

## Family law news: 'Needs must?' How the concept of needs can affect prenuptial agreements

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Earlier this year, the Law Commission finally produced its report on Matrimonial Property, Needs and Agreements after nearly five years in the making. The headline recommendation that emerged from the report was that nuptial agreements should be binding, known as Qualifying Nuptial Agreements ('QNAs').

Of course, this being English family law, things are never that straightforward. In addition to meeting specific procedural requirements (see the briefing on our website for more details), a QNA that fails to meet the elastic concept of 'needs' would not give satisfactory protection. The tension between assessing the weight to be attached to a prenuptial agreement whilst meeting 'needs' was recently explored in the case of *Luckwell v Limata* [2014] EWHC 502 (Fam).

*Luckwell v Limata* (2014)

Ms Luckwell and Mr Limata married in 2005 and had three children. They had net assets of approximately £6.5m, all of which were in the wife's sole name. In the immediate years preceding the breakdown of their relationship, neither party worked and they essentially lived off an allowance from the wife's parents, who were very wealthy.

The parties entered into a prenuptial agreement (PNA) in 2005, setting out their intention for each to retain their separate property and for neither to make claims against each other's assets.

The PNA was supplemented by two further agreements during the marriage, each time confirming separate property was to remain separate and gifts from the wife's family were to be her separate property, including the family home in London. When the London home was transferred to the wife from the wife's father, the wife promised not to sell the property without her father's agreement.

The question for the court was whether the marital agreements should be followed or varied and, if so, to what extent. The wife's father gave evidence to the court that he would terminate his financial support to his daughter (including no longer paying the children's school fees) if the house were to be sold. So the court faced the added dilemma of the wife's income being curtailed if the husband received any capital award (as the only capital asset in the parties' names was the London home and, in order to release capital, that property would have to be sold).

If the terms of the marital agreements had been applied in full, the wife's needs would have been well catered for, while the husband would only have retained his debts. It was clear that the marital agreements did not meet the husband's needs. He would not have been able to afford a home for him and his children when they stayed with him.

Evaluating the settlement

Without a marital agreement, the husband could have reasonably expected to receive a significant proportion of the equity in the family home. Ultimately, the court made the following award – the London home to be sold and the proceeds of sale to be used as follows:

- The husband's debts to be discharged.
- The husband to receive £65,000 for furniture, a car and to meet his rent and interim expenses in the period before he purchased a house.
- A property of the husband's choice worth up to £900,000 to be purchased in which the husband was to live until the youngest child turned 22, after which the property to be sold and 45% of the proceeds of sale to revert to the wife. The remaining 55% of the proceeds of sale to be re-invested in a smaller house in which the husband could live for the rest of his life (or earlier if there was a change of circumstances) before reverting back to the wife.
- The wife to retain the balance of the proceeds of sale which would give her an estimated £5.5m. Of this, the court felt she needed £1.1m as an education fund for the three children, £1.4m to generate an income for her and the children and the remaining £3m to purchase a home.
- This award was made to meet the husband's needs. However, although the husband was housed for the rest of his life, he did not receive any capital outright (save for the relatively small contribution to furniture, a car, interim expenses etc).

Summary

While the terms of the marital agreement were not strictly followed, it is clear the existence of the agreement significantly curtailed the husband's award, so even where the terms of a PNA might not meet 'needs', it can depress those 'needs' when compared to those claims made in

cases without prenuptial agreements.

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