint expert ("SJE") instructed by both or all parties. In BR v BR, Peel J, went as far to say that it is "the default position" and the bar for deciding otherwise is set high.

Family law practitioners will be familiar with the rules around the appointment of experts and expert evidence generally. Provision for the instruction of experts in financial remedy proceedings is made in Part 25 of the Family Procedure Rules and in particular r25.4(3) which states that the expert evidence sought must be "necessary to assist the court to resolve the proceedings". R 25.11(1) sets out that where two or more parties wish to put expert evidence before the court, the court may direct that the evidence is given by an SJE. The position is further reinforced by Practice Direction 25D (para 2.1) which states that "wherever possible expert evidence should be obtained from a single joint expert instructed by both or all of the parties."

In BR v BR, the parties agreed prior to the First Appointment that they would each instruct their own experts. Despite their agreement, the court rejected this approach, instead preferring the instruction of a single joint expert. The wife had already instructed her own accountant who had taken a significant role in drafting her questionnaire. The questionnaire ran to over 500 questions focussing almost entirely on the business interests which made up the overwhelming majority of assets. The judge assumed that the information sought was that which the wife's accountants considered would produce the information they needed to provide a valuation.

No doubt, this combined with the strong wording in PD25D played a significant part in the judge's preference for an SJE, rather than encouraging a lengthy (and costly) back and forth between two experts who were sat squarely in their respective clients' camp. It is not difficult to imagine the time and expense that would be incurred in answering 500 questions, only for those replies to be scrutinised and deficiencies or further questions to be raised thereafter with the likely result of two conflicting valuations. The judge felt comfortable that the questions raised by the wife's accountants could and should be dealt with by the SJE in the course of their instruction and on that basis the wife's questions in relation to the business interests were struck through.

The court considered that the instruction of an SJE (rather than each party having their own expert) is preferable for a number of reasons, as follows:

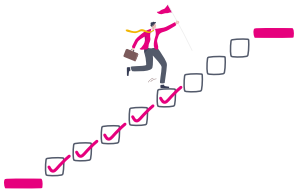
- **Cost and Proportionality** – by simple arithmetic, the cost of one expert is very likely to be cheaper than instructing two experts;
- **Duty to the Court** – although all experts have an overriding duty to the court regardless of who is instructing them and paying their fees, there is a sense that a solely instructed expert could be more susceptible to bias or appear to be more partisan given the source of their instructions, the information that is given to them and the relationship they build with their client over time.

- **Control of the Flow of Information** – the instructions and information provided to an SJE has the benefit of a form of 'court-assisted quality control'. If the parties are unable to agree what information should be provided to the expert then the court has the ultimate decision-making power and oversight. The court warned of the risk of two solely instructed experts reaching two entirely different conclusions because of the different documents, instructions and information that had been provided to them. In an area that is so fraught with uncertainty (valuations of shares in private companies have often been described in case law as 'fragile'), reducing the number of variables and increasing oversight can only be a positive step.
- **Use of a Shadow Expert alongside an SJE** - parties may still wish to instruct a shadow expert who will be able to assist in the preparation of the joint letter of instruction, raising questions to be put to the SJE and consulting with their client's counsel ahead of any cross-examination of the SJE.
- **Negates the Need for Lengthy Questionnaires** – the court considered that an SJE will be able to decide what information and documentation they need and conduct the necessary enquiries in order to prepare their report, negating the need for a high volume of business interest-centric questions in the parties' questionnaires.

Daniels v Walker Applications

Where one or both parties are unhappy with an SJE valuation, it is open to them to make an application for permission to adduce their own expert evidence, known as a Daniels v Walker application. The party seeking permission must, again, persuade the court that such evidence is "necessary". In GA v EL, the wife made a late Daniels v Walker application to adduce expert valuation evidence from her shadow accountant three weeks before the final hearing. Peel J extrapolated various principles in relation to the meaning of 'necessary' in the context of Daniels v Walker applications at paragraph 28 of the judgment, but placed particular emphasis on the issue of overall justice to the parties in the context of the litigation.

In this case the difference between the SJE evidence and the shadow expert evidence the wife sought to adduce was minimal in the circumstances. The application was made late and the granting of the wife's application would have serious ramifications for the listing of the final hearing, including potential prejudice to the husband who would have little or no time to access his own expert evidence, for his expert to liaise with the existing experts and to make his own Daniels v Walker application (should he wish to). Further, it was undesirable for the husband to in effect be reliant on the SJE's evidence with whom he would have a different relationship to that which the wife would enjoy with her shadow expert to whom she had unfettered access and would be completely aligned with her instructions. For those reasons and with an eye to the minimal (in the context of this case) difference between the two experts' valuations, permission to adduce the shadow expert's evidence was refused.



Effective Use Of Shadow Experts?

In BR v BR the wife was criticised for using her section 25 statement to shoe-horn in expert evidence from her shadow accountant. The judge noted that she opted not to make a Daniels v Walker application and stated that she must bear the consequences of this. It is not clear from the judgment whether such an application, had the wife made it, would have been successful. Given the Judge's clear preference in favour of SJE evidence at the First Appointment, it is perhaps understandable why such an application was not made.

The practice of business valuations in financial remedy proceedings has long been referred to as an art and not a science and 'fragile' in nature, particularly in relation to the valuation of shares in private companies.

The court has consistently made clear that it is engaged in a broad analysis rather than a detailed accounting exercise. The preferred approach seems to be for the appointment of an SJE so that the court has an independent source of expert valuation evidence and then for parties who wish to have their own experts, to appoint shadow experts who will be involved 'behind the scenes' to effectively mark the SJE's homework, help to formulate questions following the report and assist Counsel with cross-examination of the SJE.

It is difficult to see, other than in rare circumstances, where the court will permit its broad evaluative jurisdiction to be disrupted and influenced by the introduction of additional expert evidence above and beyond the SJE evidence, particularly in circumstances where it remains open to each party to instruct their own shadow expert. What issue of overall justice cannot be overcome by the combination of the appointment of an SJE, the party dissatisfied with their valuation appointing their own shadow expert to advise them and the court exercising its broad analysis and discretion?

What is clear from the recent case law on business valuations is that our clients' appetites for challenging and disagreeing with expert evidence remains high.

Who can blame them when it is often the case that trust between spouses is at an all-time low? Frequently, one party has, either by accident or design, not been involved in the business which is now the subject of proceedings. It is unsurprising that a spouse in that situation will want to rigorously test expert evidence where the valuation produced will have a significant impact on their financial award on divorce and therefore their future? In a world where those valid concerns run high, but the court's tolerance for the introduction of additional expert evidence is low, there is a clear case for clients to have the benefit of both an SJE and an experienced shadow expert behind the scenes in whom they can trust.

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"The 'high-powered, well-respected' family team at Kingsley Napley LLP has a 'first-class reputation', and is 'often at the cutting edge of new developments'."

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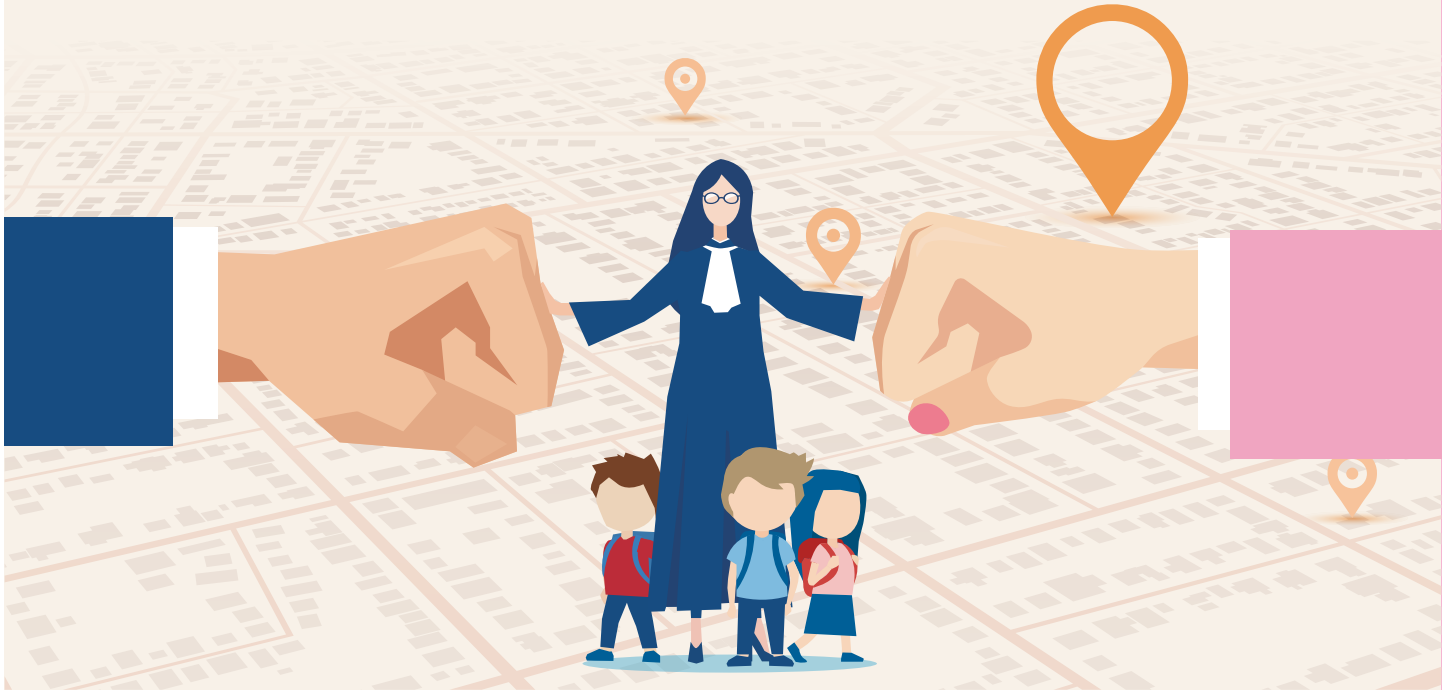
FAMILY COURT PROVIDES LATEST PERSPECTIVE ON CO-PARENTING AND INTERNAL RELOCATION WITH A CHILD



Authored by: Felicia Munde (Associate) & Sophie Chapman (Partner) - Stewarts

Relocation cases have traditionally been dominated by international moves. However, as professionals have increasingly sought to balance their time between a vibrant city life and a tranquil country escape, there has been a notable increase in internal relocation cases in family law. Even where relocation remains within the United Kingdom, choosing to relocate with a child can still be a tricky decision and has added complexity for separated parents. Any arrangement that will disrupt a child's established care routine and schooling will require the consent of the other parent.

In such cases before the family courts, judges must carefully weigh up the child's best interests, factoring in practical concerns and utilising the guidance provided in case law.

The case of Re Boy A and another involved two brothers aged eight and 11 who had grown up in London. The court had to decide whether relocation from London to Somerset, as sought by their mother, would be in their best interests. The case attracted much media attention following the release of a letter written by the judge directly to the children.

Background

The children in question, referred to as "A and B" in the judgement, were subject to a 2018 Child Arrangements Order, which provided for them to reside with their parents at their separate homes under a shared care arrangement on alternate weeks and for their time to be split equally during the school holidays. The mother had been the primary caregiver for A and B since their birth and during their early years. The father was also heavily involved despite professional commitments. In September 2020, the mother bought a home in Somerset and began to split her time between London and Somerset, as many professionals did following the outbreak of the Covid-19 pandemic.

In 2021, the father applied for a Prohibited Steps Order and Child Arrangements Order pursuant to section 8 of the Children Act 1989 requesting that the children reside with him in London. The mother made a cross-application for a Child Arrangements Order and a Specific Issue Order pursuant to section 8 of the Children Act 1989 providing for the children to relocate with her to Somerset.

The court, therefore, had to consider whether it would be in the children's interests to relocate to Somerset (which would involve a change of schools) and, in any event, what the child arrangements should be given that the mother's position was that she "could not leave her boys behind" but equally "could not afford to keep two properties".

Analysis Of The Welfare Checklist

In assisting the court, CAFCASS spoke to the children and made recommendations. Having spoken to both parents and the children, CAFCASS recommended that the court grant the mother permission to relocate with the children to Somerset, despite some suggestions that the mother had influenced the children's perspective on London schooling. For example, child A told the officer that "his mum had showed him things about the area [of his proposed London secondary school] that had put him off". However, CAFCASS concluded that the recommendation was finely balanced and was ultimately predicated on the mother supporting the father's role in A and B's lives.

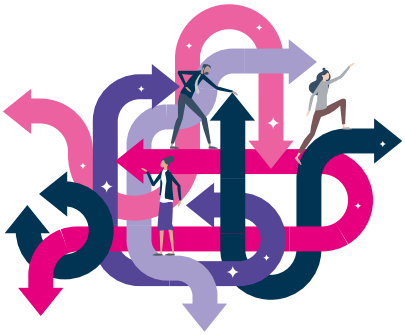
Historical events had shown great animosity between these parents. On balance, the court was not satisfied that the mother would be able to support and nourish the children's relationship with the father should a relocation to Somerset take place.

The court's challenge was to balance the frustration the children would endure by continuing to be exposed to the parental tension and conflict as their parents sought to co-parent and manage the shared arrangements against the risk of significant emotional harm should their relationship with their father be marginalised and diminished by moving out of London.

Ultimately, the court concluded that there was "a likelihood that F [would] be frozen out of A and B's life in any meaningful way and that they are at risk of suffering emotional harm". It concluded that the continuation of alternate weeks of co-parenting, in the context of the poor communication, was a less bad outcome for A and B than the emotional risks of relocation to Somerset.

Therefore, the mother's application to relocate to Somerset was not granted. A Child Arrangements Order was made for the children to remain living with both parents under a shared care arrangement on alternate weekends (travelling to Somerset once a month and during school holidays, if required) and continue attending school in London.

The judge wrote a letter to the children, which is appended to the judgment. The letter has been hailed as an excellent way to communicate with children in such proceedings.



Relocation

This case confirms that relocation, even within the UK, is a difficult question for the court to consider. Such cases are complex and emotionally charged. They frequently involve carefully balancing one party's rights, intentions and desires with the 'left behind' parent's right to maintain close and regular contact with their child.

While the legal framework has not changed, the considerations that must be taken into account by the court are ever-evolving. As professional work patterns continue to fluctuate over the coming years, we are likely to see more internal relocation cases being reported in the family courts.

Partner Sophie Chapman says:

"In this case, the existing shared care arrangement was a key factor in the judge's decision. That said, each case is different and seeking early legal advice is crucial. Such cases continue to demand nuanced approaches from legal professionals and the courts to ensure that a welfare assessment is properly conducted."

CAPACITY

WHAT IS IT AND WHAT DO YOU DO IF YOU QUESTION IT?

Authored by: Lula Barlow (Solicitor) - Knights Professional Services

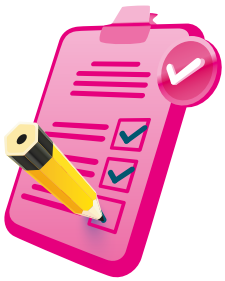
Many family lawyers will have found themselves in the situation where they have questioned their client's mental capacity. But what constitutes capacity and what do you do if you question it?

What Is Mental Capacity?

Mental capacity is the ability to make a particular decision. A client may have capacity to make certain simple decisions but are unable to make more complex ones or those that carry significant consequences. For example, a client may have the capacity to decide they want a divorce but lack the capacity to conduct financial proceedings.

The starting point for assessing capacity is:

1. A person must be assumed to have capacity unless it is established that they lack capacity. It is your professional duty to satisfy yourself whether the client has capacity to give instructions.[1] If you doubt a client's capacity, the burden of proof is on you to establish on the balance of probabilities that that person lacks capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success
3. A person is not to be treated as unable to make a decision merely because they make an unwise decision. However, if their decision is out of character, it may raise doubts as to whether they lack capacity or are under the undue influence of another person.[2]



How Do You Test Capacity?

A person lacks capacity to make a decision if:

1. They cannot:
   - a. understand information relevant to the decision or
   - b. retain that information or
   - c. use or weigh that information as part of the process of making the decision or
   - d. communicate the decision (by any means)

1 3.4 of Code of Conduct
2 Section 1 Mental Capacity Act 2005 (MCA 2005)

and

2. Their inability to do so is because of an impairment or disturbance in the functioning in the person's mind or brain.[3]

An impairment or disturbance can be temporary or fluctuate; you need to establish whether one exists at the time the client needs to make a decision. There is no presumption of continuance if an individual has previously lacked capacity, however the burden of proof is more easily discharged if there is clear evidence of incapacity for a considerable period of time, for example a traumatic brain injury. Capacity can also come and go; a client may lack capacity to make legal decisions throughout proceedings for a period of time, and then have the capacity to do so again later.

You must be satisfied that your client has capacity to give you instructions. Capacity depends on both time and context, so it is important to assess a client's capacity at every stage of the process if you have concerns. This may result in instructing a professional to undertake a formal assessment.

If it is found that a party lacks capacity, a litigation friend must be appointed to give instructions and conduct proceedings on their behalf.[4]

Who Can Be A Litigation Friend?

A deputy appointed by the Court of Protection will have priority to act as a litigation friend. Where there is no deputy appointed, another third party may act as a litigation friend if they:

1. Consent to act
2. Can fairly and competently conduct proceedings on behalf of the protected party
3. Have no interest adverse to that of the protected party; and
4. Undertake to pay any costs which the protected party may be ordered to pay in relation to the proceedings, subject to any right that person may have to be repaid from the assets of the protected party (this does not apply to the Official Solicitor).[5]

The third party must file a certificate of suitability confirming they satisfy the above conditions before any steps are taken as a litigation friend.

A litigation friend's duties include:

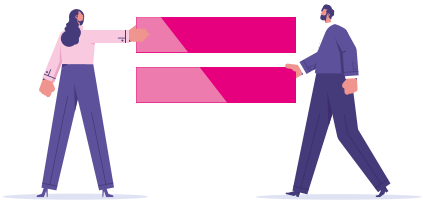
1. Making decisions in the protected party's best interests
2. Doing all they can to tell the protected party what's happening in the case and ascertaining their wishes and feelings
3. Paying any costs ordered by the court

In the event there is not another suitable or willing third party to act as a litigation friend, the Official Solicitor can be appointed. The Official Solicitor will usually consent to act if there is:

1. Satisfactory expert evidence that the party lacks capacity to conduct proceedings, or a finding by the court that the party is a protected party
2. Confirmation there is security for the costs of legal representation, such as through Legal Aid or a third party undertaking to pay their costs
3. Confirmation the Official Solicitor is a litigation friend of last resort.[6]

How Does A Lack Of Capacity Affect Divorce Proceedings And A Financial Settlement?

The Court of Protection is likely to pay significant consideration to the protected party's wishes and feelings, particularly prior to their loss of capacity. In the case of D v S [2023] the protected party suffered a severe brain injury whilst he had already separated from his wife and divorce proceedings had begun. The judge considered the protected party's best interests and evidence to support he had considered and understood his marriage had broken down at the time he had capacity. The judge granted the Decree Nisi on the basis that it was in accordance with the protected party's wishes and best interests.



The court's starting position for financial settlement is equality and any deviation from this must be on a needs basis. If your client lacks capacity due to an illness or injury they may have additional needs, such as housing or care arrangements. It is essential these costs are factored into any negotiations for a financial settlement to ensure these additional needs are met.

If an agreement is reached and it later transpires a party lacked capacity to make that agreement, it may be set aside by the court which can lead to financial repercussions. If you have any doubt about your client's capacity, it is your responsibility to satisfy yourself that they have the capacity to engage.

3 Section 2(1) MCA 2005
4 Part 15 FPR 2010
5 FPR 15.4
6 FPR 15.6

60 SECONDS WITH... ALEX CURRAN SENIOR ASSOCIATE PAYNE HICKS BEACH

Q What Has Been The Best Piece Of Advice You Have Been Given In Your Career?

A To remember that we are solicitors and not magicians. Whilst we can do a lot within the confines of the law, we cannot conjure up the unachievable.

Q What Motivated You To Pursue A Career In Law?

A I wanted to be a doctor when I was younger but the idea of studying biology and chemistry at A-Level made me feel unwell. After discussing university options with my mum, she highlighted that (at that time) I was partial to an argument and liked being right and that might suit me to a career in law. It was only when I arrived at university that I realised that not only was she right, but I enjoyed the subject matter and the problem-solving that a career in law offers.

Q What Do You See As The Most Rewarding Thing About Your Job?

A Seeing people start the next chapter of the lives. Divorce can sometimes be a gruelling process but I am seeing more people increasingly take the view it is only one chapter of their story and not the whole book.

Q What Was The Last Book You Read?

A I am about to finish *Outbreak* by Frank Gardner, the security correspondence for the BBC. The book before that was *The Suspect* by Rob Rinder. I set myself a target of reading 52 books last year and met it so this year's target is 56. So far, it is not going well….

Q What Are You Looking Forward To In 2025?

A I get married in November so that is going to be the highlight of the year, closely followed by our honeymoon in December.

Q Do You Have A New Year's Resolution, And If So, How Do You Plan To Keep It?

A No. I am a firm believer in only setting myself targets that are realistically achievable!

Q What Is The One Thing You Could Not Live Without?

A My family and my friends are obvious answers but I think a more non-obvious answer would be my mobile phone (sadly) or a good bottle of Gin.

Q What Does The Perfect Weekend Look Like?

A A lie in, some exercise, a nice walk around the park, a trip to the gym and then meeting up with family or friends for dinner our or a night in for games night.

Q What Is Something You Think Everyone Should Do At Least Once In Their Lives?

A Travel and to do it as often as you can!

Q If You Could Give One Piece Of Advice To Aspiring Practitioners In Your Field, What Would It Be?

A To learn the importance of boundary setting with clients.

Q What Legacy Would You Hope To Leave Behind?

A In my personal life: that I would do anything I could to help my family and my friends.
In my professional life: that I didn't shy away from the hard fight but that I was the kind of solicitor that others felt they could do a deal with.

Q Dead Or Alive, Which Famous Person Would You Most Like To Have Dinner With, And Why?

A Kylie Minogue. My reason – she is an icon!

PAYNE HICKS BEACH

"They are a fantastic group of lawyers. They provide excellent advice to clients, and they have strong expertise in a range of areas. They really invest in their clients; it's a real pleasure dealing with them."

CHAMBERS HIGH NET WORTH

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ABOUT US

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For further information please contact:
Robert Brodrick, Partner, Private Client rbrodrick@phb.co.uk
Richard Manyon, Partner, Contentious Trusts, rmanyon@phb.co.uk
Rebecca Cockcroft , Partner, Family, rcockcroft@phb.co.uk

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BEYOND BORDERS

A CAUTIONARY TALE ABOUT INTERNATIONAL DIVORCE

Authored by: Olalla Garcia-Arreciado (Senior Associate) - Howard Kennedy

International divorce presents unique legal challenges, especially for ultra-high-net-worth individuals (UHNWI), who are highly mobile. This article features the fictional story of a Spanish footballer in the Premier League and highlights the risks of divorcing in England for UHNWI and the intricacies of international family law.

A Spanish Couple Navigating Divorce In The UK

Xabier and Sara, both Spanish, have been together since their youth. They married in Madrid in 2010 and they have a 10-year-old son, Iker.

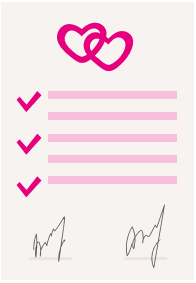
Xabier's Career And Assets

Xabier started his football career in Real Sociedad's youth academy, and his rising trajectory has seen him play for Sevilla and Atlético de Madrid. In 2018, he joined Liverpool FC, where he still plays. Thanks to a combination of investments and a healthy inheritance,

Xabier has amassed assets of around €10m. His salary at Liverpool is £2.5m pag, supplemented by various performance-related bonuses and image rights income amounting to an additional £500k pag.

Before marrying Sara, Xabier purchased a detached property in Madrid in 2008, valued at c. €3m. With his sign-on bonus, he bought a £2m property just outside Liverpool. Later, with his UCL bonus in 2019, he bought a holiday house in Menorca. All these properties are in Xabier's sole name.

Sara comes from a working-class family and worked as a teacher in Madrid before leaving her job to care for Iker following his birth. She does not have significant personal wealth.



The Marriage Contract

The couple entered into a marriage contract where they opted out of the default matrimonial property regime of community of assets[1] and instead chose one of separation of assets[2], formalised through a public deed signed before a notary about three months before the wedding. There was no formal financial disclosure, and they received legal advice from the notary.

1 Under this regime, any assets acquired during the marriage except those received by way or gift or inheritance are jointly owned and will be split equally on divorce
2 Under this regime, there are no marital assets except those which title is held in joint names

Looming Divorce

After winning the Premier League this season, Xabier is considering going back to a Spanish club to finish his football career there.

Unfortunately, the marriage has been on shaky grounds for over a year. Both parties have hired lawyers in Madrid. Xabier, adhering to their marriage contract and the usual provisions of Spanish law, has offered Sara the use of the property in Madrid, child maintenance of €2.5k pm until Iker is financially independent, coverage of all educational costs, all costs of moving back to Spain, and spousal maintenance of €5k pm for ten years.

Negotiations stalled when Sara's lawyer asked for some additional provisions. Surprisingly, Xabier was subsequently served with divorce papers coming all the way from London.

This case illustrates the complex legal and personal challenges that mobile UHNWI can face when navigating international family law. With significant financial and emotional stakes, the decision to divorce in a different jurisdiction brings numerous considerations to the forefront, including differences in divorce laws, asset division, maintenance, and child arrangements. Below I tackle some of these.

A Race To Court?

Was Sara under a legal obligation to give prior notice to Xabier that she was going to file proceedings in England? While there may be ethical considerations and potential breaches of Spanish legal practices, the urgency of cross-jurisdictional cases allows Sara to file without notice. So, is Spain entirely out of the legal equation?

The jurisdictional rules in Spain are linked to various EU regulations. Xabier and Sara have a common nationality, so the Spanish courts also have jurisdiction. Xabier can start his own set of divorce proceedings in Spain. However, he will have to disclose to the Spanish court that there is a pending application in England. The Spanish court will have the ability (but not the obligation) to pause the Spanish proceedings.

Which country "wins"?

If this scenario had occurred before the (arduous) implementation of Brexit, Sara would have won the infamous "Brussels race to court".

The EU regulations are clear: if more than one jurisdiction is competent, the application that is first in time "wins".

English practitioners were very critical of this rule: it goes against the flexibility of English family law, and it encourages litigation in an area that should prioritise conciliation and mediation. But it also gives certainty, which continental lawyers adore, but which is in a way incompatible with the flexible discretion afforded to English family judges. There is an eternal tension between certainty and fairness with a clear divide across the Channel as to which principle should prevail.

After Brexit, England has reverted to a prior rule for parallel proceedings: it is no longer a matter of which party is faster. The court, if asked to do so, will consider which country has a closer connection with the case. If the court's conclusion is that Spain is more closely connected, the judge will have the ability (but not the obligation) to send the case to Spain and stay the English proceedings. To make this happen, Xabier has to make an application for a discretionary stay.

What's Next For Xabier?

When more than one country is competent to hear a divorce case, it is obvious that the key question for most people will not be which country grants the divorce (i.e., the irrevocable dissolution of the marriage) but which country decides the financial outcome of the case. As Bill Clinton famously said, "it's the economy, stupid". Money rules the world.

English family judges often prefer to keep cases within their jurisdiction, reinforcing London's reputation as the "divorce capital of the world." While the outcome of an application for a discretionary stay remains uncertain due to the broad discretionary power of English judges, Xabier decides to move forward.

The absence of matrimonial property regimes in England and the almost unfettered freedom of the court to redistribute the assets of the parties as it sees fit and fair, regardless of title, make it an extremely dangerous jurisdiction for UHNWI, especially those that have arranged their financial affairs in accordance with a foreign contract of separation of assets that does not meet any of the requirements of an English nuptial agreement. This is a great risk for Xabier from an asset-protection perspective, especially because most of his assets have been built during the marriage and Sara has little earning capacity and no assets of her own – in all likelihood and depending on the weight given to the marriage contract, Sara will end up receiving between 355 and 50% of the matrimonial assets.

In short, given that (unlike the EU) England never applies foreign law to family matters, if Xabier's challenge to the jurisdiction fails, he will succumb to the dangers of English family law. But even if his challenge is successful, Sara could try to reopen her financial claims in the future via a Part III application. On the other hand, if Sara is on the winning side, Xabier could use various tactics to try to hinder the enforcement process.

Looking Ahead

These parties should have entered into a post-nuptial agreement when they relocated to England – but they didn't. In view of the uncertainty of having parallel proceedings, potentially conflicting decisions, enforcement issues, and mounting legal costs, Xabier and Sara should return to the negotiating table and settle. Whilst this is more complex in cases with an underlying jurisdictional conflict, it is possible to negotiate on a jurisdiction-neutral basis, with each party being assisted by lawyers from both jurisdictions. Finding a solution that sits somewhere in the middle, ensuring a smooth enforcement and avoiding further claims in any jurisdiction, is the best way forward. Expert legal advice is essential to navigate these turbulent waters.

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A REFORM OF COHABITATION LAW

WHAT WILL IT TAKE?

Authored by: Emma Diack (Associate) - Clarence Family Law

The current legal framework surrounding cohabiting couples is outdated and unfit for purpose. It does not support the almost 50% of couples who choose to not marry and instead reside together.

Marriage rates are in decline, and the law is clearly struggling to keep pace with how people are choosing to form relationships.

Urgent reform is needed to protect millions of people left vulnerable by a system that only recognises formalised unions.

The Current Legal Gap

Cohabiting couples, even those who have lived together for decades, remain legally exposed upon separation. Unlike married couples or civil partners, they do not benefit from automatic rights to financial support, housing or property division and have been left adrift. The enduring myth of the common law marriage' continues to mislead people into thinking they have legal protections which, in reality, don't exist. It is a myth, and it has yet to be busted. This legal grey area often punishes the financially weaker party, leaving them with no safety net.

Property Disputes

A cohabiting couple may own the property in which they reside. Their legal rights however are governed by the principles of property law; not family law. Upon separation, cohabitees may have a claim under the Trusts of Land and Appointment Act 1996 [TLATA] which gives the court powers to make orders where there is a dispute as to the property's ownership. This involves a cohabitant having to demonstrate a beneficial interest in a property. These claims can be complex, time consuming and costly.

When Children Are Involved

A separate route exists under Schedule 1 of the Children Act 1989. The parties must have a child(ren) together and this claim focuses solely on the financial needs of that child, not either of the parents. It offers limited and highly specific protection, and doesn't begin to address the broader issues faced by cohabiting couples upon separation.

A Reform Long Promised, But Not Delivered

The call for reform of cohabitation law has been heralded for decades and has yet to be formally amended.

In July 2007 the Law Commission replaced a report setting out detailed recommendations of reform and provided a framework for individuals to obtain financial relief upon separation.

The Law Commission proposed an 'opt out scheme' which would hopefully protect the vulnerably weaker party. The Coalition Government eventually responded… 4 years later; simply concluding they would not take forward any of the Commission's recommendations. Now we are back to square one.

Recent signals from the Government have been more promising. At the start of 2025 the Government confirmed reform would be on its agenda, with the Minister for Family Justice, Marriage and Divorce, Lord Ponsonby of Shulbrede, confirming that the House of Commons Select Committee 'have no plans to delay [their] progress on delivering cohabitation reform because of [their] work both in relation to marriage law and divorce law.' A statement which is strongly welcomed, but to what avail? Many remain sceptical. Progress has been slow, and political will has been repeatedly faltered.

The Bigger Debate

It remains to be seen whether this year will be the year of concrete change. It is hoped that the Government may finally see benefit of aligning the law with modern societal norms. Some argue that offering cohabitants rights similar to married couples could undermine the institution of marriage. But this is a socio-economic debate as well as a legal one. With so many now choosing cohabitation over marriage, the law must reflect the society it serves. The current framework isn't just outdated – it is actively harmful.

What Can Couples Do Now?

While we wait for the law to play catch up, couples can take proactive measures:

1. **Cohabitation Agreements:** These outline the distribution of their assets upon separation. They provide clarity, and legal certainty, especially where one partner owns the home outright or has contributed disproportionately.
2. **Declarations of Trust:** These should be registered with the Land Registry to formally record ownership proportions.
3. **Wills:** Upon the death of a partner, the surviving cohabitee will not automatically inherit their partner's estate without a will [unlike married couples]. By ensuring a valid will is in place, the partner's wishes are honoured upon their passing.

These tools are not perfect, and they require forethought and legal advice. But they are currently the best protection available.

We have waited long enough. The case for cohabitation reform is not just legal, it is a matter of fairness, dignity and keeping the law aligned with the lives of the people it governs.

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WHAT NEXT FOR FINANCIAL REMEDIES LAW?

THE LAW COMMISSION'S SCOPING REPORT AND ITS IMPLICATIONS FOR HIGH NET WORTH INDIVIDUALS

Authored by: Polly Calver (Senior Associate) - Forsters

On 19 December 2024, the Law Commission published their much-anticipated Scoping Report on Financial Remedies on Divorce and Dissolution. The Commission had been tasked (per its terms of reference) with considering whether there is "scope for reform" in the law on financial remedies. Its conclusion was that there is, and reform is needed: the law is insufficiently certain to provide a navigable framework for most divorcing couples. The report puts this down to a combination of wide judicial discretion and the development of judge-made law which cannot be understood from the face of the key statutory provisions (i.e. section 25 of the Matrimonial Causes Act 1973).

It will be for the Government to decide whether to take forward any programme of reform, and the report doesn't make recommendations as to what any new law should contain (although it outlines some potential models for reform, from codifying the existing judge-made law, to formulating a system of marital property regimes comparable to that which operates in many European jurisdictions).

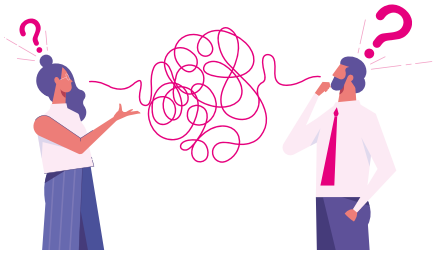
In the meantime, the report provides food for thought as to trends we may see in financial remedy cases and ways in which, as advisors, we can play to the strengths of the current law and mitigate its deficiencies. In this article, we'll consider two key areas where the report may well indicate the "direction of travel".

Towards Certainty

One of the report's key criticisms of the current law is that the judges' mandate in section 25 of the Matrimonial Causes Act 1973 to do what is "fair in all the circumstances of the case" lacks a clear overall purpose. Combine this with the principles developed in case law of "needs", "sharing", "compensation", "matrimonialisation" (which remains sufficiently unsettled as to require determination by the Supreme Court in the upcoming appeal of Standish v Standish) and so on, and it is difficult for divorcing couples to understand how the law applies to any particular set of circumstances without specialist legal advice in a high level of detail.

The Law Commission report focuses on the large population who cannot afford such advice. Rather than negotiating "in the shadow of the law", as the Government's push towards non-court forms of dispute resolution might assume, research (in particular the Nuffield Foundation's "Fair Shares" report) shows they are negotiating—due to the law's current lack of accessibility—entirely beyond its reach.

But for individuals who can afford detailed specialist legal advice, would a push for certainty come at the cost of bespoke outcomes? It has long been debated how we can, on the one hand, empower divorcing couples to reach their own arrangements by providing clear parameters to guide negotiations and promote settlements and, on the other, ensure that cases can be treated differently from the norm when they are different from the norm. One of the key advantages of the current law is that for those who can afford to make use of the courts or private justice a discretionary system enables all sorts of unusual circumstances to be weighed up in the round. The principles of "needs" and "sharing" enable us fairly to take account of diverse sources of assets (inherited or won in the lottery; simple and safe or complex and volatile), alongside diverse types of relationships and lifestyles (childless or not; long or short; domestic or international; living lavishly or thriving thriftily).



For those fortunate enough to have specialist advisors, the Law Commission report serves as a helpful reminder that many clients find the current law on financial remedies impenetrable (and the same goes for the system within which it operates), a frustration to which high net worth clients are not immune. The more we can do to demystify it, the more we lead our clients away from unnecessary miscommunications and misunderstandings, keep legal costs down and reduce emotional stress. Whether we achieve this through the collaborative law process, by attending private FDRs, by holding round table meetings, or simply by producing early and clear proposals, it is more important than ever that we help our clients to operate within a clear legal framework and therefore narrow the issues. We can strive to do so even in cases where unique circumstances need to be catered for, taking advantage of our current discretionary system.

Nuptial Agreements

Back in 2014—four years after the landmark case of Radmacher v Grantanio gave stronger legal backing to nuptial agreements—the Law Commission made recommendations for nuptial agreements to be placed on a statutory footing. Those recommendations have become a tenet of best practice for practitioners drafting nuptial agreements, particularly the guidance as to safeguards which an agreement should meet.

Ten years on, in its Scoping Report, the Law Commission continues to endorse its 2014 recommendations (save that it notes reconsideration may be required to align with any upcoming reform of financial remedies law more generally).

The report notes that since 2014, pre-nuptial agreements have grown in popularity, and that some legal practitioners are finding they operate to make the division of assets on divorce more straightforward (although not without the occasional agreement being challenged).

The report flags that there is uncertainty as to whether a party's "needs", which cannot be contracted out of in a nuptial agreement, should be interpreted less generously where there is a nuptial agreement, particularly in light of the recent cases of Cummings v Fawn and AH v NH in which Mostyn J and Peel J respectively expressed different approaches to this issue. However, on the whole it is clear that pre-nuptial agreements are one of the key ways in which couples secure themselves some certainty in this otherwise uncertain area, and they are likely to continue gaining traction.

It remains to be seen whether the Government will take up the Law Commission's recommendation and propose reforms to usher in a new era of financial remedies law. In the meantime, the lesson of the report must that our clients' experience of the current law is beset by the difficulties the Law Commission identifies—that the law is discretionary, judge made, complex, and can leave divorcing couples scratching their heads as to what is expected of them. As advisors, we can add value by making the range of possible outcomes as clear as possible at the earliest possible stage, including through the use of pre-nuptial agreements.

WIGS, GOWNS AND POWER SUITS

WHAT IS FAMILY LAW REALLY ABOUT?

Authored by: Clare Pilsworth (Partner) - Tees Law

If legal TV dramas and high-profile tabloid headlines were anything to go by, one would be excused for thinking that life as a family solicitor is a glamourous world of high heels and court rooms, with daily dramatic showdowns in front of gowned and wigged Judges.

Whilst this is undoubtedly accurate in some cases, as a junior family solicitor, I have been pleasantly surprised to discover that family law work is far more nuanced, emotionally complex, and often profoundly rewarding, with the majority of family law work being resolution focused.

Following completing my undergraduate law degree, I started my legal career working as a paralegal in the private client sector. Although some would say this is still a relatively emotive practice area, the idea of carrying out family law work seemed far from my cup of tea. My view of family law was that it was shrouded in conflict and was incredibly emotionally draining for advisers.

When starting my training contract in 2021, my first seat allocation was family law. I was nervous to start due to these misconceptions but a few months into my training, I realised there was more to family law than meets the eye. I then ended up carrying out the majority of my training in family law, before qualifying as a family law solicitor in 2023, and have not looked back since.

Divorce, Divorce, Divorce

One of the most widely held misconceptions is that family solicitors spend their days in courtrooms battling over bitter divorces.

While divorce is certainly a core component of family law, the field encompasses a much broader range of issues.

These include child arrangements, domestic abuse protection, financial settlements, pre and post-nuptial agreements, cohabitation disputes, cohabitation agreements, surrogacy, adoption, and even the legal complexities of modern families, such as those involving same-sex parents or assisted reproduction.

Whilst court proceedings in family law can sometimes be unavoidable, in my experience, much of the work family law

solicitors carry out in fact never reaches a courtroom. Family law solicitors spend significant time trying to avoid litigation altogether. Negotiation, mediation, and collaborative law are often the preferred routes. Many solicitors are trained in alternative dispute resolution techniques, and the focus is on achieving a fair outcome with the least emotional damage to the family, particularly where children are involved.

In recent years, Non-Court Dispute Resolution (NCDR) in family law has undergone significant changes aimed at promoting less adversarial and more cooperative approaches to resolving family disputes. Courts and policymakers have increasingly emphasised the importance of alternatives to litigation as a means to reduce the emotional and financial toll on families. Legal reforms and updated procedural rules now require parties to actively consider NCDR before proceeding to court, with judges empowered to encourage or even direct participation in these processes. Additionally, there has been a shift towards integrating NCDR into the early stages of family law proceedings, with greater support for access to legal information and services to empower parties to resolve disputes amicably. These changes reflect a broader cultural shift towards child-focused, cost-effective, and resolution-oriented practices in the family justice system.

Is Family Law Outdated And Archaic?

Before working in family law, I held a misconceived view that the family law system was outdated and failed to reflect modern family dynamics.

The reality, however, is that family law is an ever-advancing area of law that is forced, as it should be, to keep up with societal changes.

Legal recognition has expanded beyond traditional notions of marriage and parenthood, with reforms such as the Divorce, Dissolution and Separation Act 2020 simplifying the divorce process through the introduction of no-fault divorce, which came into effect in 2022. This change marked a significant cultural shift, reducing unnecessary conflict and blame. Additionally, there has been a growing emphasis on the rights and welfare of children, including improved mechanisms for children's voices to be heard and better representation of the views of the child in proceedings.

With cohabiting relationships being the fastest growing family type in the UK, a huge focus for family law practitioners currently is to move towards a fairer system for unmarried couples.

Resolution has long advocated for reform in the area of cohabitation law. Currently, cohabiting couples in England and Wales have limited legal rights upon separation, regardless of the length of the relationship or whether they have children. Resolution proposes the introduction of a legal framework that would provide basic financial protections for cohabiting couples who meet certain criteria, such as a minimum period of cohabitation or having children together. Their proposed reforms aim to ensure fairer outcomes that better reflect the reality of modern family structures. It is hoped that reform in this area could come sooner than expected after the government confirmed it will consult on the issue this year. This follows Labour pledging in its 2024 manifesto to strengthen the rights and protections of those in cohabiting relationships.

The family courts have also embraced digital transformation, by streamlining procedures through online applications and remote hearings.

These developments, along with a stronger focus on NCDR, show that family law is evolving to better reflect and support the diverse, complex realities of modern family life, making it an exciting time to be a junior family law solicitor.

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HUDSON V HATHWAY AND BEYOND

EVOLVING PRINCIPLES IN COHABITATION AND DIGITAL DISPOSITIONS

Authored by: Laura Tanguay (Partner) - Birketts

Described previously by the courts as "a witch's brew, into which various esoteric ingredients have been stirred over the years, and in which different ideas bubble to the surface at different times", disputes involving property interests between unmarried cohabitants remain a complex and evolving area of law.

Practitioners of the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) were therefore grateful to read the Court of Appeal's decision in Hudson v Hathway [2022] EWCA Civ 1648, which established two important points:

1. A party pleading a subsequent increase in their equitable share as a result of a post-acquisition change in common intention, must evidence detrimental reliance on that changed intention.
2. Informal digital methods of communication may satisfy the formality requirements for disposing of a beneficial interest (under s.53(1)(c) of the Law of Property Act 1925) if the sender types their name at the end of their message.

The Facts Of The Case

Mr Lee Hudson and Ms Jayne Hathway, a formerly cohabiting couple, jointly purchased and owned a property known as Picnic House. Their relationship ended in 2009, and Mr Hudson moved out of the property.

In 2011, an oil spill rendered Picnic House difficult to sell, prompting drawn-out email correspondence between the parties in 2013 about the division of their assets. In these exchanges, Mr Hudson sent various emails saying he no longer wanted any part of the house and had "no interest whatsoever" in it, encouraging Ms Hathway to "take it" and use the proceeds to buy herself a new home. The emails were subscribed "Lee".

Nevertheless, Mr Hudson later initiated a claim under TOLATA, seeking a declaration that he had a 50% beneficial interest in Picnic House.

Issue One: Detrimental Reliance

The Court found that detrimental reliance remains a necessary ingredient when seeking an enhanced beneficial share following an express agreement to vary beneficial interests.

Ms Hathway's actions – assuming sole responsibility for the mortgage, forgoing any claim on Mr Hudson's pension or other assets and not seeking child maintenance – amounted to sufficient detrimental reliance.

The reverse of this is that an oral agreement to vary the beneficial shares will not be enforceable in the absence of detriment, no matter how clearly and emphatically the agreement is expressed.

Issue Two: Disposition Of A Beneficial Interest By Email

This was a novel point, not previously argued either at trial or upon appeal in the High Court, which related to s.53(1)(c) Law of Property Act 1925:

> (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will."

Technically, a beneficial co-owner of land under a joint tenancy cannot assign their interest to the other joint tenant (because under a joint tenancy each of the tenants is already the owner of the whole) but they can release their interest (per s.36(2) LPA 1925). The release of an interest by one joint tenant to another amounts to a disposition for the purposes of s.53 LPA per Lewison LJ at Hudson v Hathway [50] – [53].

The Court of Appeal held that Mr Hudson's emails constituted a valid and effective release of his beneficial interest in the property, finding:

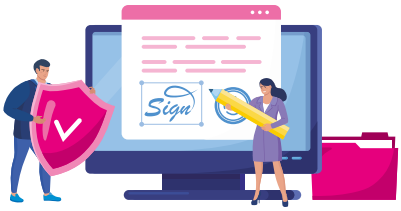
- The emails were "in writing" as defined by the Interpretation Act 1978.
- Mr Hudson's deliberate subscription of his name "Lee" at the end of the emails satisfied the signature requirement of s.53(1)(c).

Implications for cohabiting couples and practitioners

The implications of Hudson v Hathway are far-reaching.

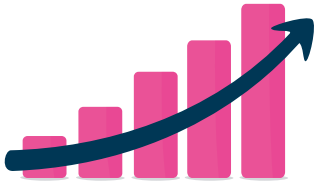
1. Detrimental Reliance Is Here To Stay

Detrimental reliance remains a crucial component when seeking an enlarged beneficial share. Claimants must demonstrate that they relied on the agreement to their disadvantage, a principle reflecting the equitable maxim "equity aids the diligent, not the volunteer".



2. Statutory Formalities In The Digital Age

The judgment reflects an acknowledgment of modern communication practices, confirming that typed email signatures (even auto-generated) can amount to valid signatures under s.53(1)(c) LPA 1925. Informal digital forms of communication may now constitute signed writing in a variety of legal contexts. It follows that other forms of digital communication, such as WhatsApp messages, will likewise be subject to this analysis.



3. The Rise Of Informal Declarations

If an equitable interest can be disposed of under s.53(1)(c) LPA 1925 by email in this way, logic dictates that a valid declaration of trust may similarly be created under s.53(1)(b) LPA 1925, for which the formality requirements are identical. This means that express declarations of trust may now be found outside the four corners of a TR1 or formal trust deed. Practitioners must therefore be alive to declarations of trust arising in other circumstances, such as in written instructions given to a conveyancer.

Are we already seeing a rowing back from Hudson v Hathway?

Hudson v Hathway was considered in the recent High Court appeal of Dervis v Deniz [2025] EWHC 902 (Ch). In that case, the appellant argued that her ex-partner had released his beneficial interest to her in a series of emails between them:

> "I don't want the house it's yours it's always been yours!"
>
> "I hate that house I want nothing to do with it."
>
> "I give my full consent to be removed of the mortgage at 41 Newbury avenue EN3 6EF. I can be present to sign any documents needed. Not seeking any financial interest in the property."

Unfortunately for the appellant, that claim had not been pleaded in her Particulars of Claim and was not raised at the trial, nor was Hudson v Hathway cited to the trial Judge. The relevant email exchanges and surrounding telephone conversations alleged to have taken place between the parties had not, therefore, been subject to detailed examination during the trial. So what? It was argued for Ms Dervis: the question was one of contractual interpretation, in respect of which evidence of the subjective intentions of the parties, in the email exchanges, was inadmissible.

While the High Court accepted that submission, it added that contractual interpretation must still take place against the factual matrix – namely, the background knowledge reasonably available to both parties at the time.

While not pleaded in Hudson v Hathway, the trial judge had at least undertaken a thorough examination of the emails and the surrounding context, leading to a clear finding, as noted by Lewison LJ at [23]: "The trial judge found that the parties had clearly reached a deal…".

By contrast, no such contextual investigation had taken place in Dervis v Deniz. There had been no investigation of the context and circumstances in which the emails had been sent, nor had the telephone conversation said to have prompted Mr Deniz's consent to be removed from the mortgage been explored.

The case was not, therefore, on all fours with Hudson v Hathway, and the appeal was dismissed.

While Dervis v Deniz may at first glance appear to temper the influence of Hudson v Hathway, it is better seen as a reminder of the evidential and procedural foundations upon which such claims must rest.

60 SECONDS WITH... ALEXANDRA LUKANOVA ASSOCIATE RUSSELL COOKE

Q Imagine You No Longer Have To Work. How Would You Spend Your Weekdays?

A I'd be in a big, sunlit kitchen, dreaming up recipes and maybe filming the occasional cooking video – think Martha Stewart. But I'd also be out exploring, staying active, and chasing local food experiences in true Anthony Bourdain spirit.

Q What Has Been The Best Piece Of Advice You Have Been Given In Your Career?

A When you receive an aggressive letter from the other side, pause. Breathe. It's not personal. Stay focused on your client's best interest – responding in kind rarely helps anyone.

Q What Is The Most Significant Trend In Your Practice Today?

A Non-court dispute resolution – it keeps costs proportionate, reduces acrimony and prioritises dignity. It only works if we, as lawyers, champion it just as confidently as we would a court battle.

Q Who Has Been Your Biggest Role Model In The Industry?

A James Carroll, my colleague and our managing partner at Russell-Cooke. Despite an impossible diary, he always makes time – whether it's a quick question or a big issue. He's constantly looking to grow, thrives on giving and receiving feedback, and models exactly what it means to resolve matters swiftly, sensibly and with integrity. And if court is needed- he's the person you'd want in your corner, every time.

Q What Advice Would You Give To Your Younger Self?

A Don't try to control everything. What's meant for you won't pass you by – even rejection can be redirection. Let go a little. Things won't fall apart just because you're not holding every thread.

Q What Do You Like Most About Your Job?

A What I like most is the culture at my firm - but really, culture is just great people. My colleagues are kind, supportive, and genuinely care. They're also sharp, efficient, and brilliant at what they do. It makes coming to work feel easy.

Q What Is Something You Think Everyone Should Do At Least Once In Their Lives?

A Run a marathon – or at least try! I've signed up for my first and I'm terrified, but I know that if I can do this, I'll feel like there's nothing I can't do.

Q What Has Been Your Most Memorable Experience During Your Career So Far?

A Speaking at the HNW Divorce NextGen Summit in March this year – it was my first time speaking professionally and I honestly loved it. It felt like a perfect outlet for my inner theatre kid… or maybe a healthy compromise for not becoming a barrister!

Q What Is The Biggest Life Lesson You Have Learned?

A You can't do everything, and you don't have to. Trying to control every outcome is exhausting – sometimes the best results come when you step back and let things take their course.

Q What Does Your Perfect Holiday Look Like?

A Good wine, seasonal local food, and a slow road trip through Tuscany.

SERVING OUTSIDE OF THE JURISDICTION

A PRACTITIONER'S GUIDE

Authored by: Leora Taratula-Lyons (Senior Associate) - Burgess Mee

In an increasingly mobile and multinational world, serving outside the jurisdiction is likely to be encountered by family practitioners. This will likely be when the respondent to a divorce application needs to be served. Other examples include where a third party or parties based outside the jurisdiction are joined to the proceedings or are ordered to provide disclosure via a Letter of Request application. In any of these scenarios, serving those parties promptly and effectively will be an important procedural step. Having recently worked on a few cases involving most of the above scenarios, here are my top tips for any practitioners navigating the complexities of serving parties abroad.

1. The Foreign Process Section Is Your Friend

The Foreign Process Section (FPS) is the department based in the Royal Courts of Justice (RCJ) that deals with service abroad. They are one of the more responsive parts of the court system, both in terms of answering the phone and your emails. The clerks provide guidance on which route of service each country will permit and the requirements for each process. The FPS will also send you precedents of the forms that need to be completed with guidance notes. This assistance is essential if you are unfamiliar with the process.

However, there are limitations on how the FPS can help. They are unable to advise on the correct language to translate documents into and the Hague website is difficult to navigate to find this information. It is important to double check the official language for the country you are serving and, in certain cases, the region within that country; for instance, in Switzerland, the main language may be French, Italian or German, depending on the canton within which the party resides. Research is required to ensure the documents for service are translated into the correct language. A belt and braces approach would be to translate the documents into multiple languages, but that is less cost effective.

2. Different Countries Have Different Procedures

Countries that are signatories to the Hague convention enable service to be effective via their respective Central Authorities. This route involves preparing the documentation for the FPS, which will include the cover letter to the party enclosing the documents for service as well as completing a form N224 (Request for Service Out of England – a simple, 1-page form)[1], Article 5 Hague request form (a 5 page form) and preparing a cover letter to the FPS. All these documents must be delivered to the FPS in hard copy, something that is much less regularly encountered in our day to day practice.

1 https://www.gov.uk/government/publications/form-n224-request-for-service-out-of-england-and-wales-through-the-court

The hard copies can be delivered via post (ideally tracked or recorded) or by hand delivery to the drop box in the atrium of the RCJ. One must be prepared for the inherent delays in going through this route; time estimates for serving via a foreign Central Authority may be as long as 4 to 6 months! Despite this, my experience is the process is slightly quicker than the time estimates given, though perhaps I am in the minority.

Not all countries are signatories to the Hague convention and adopt the above route. Examples of non-Hague convention countries include New Zealand, Panama and the UAE. An alternative process is described as "agent to agent" by the FPS and essentially means using a process server. This may be quicker than going via the Central Authority too, so may be preferred if time is of the essence.

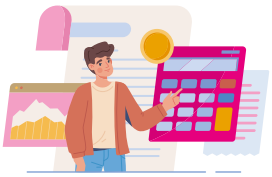
A further route to serve documents is via the diplomatic route and FCDO (Foreign, Commonwealth & Development Office). This requires payment of a consular fee of £150 to the FCDO. Once the fee is paid, the FPS will contact you to advise on the how to submit the documents for service. The government website advises that it will take 'at least 4 weeks' for the documents to be processed and sent abroad. How long the overseas jurisdiction takes varies.

If you do not know the correct procedure to follow, do not worry; the FPS is there to guide you.

3. Check The Red Book Or Your Order

When serving a party outside of the jurisdiction, you should consult FPR Part 6 Section IV and check the table of standard times for service for the relevant country at FPR Practice Direction 6B 8.1. However, if you have an order directing you to serve that application or order, the wording of the order prevails over the rules.

When preparing the draft order, it is important to consider the procedure and timing in advance. If the order specifies a particular procedure, such as service via the Central Authority, you should ensure the country accepts service via that route. Otherwise, you may need to get the order amended under the slip rule if you need to serve a different way. Drafting the order broadly so that you have optionality is advisable.



4. Consider Costs

A further consideration for the order is who is paying for the cost of service, including translation costs. Serving abroad, particularly via the FPS and Central Authority, is a document-heavy process that will require a not insignificant amount of a solicitor's time. If translations or a process server are required, or if a consular fee of £150 applies, these costs will be a disbursement that will need to be paid. In addition, when making a Letter of Request application, a solicitor's undertaking on form PF78[2] must be given to confirm that the expenses incurred by the other jurisdiction, if any, will be paid. Proactive case management in deciding which party will pay these legal fees and disbursements in the first instance is encouraged to avoid an unhappy client or negotiation further down the line.

5. Expect delay

Serving abroad is unlikely to be a quick process. Awareness of the likely timeframes in advance will only help when it comes to timetabling the case and advising your client.

Time estimates for serving via a Central Authority overseas may be a number of months and there may be delays where the other jurisdiction's authority raises queries or return the documentation if it is not prepared correctly. I have encountered an overseas Central Authority informing the FPS that the wrong procedure was followed, which resulted in the documents sent for service being returned. The FPS disputed this and the foreign authority eventually agreed that the correct process had been taken and the documents were re-sent for service. This resulted in a delay of a few months.

As such, serving a party abroad will almost always impact the court timetable. If the overseas party you are serving needs to be served before the next hearing, this will inform when the next hearing can be listed, to avoid an adjournment and the associated costs.

It is important remember that the sealed version of the order should be served on the party, not a draft or approved order and we practitioners will not know how long the court may take to approve and seal the order.

6. And Finally, A Few Tips

- **If you are able to, informally serve via email too** – This enables the party to be aware of the application as soon as possible. Otherwise, it may be months before they are served via an official route. Service via email may speed up the case progression in the interim rather than relying solely on a long and unpredictable process. However, you should make sure you are permitted to serve via email – this could be included in the draft order.
- **Double check the address of the party you are serving** – Ensure it is correct in the documents you send for service. If the party is a company, check you include the correct address as there may be multiple to choose from.
- **Avoid translating documents prematurely** – If they are going to be reviewed and possibly amended by the court (e.g. a draft order or Letter of Request application).
- **Timetabling** – Is the next hearing listed sufficiently in advance to ensure service has been effected and the parties notified of that hearing in case they need to attend?
- **Cost estimates** – You are likely to engage more time than expected with dealing with all the paperwork, particularly where hard copies are required. You should estimate ample time to deal with the documents, obtain translations and for calls and emails with the FPS. Being up front with a client about the likely costs will only help their experience of this process too.

2 https://www.gov.uk/government/publications/form-pf78-solicitors-undertaking-as-to-expenses-rule-34136b

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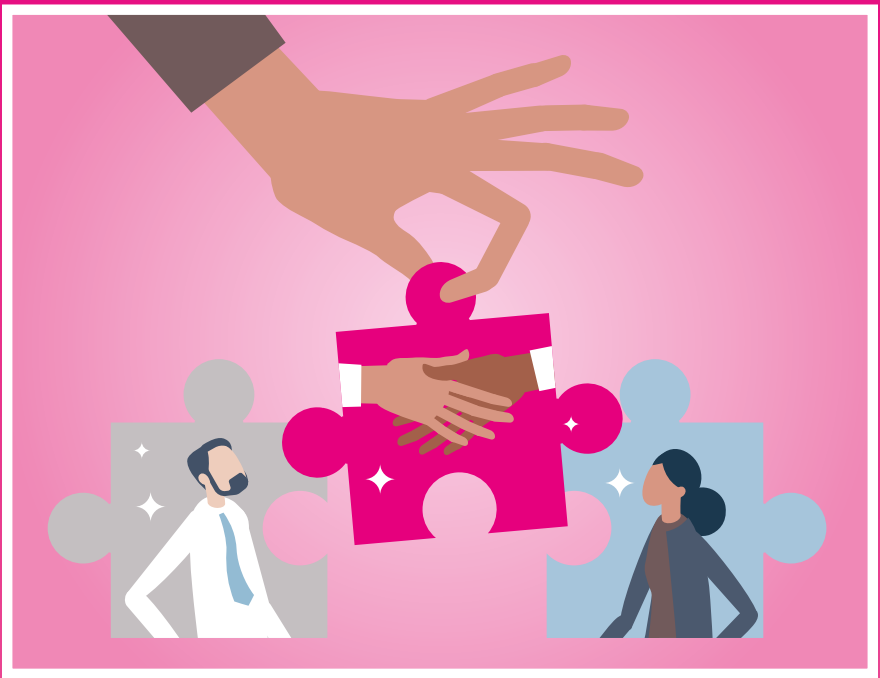
REFRAMING THE BENEFITS OF MEDIATION



IN THE DISPUTE RESOLUTION LANDSCAPE

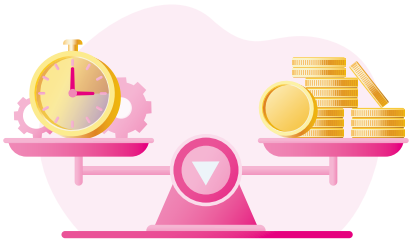
Authored by: Joe Ferguson (Associate) & Grace Parry (Associate) - Myerson Solicitors

It has been over a year since the changes to Part 3 and Part 28 of the Family Procedure Rules. A sign of the times, they emphasised a growing recognition in our field that litigation should not be the standard form of dispute resolution, due not only to the strain litigation can cause on a personal level, but indeed the strain it has on public services. In the period since the changes, family lawyers have watched how the new rules have been applied intently whilst assisting clients to consider and engage in non-court dispute resolution. For some, to whom non-court dispute resolution had previously been a tick box exercise, it has been a wake-up call.

Non-court dispute resolution is defined non-exhaustively in the Family Procedure Rules, an indication of the various options which are available to parties. Mediation is one of these options which family lawyers sadly often fail to consider appropriately.

What Is Mediation?

Mediation is a voluntary, confidential process in which an impartial third party (the mediator) assists individuals in conflict to communicate more effectively and reach mutually acceptable agreements. In the family law context, mediation provides a structured environment where separating couples can resolve disputes relating to children, finances or both without the need for judicial intervention. Unlike a judge, a mediator does not impose decisions but facilitates dialogue and compromise.



Mediation is typically quicker, more cost-effective, and less confrontational than litigation. It empowers the parties to retain control over the outcome, rather than to roll the dice on litigation. Furthermore, it helps preserve family relationships, particularly important where children are involved, providing a framework for the resolution of future conflicts.

There are several different types of mediation designed to complement the parties' needs.

Each style has been developed with an element of conflict in mind to mitigate risk in the hopes of arming the parties with the necessary resources to discuss matters effectively with the overall objective of limiting the issues and reaching a resolution. This is a further example of how mediation has developed over the years as an encouraging dispute resolution alternative.

Some of the main types of mediation include the following:

Sole Mediation – a single mediator is instructed to facilitate discussions between the parties. This is the most common type of mediation and has the advantage of being a more cost-effective solution as the parties can share the costs of the instructed mediator.

Co-mediation – the parties each individually instruct a mediator who subsequently work together throughout the mediation process. It is of paramount importance that the two mediators can work together effectively, and parties need to bear this in mind. The benefit of this type of mediation is that the parties can draw on the mediators' different areas of expertise. In practice, this style of mediation is rarely used in comparison to sole mediation mainly due to the cost implications but also, if the mediators have a disagreement, then it puts a halt on the whole mediation process.

Hybrid Mediation – is a combination of mediation with other professional involvement, including lawyers and potentially other experts, such as accountants or independent financial advisors. This type of mediation is likely to be more appropriate when there are complex legal issues or high conflict between the parties. The mediator will need to assess in the first instance whether hybrid mediation is suitable. The main advantage of hybrid mediation is that it allows parties to explore settlement options in greater detail both within mediation with input from their respective lawyers.

Anchor Mediation – is a mixture of sole and co-mediation. Generally, the process will begin with a sole mediator and if there are area of dispute outside of the mediator's expertise, a further mediator will be introduced to facilitate further discussions between the parties to avoid a breakdown of the mediation process.

When Is Mediation Not Appropriate

The vast majority of cases are suitable for mediation. However, there may be circumstances that render mediation unsuitable. Examples would include where there is a point of law that must be determined or where expert evidence is necessary but one-party refuses to engage. In situations where there is a complete breakdown of trust between the parties, or there is a clear imbalance of power, mediation can prove difficult as it is a voluntary process, and you are reliant on both parties engaging and providing full disclosure required to ignite effective negotiations.

Cases involving allegations of domestic abuse should be treated with caution, though many mediators are open to exploring the possibility of mediation still being a viable opening subject to mitigating any risks with the appropriate safeguards.

Conclusion

Mediation is not only varied but often successful.

Research facilitated by both the Family Mediation Council and the Ministry of Justice shows that mediation is at least partially successful in around 70% of cases in which mediation is attempted.

It is clear that mediation, its various forms and numerous benefits should form part of early advice provided by solicitors for the resolution of family law disputes.

MEETING NEEDS

A REAL PREDICAMENT

Authored by: Emily Venn (Associate) - Harbottle & Lewis

On 19 March 2025, Mr Entwistle, Ms Helliwell and their legal teams attended the Court of Appeal to make their arguments in respect of Mr Entwistle's appeal of Francis J's decision to hold him to the terms of a prenuptial agreement the parties had signed on the day of their wedding – save for a modest additional payment of £400,000 to meet his needs, covering a three-period of spousal maintenance, a rental budget for two years, and a car.

One of the grounds of appeal was that the size of the award was unfair relative to Ms Helliwell's wealth, and that Francis J had not properly assessed his needs, taking into account the parties' standard of living during the marriage.

The outcome of the appeal is awaited, so it remains to be seen whether the Court of Appeal will reconsider the assessment of Mr Entwistle's needs, following a short marriage in which the parties bore no children, in more generous terms.

So, how does the court determine a financially weaker party's award where a PNA exists?

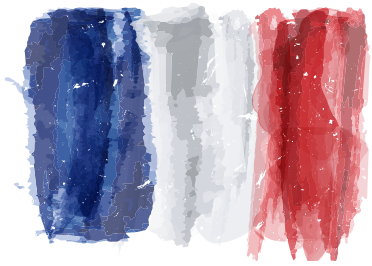
In Radmacher v Granatino, it was stated that "the court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement." 'Needs' was identified as one factor which would most readily render it unfair to hold the parties to a PNA, as they were unlikely to have intended that it should lead to a spouse being left in "a predicament of real need, while the other enjoys a sufficiency or more".

But, how does the court ensure that a spouse is not left in a "predicament of real need"?

Historically, this was interpreted conservatively, as "the minimum amount required to keep a spouse from destitution", or in a "book-ended" range where the left book-end constituted a "spartan lifestyle catering for not much more than essentials", just to the right of that left book-end. However, recently, how needs are assessed has depended on the circumstances of the case:

- **HD v WB (Peel J):** After a long relationship with three children, the PNA was held not to meet H's needs (awarding him only £112,000 after a six-year marriage, despite the length of their relationship). He was awarded a housing fund of £2.5m to be held on trust for W (such mechanism having been contemplated by the PNA, but only amounting to £500,000 upon the 10th anniversary of the marriage), a capitalised sum of £1.2m to meet his income needs for five years, and further sums totalling £700,000. Peel J commented that without the PNA, H would have received significantly more.
- **Backstrom v Wennberg (L. Samuels KC):** After a six-year marriage, H received a housing budget of £6.5m in light of the PNA providing for his and the parties' son's reasonable housing needs to be met during the remaining 15 years of their son's minority, such housing to revert to W at that stage. Despite scant evidence of his earning capacity and income needs, he was awarded a capitalised sum of £350,000 to meet his income needs for six years.
- **MN v AN (Moor J):** After a long marriage, the PNA, the terms of which provided W with a Duxbury fund of £7m and a housing fund of £4.75m, was held to meet W's needs and therefore upheld in full. Moor J commented in relation to each figure that it may have been that, absent the PNA, a Judge would have awarded a higher sum.
- **BI v EN (Cusworth J):** The parties entered into a French marriage contract, electing a séparation de biens regime, which was upheld. This excluded sharing of the significant wealth that had been build up during the marriage, but did not prevent the English court from making a needs-based award to ensure W's needs were met. The judge made a generous award in light of the length of the marriage and high standard of living enjoyed, her contributions to the family and the significant resources available and generated during the marriage. A similar approach was taken by Moor J in CMX v EJX. It is notable that in these cases, the French marriage contracts left the question of maintenance and needs generally to be dealt with separately (as would have been the case under French law), hence the generous awards made.

Two themes run through these cases: firstly, there is clearly no one-size-fits-all approach; and secondly, the financially weaker party's sharing entitlement (however great it may have been) was set aside in favour of a needs-based award being made, due to the existence (and operative terms) of the relevant PNA. And, however generously those needs were provided for, they ultimately received less than they might otherwise have done had a valid PNA not been in place.



However, French marriage contracts aside, none of the above cases really and truly substantively departed from the terms of the PNA in question – which brings us to AH v BH. Peel J emphasised the latitude and flexibility available to the court to determine the receiving party's needs and, entirely contrary to the terms of the PNA, awarded W an outright housing fund and a capitalised income fund for ten years, totalling 8% of the assets. No stepdown was awarded since Peel J was not confident that W would be self-sufficient after ten years. Key factors influencing his decision were W being primary carer of the parties' two minor children, the fact that the PNA, which contained a clause stating that it would be reviewed upon the birth of the parties' first child (indicating their belief that it would not be a fair document in such circumstances), and the impact on W's financial stability and dependency of having married and had children. Whilst Peel J noted that W might have received more absent the PNA, it is arguable that, the PNA being in place as it was, had he taken a more robust approach in relation to W's longer-term needs, she might indeed have received less.

AH v BH reflects a renewed emphasis on judicial discretion in the context of determining needs where there exists a signed agreement intending to limit the financial claims a party might otherwise have had upon divorce.

It also, together with the more recent case law, contributes to the uncertainty of what orders might be made where a PNA is found to cater insufficiently for needs, leaving legal practitioners in somewhat of a predicament in advising clients on likely outcomes.

Therefore, what Mr Entwistle's fate will be remains anyone's guess…

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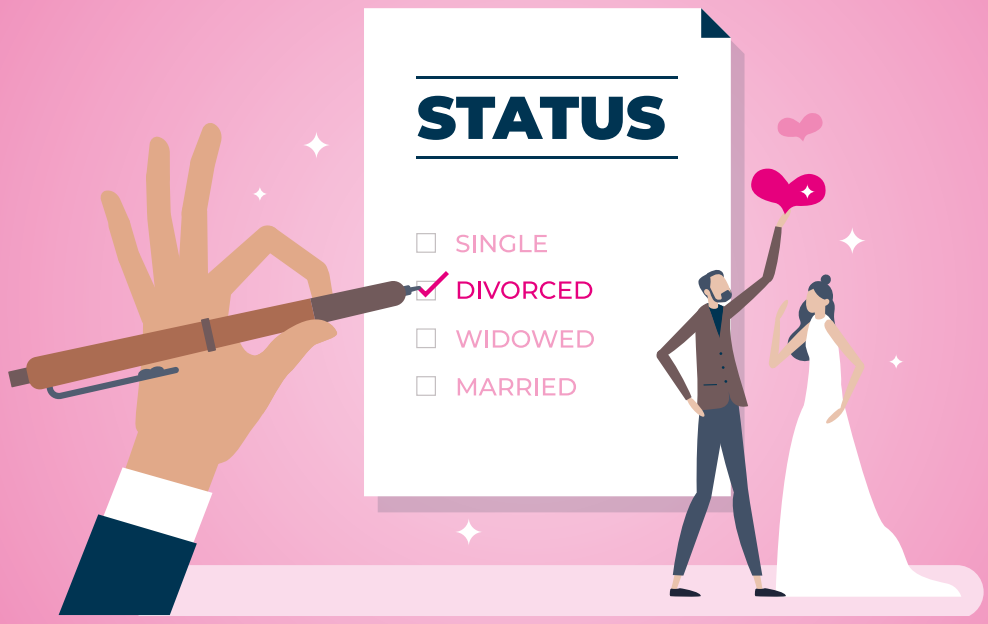
QUICK VOWS LONG ROWS



WHAT NOT TO DO IN A SHORT MARRIAGE DIVORCE

Authored by: Francesca Skakel (Associate) - Birketts

When a judge declares a matter to be 'a paradigm case of how not to conduct litigation on the breakdown of a short childless marriage'[1], that compels every family lawyer to sit up a little straighter and reflect on their own practice.

In Helliwell v Entwhistle [2024], Mr Justice Francis laid bare the cautionary tale: a brief, childless marriage that turned into protracted and unnecessary litigation. While such cases may lack the complexity of children, long financial interdependence, or mingling of assets (cf. the now infamous case, Standish v Standish), they bring other difficulties: emotional fallout, mismatched expectations, and arguments that are often more about vindication than outcome.

With increasing public and court scrutiny of legal costs[2] escalating disputes beyond proportionality, there is a professional responsibility to approach these cases with discipline and care. Lawyers should be alert to the common pitfalls in short marriage cases and take active steps to prevent a brief union from becoming a protracted, needlessly damaging dispute - both for the client and for the standing of the profession.

A Cautionary Tale In Litigation Strategy

The facts of Helliwell v Entwhistle [2024] are:

- Parties were married for three years with no children.
- W disclosed assets of £61.5m (H asserted W's assets were £74m).
- H disclosed assets of £850k (including £500k in illiquid assets).
- W disclosed income of £600kp.a. (H asserted her income was nearer £1m p.a.).
- H was not working and claimed that he was unable to.
- A nuptial agreement was signed on the day of their marriage, providing for each to retain their own separate property and split any jointly owned property.

1 See: Para 8, Helliwell v Entwhistle (2024) EWHC 740 (Fam)

2 Most recently, in DSD v MJW (Costs of MPS) [2025] EWFC 119, DDJ David Hodson noted 'Throughout history, lawyers have had a bad reputation. Amongst the wide category of complaints might be nuances, fine points taken which lawyers call distinguishing but the public calls something completely different, long delays which rarely suit anyone but lawyers and high costs including disproportionate costs.' Although, many lawyers will point to court delays and demanding clients having an equal part to play in driving up costs.

Despite the existence of the nuptial agreement, H sought to assert substantive settlement claims. W lodged the expected notice to show cause application, which initiated proceedings.

Throughout, and despite the PNA, W made offers up to £800k, which Mr Justice Francis noted was 'a generous one and the husband should have accepted it'.[3]

With regards the PNA itself, there was inevitably dispute regarding its validity due to the timing of its execution, as it ran counter to the (now well-rehearsed) Law Commission's Recommendations on a Qualifying Nuptial Agreement. However, as these are not statutorily binding and so fall within the usual 'circumstances of the case' under s.25 MCA, Mr Justice Francis exercised his discretion to give effect to the nuptial agreement.[4] This left Mr Entwistle, in accordance with the seminal principles arising from Radmacher, with an award limited to his reasonable needs.

Turning to these, Mr Justice Francis considered H's case preparation, noting that he put forward 'something of an aspirational budget' with 'astonishing claims' (including £36,000p.a. for flights and £26,000p.a. for a meal plan because he couldn't 'even cook an omelette'[5]).

The judge felt the need to urge the profession to take note:

'I do suggest to lawyers who prepare these budgets that if you put something in the schedule which is absurd, it can discolour the whole case. Of course I am not judging the whole case on the basis of this particular aspect of the schedule, but it is unhelpful I am afraid when people put their expenses forward in that kind of way. Being married to a rich person for three years does not suddenly catapult you into a right to live like that for very [sic] after the relationship has ended.'[6]

The judge went through a summary of H's stated needs and found approx. £455k would meet the following items:

- £178,300 to account for a small sum whilst he remains in England, his first 6 months in Dubai (to give him time to find a job) and a sum to augment his income for a further two years thereafter;
- £22,110 for medical treatment;
- £28k for a visa in Dubai;
- £10k moving costs;
- £40k for a car (cf. the £75,000 H requested); and,
- £175k for two years rent (cf. the £1.75m requested by H for a house, which Mr Justice Francis felt ran contrary to the approach applied in Radmacher in meeting short term needs and therefore considering that his assessment of £175k for rent was 'generous').

Bearing in mind H's existing net assets (of which £350k or so was liquid), the judge made a lump sum award of £400k, which would therefore leave Mr Entwhistle with a sum in excess of needs on the judge's assessment above.

Although, the judge stated the he did not allow a "needs" sum to meet the £246k for unpaid legal fees, in effect the award accounted for these costs by netting the fees on the asset schedule before considering the lump sum provision.[7] It should be noted that Mr Justice Francis did subsequently make costs award of some £75,000, particularly in light of H's rejection of W's previous offer of £800k.[8]

Some may consider that decision to be a harsh one for the wife, and the judge himself noted that his award was 'generous in the context of what [the Judge] determined is the right way of approaching this case, and generous in terms of looking at the offers that have been made by the wife already'. On the flip side, Mr Entwistle has since stated that the award would not have been made were the gender roles reversed; certainly, in the context of the overall resources, the award was a modest one.

Professionals should take careful note that the significant sums of legal cost expenditure did not go without criticism 'costs must take centre stage in these cases. Just because you are married to someone rich does not mean that you get a blank cheque to underwrite your costs.'[9]

Without heeding the lessons of the preceding judge, Mr Entwistle's appeal was heard in March 2025 on grounds that:

- The judge had not properly considered H's ability to seek independent and full advice in relation to the PNA and W had pressured him not to so
- W failed to give full and frank disclosure at time of the PNA (H saying she disclosed £18m, when her assets were £60-70m)
- The judge had not properly assessed H's needs and the award was not fair with reference to s.25 MCA

The appeal outcome is pending.

3 See: Para 128.

4 Not least, because he found the husband 'knew exactly what he was doing' when he signed the 'straightforward plain English' document, and he did receive advice (albeit limited). Para 113.

5 To which the Judge answered ''Learn,' it is not difficult' (para 140).

6 See: para 140.

7 At para 148. However, some may query how this generosity fits into Para 4.4 PD28A and Rothschild v De Souza [2020] EWCA Civ 1215, in which Sir Jonathan Cohan's judgment was upheld, even though it resulted in an award less than the offending parties' assessed needs because of the impact of the cost award.

8 Jenny Alzena Helliwell v Simon Graham Entwistle (Costs) [2024] EWHC 1298 (Fam), which goes further than the original judgment in acknowledging that costs were accounted for in the award, with Mr Justice Francis stating at para 14 'effectively I was underwriting his outstanding costs by adding them into his needs, and the consequence of that was that although he had to pay his own costs, he had to pay an amount that, when I assessed his needs, I included that number in the costs that he had to pay.' (cf. his original judgment 'Just because you are married to someone rich does not mean that you get a blank cheque to underwrite your costs, and I am afraid that I am not going to be allowing that in my award.' At para 148)

9 See: para 148.

Lessons to be learned?

The judgment in Helliwell v Entwhistle delivers a clear message: the way professionals conduct litigation matters and poor judgement will not go unnoticed. The case offers several key takeaways for practitioners aiming to avoid similar criticism.

1. Be Realistic About Entitlement.

A brief marriage to a wealthy partner does not create a financial 'blank cheque'. Understanding and advising on the limits of your client's claim is fundamental.

2. Treat Nuptial Agreements With Care.

Just because an agreement does not perfectly align with Law Commission recommendations does not render it irrelevant. Dismissing them too quickly may risk overlooking their weight. Equally, best practice remains to ensure that there are no arguments at the outset by properly adhering to the recommendations when drafting and executing nuptial agreements.

3. Keep Costs In Check.

Disproportionate fees undermine outcomes and fuel reputational damage. Efficiency and focus are not just economic imperatives but professional responsibilities.

4. Guard Against Exaggeration.

Lawyers must help clients separate emotion from evidence and focus on practical independence post-separation, rather than pursuing a misplaced sense of redress.

5. Involve Counsel Early

Collaboration with counsel at the outset can help crystallise the legal merits of the case and guide clients away from weak positions before they become entrenched.

Ultimately, cases like Helliwell are a reminder that even modest disputes can become professionally defining. Good family lawyers don't just know the law - they know how to apply it with restraint, judgement, and foresight.

60 SECONDS WITH... MAX TURNELL BARRISTER 1KBW

Q Imagine You No Longer Have To Work. How Would You Spend Your Weekdays?

A After an appropriate amount of hedonism (particularly travel), I know I would crave the structure of work. I would probably end up replacing one vocation with another by pretending to be a farmer.

Q What Has Been The Best Piece Of Advice You Have Been Given In Your Career?

A It's all simple if you put in the work. Essentially no matter how impenetrable or complex something initially appears, with hard work, curiosity and time, everything is understandable. Even distribution waterfalls.

Q What Is The Most Significant Trend In Your Practice Today?

A There is a real pipeline of jurisdiction, Part III and international enforcement cases at the moment. I think because they tend to be much more difficult to settle.

Q Who Has Been Your Biggest Role Model In The Industry?

A Without (queasily) deflecting too much, my chambers is full of the most inspirational practitioners and I continue to learn from them all but I have probably learnt the most from the inestimable Charles Howard KC and Deepak Nagpal KC.

Q What Advice Would You Give To Your Younger Self?

A Carve out time to do "considered nothing" and be completely work-free.

Q What Do You Like Most About Your Job?

A Agreeing orders after hearings? Sadly (?) I really enjoy consuming a mountainous set of papers, becoming a master of the facts and bringing it all together for court. For a short time at least, you feel you know everything you can about a case and a client's financial life.

Q What Is Something You Think Everyone Should Do At Least Once In Their Lives?

A Visit the Stockholm archipelago.

Q What Has Been Your Most Memorable Experience During Your Career So Far?

A Being junior counsel and later sole counsel for Sir Frederick Barclay in the long-running and widely reported Barclay enforcement proceedings. The case had everything (including brilliant coverage from Private Eye).

Q What Is The Biggest Life Lesson You Have Learned?

A Don't worry about the things you cannot change (it's not fully learnt yet)

Q What Does Your Perfect Holiday Look Like?

A Have I mentioned the Stockholm archipelago!? Every last holiday with my wife and two very young children has been the best one yet.

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CRIMINALISING THE WILD WEST OF THE ONLINE WORLD

THE ONLINE SAFETY ACT 2023 AND CROSSOVER BETWEEN FAMILY AND CRIMINAL PROCEEDINGS

Authored by: David Hardstaff (Partner) & Rishi Joshi (Associate) - BCL Solicitors

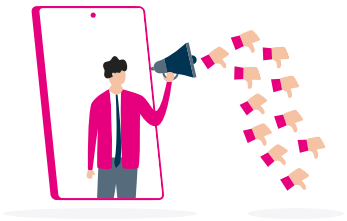
Crossover between family and criminal proceedings is something practitioners on both sides of divide have become accustomed to, particularly following the introduction of the offence of controlling or coercive behaviour in 2015 and the further expansion of domestic abuse laws in the Domestic Abuse Act 2021. With its focus on online and communications offences, several of which have extra-territorial reach, the new criminal provisions of the Online Safety Act 2023 are of equal relevance to HNW family lawyers as they are to their criminal law contemporaries. Each of the offences carries a potential sentence of imprisonment and signals a shift in how the law views 'digital abuse'. Family practitioners should be alive the offences under Part 10 of the Act, both from the perspective of protecting their clients from abuse, but also – as may resonate with some - from the perspective of protecting their clients from themselves. Crucially, evidence from one set of proceedings can easily bleed through into parallel proceedings, causing havoc for the second team, whether family or criminal. A 'joined up' approach can avoid this and pay dividends, if put in motion early doors.

Part 10 of the Act creates a series of new and updated offences, including a false communications offence ('fake news!'), a threatening communications offence (consolidating previous malicious communications offences), and several offences in relation to the sharing, or threatening to share, intimate images ('revenge porn'). There are also further offences introduced by Part 10 which criminalise online activity seeking to encourage or assist serious self-harm and conduct referred to as 'epilepsy trolling' through sending flashing images.

Speak No Evil: False Communications

With 'fake news' and 'gaslighting' now common parlance, the Act potentially makes it an offence for a person to send a message which conveys information the sender knows to be false.

If at the time of sending the message, the sender intended the message or the information therein to cause non-trivial psychological or physical harm to a likely audience, and the person has no reasonable excuse for sending the message, the sender of the message could find themselves on the receiving end of a knock on the door from the old bill. The maximum sentence for this offence is a maximum penalty of 51 weeks imprisonment or a fine or both. Significantly, the new offence has extra-territorial application, potentially catching communications sent from outside of the UK.



So, whilst ranting on social media about an ex might be a cathartic release for some, the new offence creates real jeopardy for clients who sometimes struggle to control what they commit to writing. What of more nuanced cases? In an acrimonious family case, the father might have a completely different interpretation of the same set of facts as the mother, and he might articulate the same in writing, perhaps after a glass or two of wine and a busy evening on WhatsApp. Might the evolution of the offence be to see allegedly false communications forming part of a fact finding process in the family court, in the same way that controlling or coercive behaviour is now commonplace in the family law arena? It remains to be seen how zealously the offence will be pursued, let alone how many convictions will be secured. The offence first gained prominence last summer following the Southport murders and some of the resulting (false) bile on social media. It might at first seem a stretch to think of the same offence being used in a domestic context, however, in the information war that is often HNW divorce, the risk is certainly real enough that clients should be forewarned.

Leave It To The Lawyers: Threatening Communications And The Concept Of Serious Harm

It is now also an offence to send someone a message which conveys a threat of death or serious harm and at the time of sending it the person intended an individual encountering the message to fear that the threat would be carried out or was reckless as to whether an individual encountering the message would fear that the threat would be carried out. The maximum sentence for this offence is 5 years. The Act defines serious harm not only as including physical (and indeed sexual) harm but also including serious financial loss. Where an allegation relates to the threat of serious financial loss, it is a defence for the accused to show that the threat was used to reinforce a reasonable demand and that the use of the threat was a proper means of reinforcing the demand.

Whilst allegations of harassment and blackmail have forever been features of difficult divorce cases, clients should now additionally be aware that threats – sometimes made out of frustration - to "financially ruin" their former better half, could result in an allegation of criminality. Equally, family lawyers should be vigilant to the same threats being made to their own clients and question, when does 'hot air' from the other side cross the line and amount to something more oppressive and sinister?

It's Not Porn: Sharing Or Threatening To Share Intimate Images

Perhaps the most visceral of the new offences is the clampdown on intimate image abuse, colloquially, but inaccurately referred to as 'revenge porn', whereby images are shared without consent. The four new offences cover significantly more ground than the previous incarnation of the offence, including sharing without consent (regardless of motivation); sharing with intent to cause alarm, distress or humiliation; sharing for sexual gratification while being reckless as to distress; and threating to share an intimate image.

These additions build on earlier reform that outlawed the disclosure of private sexual images. In fact, threatening to share intimate images has been a crime since the Domestic Abuse Act 2021 amendment, but enforcement was patchy

– according to Refuge, by 2023, only about 4% of reported intimate image abuse cases led to charge.

The Act's expanded offences and tougher sentencing options (and even potential sex offender registration) send a clear message that this conduct is to be taken extremely seriously.

Family lawyers should consider these provisions as powerful deterrents and remedies when advising clients who face this kind of potential blackmail in a divorce. Simply put, a spouse threatening, "I'll leak your nudes if you don't agree to a low settlement" is not only evidence in support of coercive control – it is potentially an offence in its own right.

There will of course be occasions on which intimate photographs or videos do form important evidence in a family dispute. The issue was considered in detail in M (A Child: Private Law Children Proceedings – Case Management – Intimate images) 2022 EWHC 986 (Fam). In that case, Mrs Justice Knowles considered the issue of intimate images in family proceedings and the correct approach to be taken by parties and the court. The decision recognises the proliferation of intimate images in family cases and the inevitable increase given the "growing use of still and/or moving images to document intimate relationships." The 12-step protocol set out in the case is essential reading for all family practitioners, with the central message being that an application must be made before the use of intimate images will be entertained by the family court.

The new offences highlight the need for family practitioners to have one eye on the criminal law when advising clients in coms-heavy cases.

Quite apart from the need to protect and safeguard vulnerable clients from abuse, clients with a tendency to vent in writing may require additional management. In some cases, there may be a heightened risk of prejudicial evidence from family proceedings eventually making its way into criminal proceedings (subject to permission), or vice versa. Where there are parallel proceedings, a close working relationship between family and criminal teams is essential. Even family lawyers need criminal advice sometimes….

David Hardstaff is a partner in BCL Solicitors LLP's serious and general crime team and has extensive experience advising clients and law firms involved in parallel family proceedings.

Rishi Joshi is an associate in BCL's serious and general crime team and has particular experience in advising defendants and victims in controlling or coercive control cases.

UNDERSTANDING THERAPY

A GUIDE FOR FAMILY LAWYERS SUPPORTING SEPARATING COUPLES

Authored by: Evie Smyth (Associate) - Russell Cooke

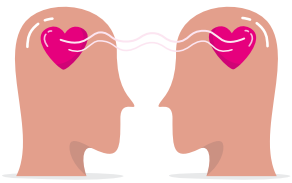
As family lawyers, we spend much of our professional lives supporting clients through one of the most emotionally challenging times they will ever face. We cannot do our job well without acknowledging the emotional and psychological dimensions of separation alongside the legal ones. This takes many forms: from taking the time to listen to our clients with compassion and patience when they ring us up in a frantic state, to encouraging our clients to engage in NCDR processes which offer more flexibility and are less adversarial than traditional litigation.

Undoubtedly, a significant part of this is also knowing the limits to the support we can provide, and knowing when to signpost. As someone who is both a practising family solicitor and currently training for a MSc in Gestalt Psychotherapy, I am deeply passionate about the intersection between therapy and family law. With mental health awareness growing and therapy more accessible than ever, many of our clients are seeking—or could benefit from—professional psychological support during the divorce process.

Many of us have personal experience of therapy or have been referring clients to therapists for many years. However, speaking from my own experience, identifying the right form of therapy and the right therapist can seem really overwhelming. Below is a quick guide to the main modalities of therapy that are practiced in the UK today. This is definitely a non-exhaustive list but is a good place to start.

Psychodynamic Therapy

Psychodynamic therapy explores how early life experiences and unconscious processes influence current emotions and relationships. [Enlarge] By bringing deeper patterns into conscious awareness, clients can understand the root of their distress and develop lasting emotional insight. For someone experiencing separation or divorce, this approach can shed light on recurring relational dynamics and support meaningful, long-term change.



Person-Centred Therapy (PCT)

Rooted in empathy, acceptance, and authenticity, person-centred therapy offers a non-directive and supportive space for individuals to explore their emotions at their own pace.

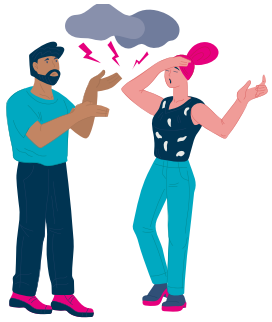
It assumes people have an innate capacity for growth when provided with the right conditions. For those experiencing the emotional fallout of a relationship breakdown, this approach can be deeply validating, helping them feel heard, respected, and more grounded in their sense of self.

Gestalt Therapy

Gestalt therapy is a dynamic, experiential approach that emphasises awareness, personal responsibility, and the integration of thoughts, emotions, and bodily sensations in the present moment.

Through creative techniques like role-play and dialogue, it helps clients understand themselves more fully and break out of stuck emotional patterns.

For clients navigating separation or divorce, Gestalt therapy offers a powerful space to reconnect with their sense of agency, resolve unfinished emotional business, and move forward with greater clarity and authenticity. Its emphasis on the "here and now" makes it particularly effective for those who feel overwhelmed, fragmented, or emotionally paralysed by change.



Integrative Therapy

Integrative therapy combines elements from different therapeutic models, such as cognitive, humanistic, and psychodynamic approaches, to tailor treatment to the individual's unique needs.

This flexible style makes it particularly well-suited to clients dealing with complex or evolving challenges.

For those going through a stressful life event like divorce, integrative therapy can adapt as their emotional needs shift — from crisis support to deeper personal reflection.

Systemic Or Family Therapy

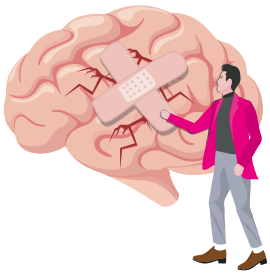
Systemic therapy considers psychological issues in the context of relationships, focusing on communication patterns and family dynamics.

It can involve multiple family members or be used with individuals exploring their relational roles. For families affected by separation or divorce, systemic therapy can help reduce conflict, improve co-parenting communication, and support children in adapting to new family structures.

Cognitive Behavioural Therapy (CBT)

CBT is a practical, structured form of therapy that helps individuals recognise and reframe unhelpful thoughts and behaviours.

By focusing on the present and teaching coping strategies, CBT empowers clients to manage anxiety, depression, and stress. For clients navigating separation or divorce, it can provide immediate tools to reduce emotional overwhelm and regain a sense of stability and control.



Eye Movement Desensitisation And Reprocessing (EMDR)

EMDR is a structured approach originally developed to treat trauma, which helps clients process distressing memories using bilateral stimulation, such as guided eye movements. It allows the brain to reframe painful experiences and reduce their emotional intensity.

For individuals recovering from abusive or traumatic relationship experiences, EMDR can be a powerful way to process those events and support emotional healing post-separation.

Conclusion

Just as clients gravitate toward different lawyers, therapy is not a one-size-fits-all solution. Understanding the broad landscape of therapeutic options allows us, as family lawyers, to better support our clients—not by stepping into the role of therapist, but by confidently signposting them to appropriate resources. By deepening our awareness of how therapy works and what it can offer, we can foster a more holistic, compassionate approach to family law—one that honours both the legal and emotional journeys of the people we serve.

FORENSIC ACCOUNTING INSIGHT

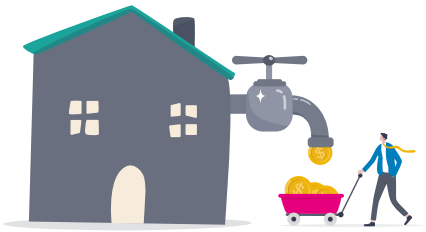
EXTRACTING VALUE AND LIQUIDITY FROM BUSINESSES IN DIVORCE PROCEEDINGS

Authored by: Ciara McHale (Disputes & Investigations Director) - Alvarez & Marsal

In divorce proceedings, the division of assets often presents a formidable challenge, particularly when it involves the valuation and distribution of business interests. As a forensic accountant, the task of determining the best method for extracting value and ensuring liquidity from businesses during these proceedings is both a critical and intricate endeavour.

Forensic accountants are often engaged in financial remedy proceedings to provide market value of the business interests owned by one or both parties. Common valuation methods include the income approach, which focuses on future earnings; the market approach, which compares the company to similar businesses; and the asset approach, which considers the company's net asset value. Accurate valuations undertaken by forensic accountants can assist in ensuring fair settlement between the parties but are often complicated by liquidity issues and the realisable value of the business interest.

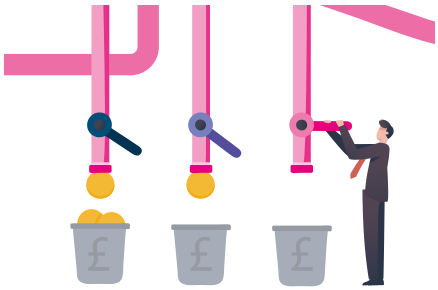
While the division of assets such as cash and marketable securities is relatively straightforward, that is not the case with businesses. This is because they are often dynamic entities with fluctuating values, diverse asset compositions and varying degrees of liquidity.



Concept Of Illiquidity Of Businesses

The key principle underlying the extraction of value is the concept of liquid and illiquid assets. Put simply, it means that having valued a business "on paper," it is important to evaluate how that translates into accessible cash or liquid assets that can more easily be divided.

Illiquid assets (such as private companies) reflect assets that cannot be easily converted into cash without substantial time, effort or cost. This illiquidity poses a problem when attempting to equitably divide marital assets as they can often be complex to market, meaning there are few buyers or that they require a longer timeframe for sale (e.g., businesses located in politically unstable jurisdictions). Business assets can also hold emotional or sentimental value to an individual, which can hinder objective decision-making and make splitting the asset difficult too.



Trading businesses are also typically required to retain working capital to meet ongoing and future expenses and to aid with cashflow. Therefore, creative solutions for extraction may be required to ensure both parties receive their fair share without disrupting business operations.

Timing issues can also arise, as the business's cash flow may not align with the immediate financial needs of the divorce settlement. Forensic accountants must navigate these complexities, often relying on detailed financial analysis and projections to provide a fair assessment of the business's value while considering its liquidity constraints. Case studies frequently highlight these challenges, illustrating the need for a nuanced approach to business valuations in divorce contexts.

Typical Methods To Extract Value From A Business

To extract value, forensic accountants employ a number of methods, including:

1. Payment of dividends
2. Liquidation of assets
3. Leveraging of debt
4. Transfer of shares
5. Buyouts and settlements

Let us look at each of these in more detail.

Dividends represent a direct method for extracting value from a business and involve distributing a portion of the company's earnings to its shareholders.

In the context of divorce proceedings, dividends can be a practical means of providing liquidity to one or both parties.

However, the impact of this decision on the business's operations and future cash flows must be carefully considered as it reduces the amount of retained earnings available for reinvestment in the business and can potentially hinder growth and operational stability. Shareholder agreements may also impose restrictions on dividend distributions.

Non-essential or underutilised assets within a business can be sold or liquidated to release liquidity. But the feasibility of asset liquidation must be evaluated to ensure it does not adversely affect the business's core operations. Whilst liquidating assets can generate necessary cash flow, such a move must strike a balance with the future viability of the company. Forensic accountants play a critical role in identifying which assets can be considered non-essential.

The refinancing of the company could also be considered to release cash from the business. This can include restructuring existing debt or obtaining new financing to unlock capital tied up in the business. However, this option introduces other risks with potential increased interest obligations which can strain cash flow. It will also depend on the business's creditworthiness and wider market conditions.

Another option is to transfer shares, but it is important to consider whether the shares represent a minority or majority stake in the business before actioning this. Minority share transfers often come with limited control and influence over the business, which may affect their valuation and marketability. However, majority share transfers can lead to shifts in business control and therefore require consideration. Any transfer must also comply with corporate governance documents, shareholder agreements and applicable laws.

Structuring buyouts or other settlements between the parties can ensure an equitable distribution of business assets. These can include instalment payments or structured settlements, which can alleviate immediate financial burdens and provide a more manageable payment plan over time. It also ensures that business operations and financial health are not compromised in the process.

Further Considerations

With any of these options, a number of tax consequences can arise. So it is important to obtain specialist tax advice before entering into any agreement with your spouse on the division of business assets. For example, capital gains on assets could give rise to a capital gains tax liability applied on its disposal (though there are some reliefs available for individuals). It is also important to consider the timing of such liabilities, where certain taxes are triggered immediately while with others, tax consequences are deferred.

Ultimately it is for the Court to determine the actual division of assets and it can make a number of orders with respect to a business, such as:

1. An order for sale
2. A transfer of shares between the parties
3. A deferred lumpsum from the sale of shares at a future point in time
4. Periodical payments.

Whether the business is retained by one party, sold or divided in specie will depend on the facts of the case. However, in practice, the courts can be reluctant to order the sale of a business unless there is no other way to achieve fairness. This is because often the business is the source of wealth for the parties and thus, a sale of the business would terminate the income stream that it generates. This is the case, for example, with sole-trader businesses and service companies.

Conclusion

In summary, forensic accountants play a pivotal role in the process of extracting value and ensuring liquidity in divorce proceedings. They employ a combination of financial acumen and strategic foresight to address liquidity challenges, ensuring that valuations are both accurate and fair, while also considering the long-term financial stability of both parties involved in the divorce.

TRIVIA

DIVORCE EDITION

1. **WHAT WAS ISSUE 19 OF OUR DIVORCE MAGAZINE ABOUT?**

2. **HOW MANY PEOPLE DO YOU ESTIMATE ATTENDED THE 3RD ANNUAL HNW DIVORCE NEXT GEN SUMMIT?**

3. **WHEN IS THE INTERNATIONAL HNW DIVORCE & CHILDREN SUMMIT TAKING PLACE?**

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5. **WHO WAS THE CORPORATE PARTNER LEADING THE DOMESTIC ABUSE: EFFECT ON CHILDREN AND FINANCIAL PROCEEDINGS?**

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Founder/Chief
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020 3580 5891
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Maddi Briggs
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