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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
(PROBATE AND MATRIMONIAL OFFICE)

Between:

B

Petitioner

and

B

Respondent

Frank O'Donoghue KC & Rachel Lyle (instructed by Bernard Campbell & Co, Solicitors) for the Petitioner
The Respondent appeared in person

HUMPHREYS J

Introduction

[1] The judgment has been anonymised in order to protect the identity of the child of the parties. For the sake of convenience I shall refer to the petitioner as "the wife" and the respondent as "the husband."

[2] The husband and wife married on 25 February 2016. The wife issued a first divorce petition on 26 April 2018. On 19 March 2021 the Master stayed this petition and granted leave to the wife to issue a second petition, which she did on 30 July 2021. The summons for ancillary relief issued on 5 March 2021.

The evidence

[3] The wife is aged in her late 40s and is in good health. She has two adult children from her first marriage, both of whom remain in full time education. The husband is in his early 50s and similarly fit and well. They first met in 2011 through mutual

friends. At that time she resided in Northern Ireland and he in Scotland. They began a relationship and became engaged in 2012.

[4] In July 2012 the wife moved to Scotland with her two children to live with the husband, but the relationship deteriorated, and she returned to Belfast with the children in May 2013 to live in her father's house. However, the couple reconciled, and he came to live in rental accommodation in Belfast. He purchased a house in Belfast ("the Belfast property") in 2014 and proceeded to carry out works of renovation. In the wife's words, no expense was spared, and staff were employed to look after the house and garden. The husband and wife, together with her children, moved into the Belfast property in or around September 2015.

[5] In February 2013 the wife was adjudicated bankrupt following the repossession of her home which was in negative equity. She alleges that she was forced into this course of action by her husband, an allegation he entirely denies.

[6] Throughout the relationship, the wife alleges that the husband subjected her to emotional abuse, shouting at her and seeking to control her by restricting her access to money. The husband denies this allegation and makes counter-allegations of abusive behaviour.

[7] When she first moved to Scotland, the husband sent her a draft "cohabitation agreement" which he wanted her to sign to prevent any claim arising in relation to his property ("the Scottish property"). In the event, this was not followed through.

[8] However, at or about the same time, the issue of a prenuptial agreement first arose for discussion in correspondence from the husband's solicitors dated 4 July 2012. The husband stated that if they were to marry, such an agreement would have to be signed. The wife accepted this in principle since the husband appeared to be a wealthy man who wished to protect what he had built up prior to meeting her.

[9] On 17 July 2015 the same solicitors wrote to the wife enclosing a draft prenuptial agreement. They recommended that she seek independent legal advice on the terms of the document which were described as being "of considerable legal significance."

[10] The wife instructed lawyers both in Scotland and Northern Ireland to give her legal advice on the terms and implications of the agreement.

[11] In September 2015 the wife received written advice from solicitors in Belfast and they emailed a draft of the prenuptial agreement with their proposed amendments to her Scottish solicitors.

[12] On 7 October 2015 the Scottish solicitors advised the wife in relation to the proposed terms of the agreement and, in particular, on certain changes which they felt were necessary. On 26 October 2015 the wife was advised:

> "I have received back a revised agreement from [the husband's] lawyer. They are happy with most of our changes which is good!"

[13] On that same date, the Scottish solicitors gave further advice on the financial consequences of any future separation.

[14] Some further proposed amendments were put forward by the husband's solicitor. On 30 October the wife's Scottish solicitors advised:

> "I have spoken with [the wife] and can confirm that she is content with your revisals, and we can now proceed to have the agreement signed."

[15] The wedding was scheduled to take place in November 2015 but, following an argument, the husband put all her belongings in black bin bags and left them in derelict office premises. She went to live with her mother for a period before the husband asked her to come back. This was part of what the wife described as a pattern of abuse and reconciliation.

[16] By January 2016, there were further communications between the solicitors. A further revised version of the agreement was sent through by the husband's solicitors. On 14 January her Scottish solicitors emailed the wife asking her to confirm that the agreement was in order and in accordance with her understanding of the agreed position. On 15 January the wife's solicitor communicated that her client was:

> "content with the agreement in its revised form"

[17] The wife signed the prenuptial agreement on 20 January 2016, and this was witnessed by her mother. Her evidence was that she signed it "under duress" and that she felt completely beaten down and had nowhere to go. The mother stated that her daughter was upset and did not want to sign the document. The wife's evidence was that on one occasion the husband informed her to:

> "not make any fucking changes, you fucking sign it or else it's not going ahead"

[18] The marriage took place on 25 February 2016. The parties first separated after about eight weeks of marriage. In June 2016 the wife obtained an ex parte non-molestation and occupation order but this was discharged in July and the husband moved back into the matrimonial home in August.

[19] Their daughter was born in the middle of 2017.

[20] In March 2018 the wife obtained a further non molestation and occupation order, as well as a prohibited steps order and a Mareva injunction. A first divorce petition was issued in April 2018 but the parties reconciled in June 2018. On the wife's case this was prompted by a desire to make things work for the sake of their child.

[21] The husband and wife separated for a final time in September 2020 and the husband returned to live in his Scottish property. A second divorce petition issued on 30 July 2021.

[22] During the course of the marriage, the wife was paid £1000 per month as a mixture of salary and dividends from the Scottish company in which she is a shareholder. She also had access to a company American Express card which she used to pay for living expenses, including food and fuel. The wife complains that her use of this card was limited to certain shops and certain purposes. Recently, she has commenced work part time, 16 hours per week, for a software company earning about £9,000 per annum. She is also in receipt of Universal Credit of around £800 per month and receives maintenance from her first husband in respect of the two adult children of £340 per month.

[23] On foot of an order made by Master Sweeney on 2 February 2023 the husband is currently paying the wife maintenance pending suit of £1000 per month together with the daughter's school fees and the utility bills for the Belfast property.

[24] The wife has a tax liability to HMRC of around £1800 in respect of her dividend payments from the Scottish company.

[25] The wife was cross-examined about the disposal of her engagement ring which, it was claimed, was purchased at a cost of £40,000 in 2012. Her evidence was that she had walked into a jeweller in Dublin in the summer of 2024 and sold the ring for €6,000 in cash. She said that it had depreciated in value due to a chip in the diamond. This money was used to fund a family holiday to Majorca.

[26] The husband's evidence is that his assets are limited to the Scottish property, the Belfast property and a modest personal pension, together with cars and registration plates which have a value, in total, of about £20,000.

[27] The Scottish company was placed in compulsory liquidation in May 2024 and the husband is now working on an ad hoc basis for his parents. He continues to pay, through the parents' company, £1000 per month in maintenance, the utility bills for the Belfast property and the daughter's school fees.

[28] The husband received an HMRC self-assessment demand in May 2023 for £125,000 which remains unpaid. He also owes £100,000 in legal fees and £10,000 in rates together with an unspecified but significant amount to his parents.

[29] In setting out the evidence of the parties, I have sought to focus on the issues of significance to this ancillary relief application. I have not detailed the various allegations and counter-allegations of conduct since I have concluded that they do not meet the threshold to be properly taken into account in the analysis of the making of proper financial provision.

The accountancy evidence

[30] Paul Black of GMcG, forensic accountant, had been instructed on behalf of the wife and provided two reports to the court dated 5 January and 2 October 2024. He noted that the husband was a majority shareholder and the wife a minority shareholder in a number of companies, most of which were dormant and had never traded. The husband had principally carried on the business of trading food machinery through one company ("the Scottish company") which was incorporated in December 1999. There is a subsidiary company ("the property company") which carried on the business of buying and selling real property and was incorporated in 2017.

[31] Mr Black carried out a review of the available financial documentation. He noted that, in the last set of available audited annual accounts, to year end 31 October 2022, the Scottish company made an operating profit of £122,253 and a net asset position of £323,729. The Scottish company owns industrial premises in Scotland which were valued on 3 November 2023 at £310,000.

[32] To the year end 31 October 2020 the property company made a profit of £2,684. Its property assets were valued at £577,000 but it owed the same amount to its creditors. This company owns club premises in Scotland which are currently on the market and were valued on 3 November 2023 at £130,000.

[33] At one stage the Scottish company used office premises in Belfast which are still owned by the Boyd family pension fund and were valued on 19 October 2023 at £275,000.

[34] The accountant was at a loss to understand how the Scottish company had been placed into compulsory liquidation by the Sherriff Court in May 2024.

[35] The husband had sworn an affidavit in May 2022 which deposed to the serious financial strain which the Scottish company was under. Documents disclosed by him in June 2023 revealed that HMRC had written to the company in May 2023 demanding payment of some £502,000, failing which it may apply for a winding up order. The husband has also referenced at that time action being taken by the company's bankers to seek immediate reduction of the overdraft which stood at over £300,000. By November 2023 the bank sought immediate payment of the overdraft sum. It ought not therefore to have come as a surprise that the company which was under significant financial pressure should be wound up a year later.

[36] The evidence of the husband on this issue was that the impacts of Brexit, Covid and the market caused the business of Scottish company to deteriorate to the extent that it could not pay its debts. The lack of cash in the company proved fatal. Much of this had been extracted by the husband to purchase the Belfast property.

[37] The court also heard evidence about a second Scottish company, also engaged in the food business, which is wholly owned by the husband's parents. The husband gave evidence that he currently works selling equipment for this company and it pays the ongoing liabilities in respect of maintenance for the wife and the utility bills for the Belfast property.

[38] I entirely reject the tentative suggestion made by the wife's representatives that the liquidation of the Scottish company was some sort of contrivance or attempt to place assets beyond the reach of the wife. To have done so would have represented a monumental act of self-harm on the part of the husband.

[39] The value of the shares owned by the husband and the wife in each of the companies is nil.

The prenuptial agreement

[40] The wife executed the agreement on 20 January 2016 whilst the husband signed it seven days later. Its recitals state that the parties intended to marry on 25 February 2016, and they wished to record the assets held by them at the date of the marriage and regulate the division of certain of the assets in the event of separation or divorce.

[41] The material clauses of the agreement provide as follows:

(i) Clause 1 – it was made in contemplation of and was conditional upon the marriage;

(ii) Clause 2 – the husband's 'separate property' is defined as the assets listed in Schedule 1, or any proceeds of sale thereof, together with any assets acquired by way of gift or inheritance during the marriage, and any income derived from these classes of asset;

(iii) Clause 3 – similarly, the wife's 'separate property' is defined as the assets in Schedule 2 , or any proceeds of sale thereof, together with any assets acquired by way of gift or inheritance during the marriage, and any income derived from these classes of asset;

(iv) Clause 4 – makes provision for assets acquired in part from separate property assets or income therefrom;

(v) Clause 5 (a) declares that, in the event of separation or divorce, neither the husband's nor the wife's separate property would form part of the matrimonial

property as defined by the Family Law (Scotland) Act 1985 or any similar legislation including the Matrimonial Causes (NI) Order 1978. The separate property would not be the subject of division on divorce and would not be taken into account in determining any application for financial provision. Each party expressly waived any claim which they may have in respect of the other's separate property;

(vi) Clause 5 (b) makes particular provision in respect of the Belfast dwelling house. In the event that it attained a value in excess of £1M, the husband would pay the wife 50% of the value above £1M on divorce, on the basis of a valuation carried out by a chartered surveyor;

(vii) Clause 5 (c) creates an obligation on the husband to transfer 20% of the shares in the Scottish company to the wife, within a month of the marriage. In the event of divorce, the husband agrees to buy back the shares at a price to be agreed or fixed by an accountant;

(viii) Clause 5 (d) records that the wife is already a 20% shareholder in the four Northern Irish companies. In the event of divorce, the husband agrees to buy those shares at a price to be agreed or fixed;

(ix) Clauses 6 & 7 – the husband and wife agree that each has sole responsibility for educating their children from previous marriages and that these children will not be treated as children of the marriage;

(x) Clause 9 recites that each party has disclosed their assets in Schedules 1 and 2 to the agreement;

(xi) Clause 14 – each acknowledges that they have had independent legal advice and that the terms of the agreement are fair and reasonable;

(xii) Clause 15 – each acknowledges that they fully understood the nature and effect of the agreement and its terms;

(xiii) Clause 16 - the parties acknowledge that in certain jurisdictions it may not be possible to oust the jurisdiction of the court but if so, they would seek to implement the terms of the agreement by having it made an order of court.

[42] Schedule 1 to the agreement contains a list of the husband's assets as follows:

(i)	Shareholding in the Scottish company	£950,000
(ii)	Shares in various other companies	£139,200
(iii)	Scottish property	£2,000,000

(iv)	Less mortgage	(750,000)
(v)	Belfast property	£1,000,000
(vi)	Less mortgage	(375,000)
(vii)	Less loan from Scottish company	(300,000)
(viii)	Contents of Scottish property	£300,000
(ix)	Contents of Belfast property	£150,000
(x)	Vehicles and registrations	£78,000
(xi)	Cash at bank	£10,000
(xii)	Pensions	£325,000
(xiii)	Endowment policy	£35,000
TOTAL VALUE		**£3,562,200**

[43] The wife's assets were listed at Schedule 2:

(i)	Car	£10,000
(ii)	Contents of two bedrooms	£7,000
(iii)	Shares in four NI companies	£800
TOTAL VALUE		**£17,800**

[44] On the basis of the figures in the Schedule, the shares to be transferred to the wife in the Scottish company were valued at £190,000 (subject to any minority discount).

[45] Annexed to the agreement were certificates signed by Scottish solicitors who had given the parties legal advice. The solicitor who advised the wife states:

> "I advised my client independently of the other party and before the time at which my client signed the Agreement as to the following matters:
>
> The effect of the Agreement on my client's rights and the advantages and disadvantages, at the time the advice was provided, to my client when making the Agreement."

[46] The certificates also record that the legal advisors were satisfied that the clients had also obtained independent advice on the law of Northern Ireland in relation to those same matters.

The legal framework

[47] Articles 25, 26, 26A and 26D of the Matrimonial Causes (Northern Ireland) Order 1978 ('the 1978 Order') gives the court power, on granting a decree of divorce or at any time thereafter, to make a range of orders, including orders for:

(i) The making of periodical payments;

(ii) The payment of a lump sum;

(iii) The making of periodical payments or a lump sum for the benefit of a child or children;

(iv) The transfer or settlement of property;

(v) The sharing of a pension.

[48] If the court makes any such order, it is also empowered to make such consequential directions as it thinks fit for giving effect to the order.

[49] Article 27 provides:

> "(1) It shall be the duty of the court in deciding whether to exercise its powers under Article 25, or 26, 26A or 26D and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18.
>
> (2) As regards the exercise of the powers of the court under Article 25(1)(a), (b) or (c), 26, 26A or 26D in relation to a party to the marriage, the court shall in particular have regard to the following matters—
>
> (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

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

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

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

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

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

(3) As regards the exercise of the powers of the court under Article 25(1)(d), (e) or (f), (2) or (4) or 26 in relation to a child of the family, the court shall in particular have regard to the following matters—

(a) the financial needs of the child;

(b) the income, earning capacity (if any), property and other financial resources of the child;

(c) any physical or mental disability of the child;

(d) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

(e) the considerations mentioned in relation to the parties to the marriage in sub-paragraphs (a), (b), (c) and (e) of paragraph (2)."

[50] Article 27A mandates the court to consider the 'clean break' principle:

> "(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under Article 25(1)(a), (b) or (c), 26, 26A or 26D in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.
>
> (2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.
>
> (3) Where on or after the grant of a decree of divorce or nullity of marriage an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any further application in relation to that marriage for an order under Article 25(1)(a) or (b)."

[51] As the House of Lords observed in *Miller v Miller* [2006] UKHL 24, aside from the principle that the primary consideration must be the welfare of any children of a marriage, and the requisite consideration to be given to a clean break, the legislation is not prescriptive. The task of the court is therefore to identify a fair division of assets on divorce, bearing in mind the yardstick of equality articulated in *White v White* [2000] UKHL 54. The court must have regard to the non-exhaustive list of factors in Article 27(2) but also to "all the circumstances of the case."

[52] An issue which oftens troubles practitioners and the courts is the distinction between matrimonial and non-matrimonial property. In Scotland, this difference is

recognised in statute. Section 10(4) of the Family Law (Scotland) Act 1985 ('the 1985 Act') defines matrimonial property as being the matrimonial home plus property acquired during the marriage otherwise than by gift or inheritance. By section 9(1), the Scottish courts are directed to apply the principle that the net value of the matrimonial property should be shared fairly between the parties to the marriage.

[53] No such distinction appears in the 1978 Order. Article 27(2)(a) refers to the "property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future." However, the court may validly consider, as one of the circumstances of the case, the source of property where it has been brought into a marriage by one of the parties or has been acquired by inheritance or gift during its course. How, and to what extent, this impacts on the question of fairness in the distribution of assets may depend on the length of the marriage.

Prenuptial agreements

[54] In *Radmacher v Granatino* [2010] UKSC 42, the Supreme Court considered the question of the enforceability of prenuptial agreements entered into between parties in advance of their marriage. Lord Phillips confirmed the principle that the parties cannot oust the jurisdiction of the court:

> "…it is the court, and not any prior agreement between the parties, that will determine the appropriate ancillary relief when a marriage comes to an end, for that principle is embodied in the legislation." (para [7])

[55] However, the court also concluded that the old law whereby such agreements were void as being contrary to public policy should be swept away. On this basis, prenuptial and postnuptial agreements would be subject to similar treatment. As a result:

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

[56] The most difficult question for a court to assess will be whether it would be unfair to hold the parties to the terms of the agreement. The Supreme Court in *Radmacher* identified children of the marriage as being one factor which may lead a court to so conclude. The interests of children, which are given statutory primacy, will trump the provisions of a nuptial agreement in an appropriate case.

[57] The court also recognised that it may be that parties to a marriage wish to make express early provision in respect of non-matrimonial property. There would be

nothing unfair, per se, in upholding an arrangement entered into relating to the disposal of such property on the termination of marriage.

[58] Lord Phillips did observe:

> "The parties are unlikely to have intended that their ante-nuptial agreement should result, in the event of the marriage breaking up, in one partner being left in a predicament of real need, while the other enjoys a sufficiency or more, and such a result is likely to render it unfair to hold the parties to their agreement." (para [81])

[59] The status of such agreements in Scots law is quite different. Unlike the position under the 1978 Order, the parties to a marriage can oust the jurisdiction of the court to resolve any dispute relating to the division of assets on divorce, subject to the powers of the court to vary or set aside such an agreement pursuant to section 16 of the 1985 Act. Prenuptial agreements are regarded as legally binding and enforceable provided:

(i) The parties freely entered into the agreement with the benefit of independent legal advice; and

(ii) Its provisions are fair and reasonable.

[60] The fact that the agreement ultimately results in a division of assets which is unequal does not, of itself, give rise to an inference of unfairness or unreasonableness – see *Gillon v Gillon* [1995] SLT 678. The court will focus on the circumstances leading up to the execution of the agreement, particularly on the nature and quality of the legal advice given to each party.

[61] There does not appear to be any authority in this jurisdiction on prenuptial agreements, although the Master has referenced the case of *Radmacher* in at least two decisions, *D v E* [2013] NIMaster 13 and *G v G* [2024] NIMaster 5. The Supreme Court decision represents an authoritative statement of the law, following a review of the relevant authorities and a consideration of the policies at play, and relates to materially identical statutory provisions in England & Wales. The Northern Irish courts should adopt and follow these principles.

Application to this agreement

[62] There are therefore three questions to answer:

(i) Was the agreement freely entered into?

(ii) Did the parties have a full appreciation of its implications?

(iii) Would it be unfair to hold the parties to their agreement?

[63] Lord Phillips stressed in *Radmacher*:

> "If an ante-nuptial agreement, or indeed a post-nuptial agreement, is to carry full weight, both the husband and wife must enter into it of their own free will, without undue influence or pressure" (para [68])

[64] In a case decided before *Radmacher*, *NA v MA* [2006] EWHC 2900 (Fam), Baron J held that, in order to overturn an agreement entered into between spouses, the court had to be satisfied that the wife's will was overborne by her husband exercising undue pressure or influence over her.

[65] The case advanced by the wife was that she was coerced into entering into the agreement. This allegation is quite hopeless. There is no evidence whatsoever of the wife's will being overborne. She had the benefit of legal advice from two separate firms of solicitors, experienced in family law, and received clear and accurate advice on the implications of the prenuptial agreement. By way of example, the Scottish solicitor counselled on the implications of the share transfer on 7 October 2015:

> "I don't want you rushing into a decision. We do not know what [the husband's] company is worth, or what it might be worth in years to come. This is a little bit of a gamble"

[66] Further, on 26 October 2015, the wife was advised:

> "My concern is that the agreement as it stands arguably precludes you from making a claim on [the husband] for monthly financial support should you separate…It is entirely up to you though, and if you feel the capital settlement is potentially big enough to allow you to support yourself then we can just leave this point"

[67] The wife's claim that the husband would not countenance any changes to the draft agreement is wholly undermined by the correspondence between the solicitors which demonstrates that changes were made to the draft by both parties until the terms were finally agreed upon and executed. The back and forth on these issues took a period of months. I entirely reject the wife's claim of coercion.

[68] The question of free will is linked to the second issue, the full appreciation of the implications of the agreement. As Lord Phillips commented:

> "Sound legal advice is obviously desirable, for this will ensure that a party understands the implications of the agreement, and full disclosure of any assets owned by the

> other party may be necessary to ensure this. But if it is clear that a party is fully aware of the implications of an ante-nuptial agreement and indifferent to detailed particulars of the other party's assets, there is no need to accord the agreement reduced weight because he or she is unaware of those particulars. What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end." (para [69])

[69] As previously observed, the evidence reveals that the wife had the benefit of independent legal advice from experienced solicitors both in Scotland and Northern Ireland. The husband's assets as at January 2016, were detailed in the schedule, and there is no allegation of any material non-disclosure. The agreement itself also states, in clear terms, its legal implications in relation to any future application for financial provision on separation or divorce.

[70] I am therefore satisfied that the wife entered into the prenuptial agreement with full knowledge and appreciation of its terms and their implications.

[71] The only issue therefore is whether it would be unfair to hold the parties to their agreement. If the terms of the prenuptial agreement govern the financial provision for the wife, she will be left with her 20% shareholding in five valueless companies, together with 50% of the value of the Belfast property over £1M, which is currently £50,000. The wife was advised that the value of shares could decrease and provided no guarantee of any particular payment in the event of divorce. Whilst the outworkings of the agreement may seem harsh, they were an entirely foreseeable consequence of the prenuptial agreement which, as I have found, was freely entered into.

[72] However, the court must, as its primary consideration, take into account the welfare of any minor child of the family. This is the only factor which would cause me to depart from the prenuptial agreement's provisions. Had no child been born of the marriage, the prenuptial agreement would have been afforded decisive weight.

The assets

[73] The uncontroverted valuation evidence before the court in relation to the real property owned by the husband was as follows:

(i)	The Belfast property	September 2020	£1.2M
		7 November 2022	£1.1M
(ii)	The Scottish property	1 September 2020	£810,000
		30 May 2023	£1M

[74] On 11 September 2024 the Master made an order for possession of the Belfast property in favour of the mortgagee, the Progressive Building Society. As of 30 October 2023 the debt secured on the property in its favour was £444,000. The husband's evidence was the debt secured against the Scottish property stands at £700,000.

[75] In her position paper for the hearing, the wife made the case that the husband's assets include:

(i) The industrial premises in Scotland;

(ii) The office premises in Belfast; and

(iii) The club premises in Scotland.

[76] This analysis is repeated in the wife's closing submission. This betrays a misunderstanding of the fundamentals of company law. Two of the properties are owned by corporate entities which have their own legal personality. The relevant asset owned by the individual is the shareholding in the company. For the reasons set out above, those shares have a nil value.

Application of the statutory factors

[77] Pursuant to Article 27(2) of the 1978 Order, I consider each of the following factors:

(a) The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future

Each of the parties has the ability and capacity to work full time. The wife is the primary carer for the daughter but is capable of making childcare arrangements to facilitate full time working. The husband has previously enjoyed a successful business career and can do again once he has discharged his debts and moved on from these proceedings. Their respective property interests and resources are detailed above.

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

The parties each have financial obligations which they are currently unable to meet. They will continue to have responsibility for their daughter for the next 11 years or longer if she proceeds to tertiary education.

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

The parties enjoyed a high standard of living, albeit it was one which was beyond both their means.

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

Each of the parties had been married before and they were in their forties when this marriage was entered into. It was a short marriage with periods of separation.

(e) Any physical or mental disability

Not applicable

(f) The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family

The wife has been almost exclusively responsible for the care and wellbeing of the daughter since separation whilst the husband has made significant financial contributions.

(g) The conduct of each of the parties

I have determined that there is no relevant conduct to be taken into account.

(h) The value to each of the parties to the marriage of any benefit lost by reason of the dissolution

Not relevant.

Disposal

[78] In arriving at my determination in this case, I have borne in mind all the statutory factors set out above but also the welfare of the child, which is the primary consideration, and the factors set out in Article 27(3). Fundamentally, it is the needs of the child which must be the focus of the court's analysis. I consider that the best outcome for the parties, and for the child, is a clean break settlement which facilitates the purchase of a new property for the wife and child to live in. I also take account of the fact that there is a prenuptial agreement which must be given appropriate weight.

[79] The assets in this case are such that sufficient capital can be raised to purchase a property for the needs of the child and the wife. It is neither necessary nor appropriate to require them to live in rental accommodation. Equally, however, an order for the sale of the Belfast property with all the equity being paid to the wife does

not represent a fair division of the assets in light of the factors which I have set out above. Both sets of proposals put forward by the parties at the direction of the court following the hearing were, regrettably, hopelessly unrealistic.

[80] I order that the husband pay to the wife a lump sum of £375,000 within 12 weeks of the date of this judgment. This represents approximately 60% of the equity in the Belfast property. It will be a matter for the husband as to how this sum is raised. Upon receipt the wife and child must give up vacant possession of the Belfast property to the husband. The order of Master Sweeney dated 2 February 2023 will remain in effect until the lump sum is paid at which stage it will be discharged.

[81] Following payment of the lump sum, there will be no continuing obligation on the husband to make any periodical payment for the benefit of the wife.

[82] I order that the husband continue to pay the school fees for the child pursuant to Article 10(7) of the Child Support (Northern Ireland) Order 1991 ('the 1991 Order').

[83] I decline to make any other order for maintenance for the child in these proceedings, since this is properly a matter for assessment by the Child Maintenance Service by virtue of the jurisdictional provisions of Articles 10(3) and 41(1) of the 1991 Order.

[84] I will hear the parties on any consequential directions and on the issue of costs. The parties will, in any event, have liberty to apply.