

# Christopher Pocock QC



1 King's Bench Walk

Specialists in Family Law

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# “Property Adjustment”

Matrimonial Causes Act 1973 s.24(1)(c)

On divorce, a Court may make:-

*“an order varying for the benefit of the parties to the marriage and of the children of the family or either of any of them any ante-nuptial or post-nuptial settlement (including such settlement made by will or codicil) made on the parties to the marriage, other than one in the form of a pension arrangement ...”*



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# Nuptial settlements

*“...This section is dealing with ante-nuptial and post-nuptial settlements, and it refers to marriage. It refers to it because **what it is dealing with is what we commonly know as a marriage settlement**, that is, a settlement made in contemplation of, or because of, marriage, and with reference to the interests of married people, or their children.”*

Hill J in Hargreaves [1926] P 42, 45



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# Brooks

*A “disposition...which makes some form of continuing provision for both or either of the parties to a marriage, with or without provision for their children”*



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# Nuptialisation/de-Nuptialisation

It is possible for a nuptial trust to become non-nuptial – *Charalambous (C v C* [2005] Fam 250)

An appointment in accordance with the provisions of a non-nuptial trust can create a nuptial trust of the appointed property:

- In *Hargreaves* “the property settled is not the whole fund out of which the £500 was carved, but it is the £500 and nothing else.”
- In *N v N* [2006] 1 FLR 856, a property purchased (in a company) under powers in a non-nuptial trust was subject of a nuptial settlement – but not the whole of the trust which owned the company.

BUT it should not nuptialise - or at least permit the variation as a post-nuptial settlement of - the entire “main” trust - *Burnett* [1936] P 1 and *K v K (Ancillary Relief: Deed of Appointment)* [2009] 2 FLR 936



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# Nuptialisation by Action

*Quan v Bray* [2014] EWHC 3340 (Fam) Coleridge J:

*“a settlement which is non nuptial at its creation **could itself later become “nuptialised”** if there was, in fact, a flow of benefit to the parties during the marriage from the trust”*

*Joy v Joy-Morancho* [2015] EWHC 2507 (Fam), Sir Peter Singer:

If a settlement that was not nuptial when created and made on the parties could become nuptialised in that way, then *“every truly dynastic settlement, bereft of nuptial character at the outset but providing benefits for an individual who subsequently becomes either a husband or a wife, would arguably become variable under section 24(1)(c) as soon as that individual, once married, received any benefits. I am satisfied that that is not the law, notwithstanding the breadth of attribution historically afforded to settlements treated as nuptial.”*



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# What to ask for – The Trust Itself

*The identity of the settlor*

*The trust deed or other instrument establishing the trust (or other entity)*

*Any documents varying the terms thereof and any other supplemental instruments.*

*All letters of wishes, or other expressions of wishes, current or past*

*Details of the current trustee(s)*

*Details of the current protector*



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# What to ask for – Financial

*Accounts (for a proportionate/relevant number of years)*

*Management or draft accounts*

*Other financial records of the value of assets held, liabilities and income;*

*Acquisitions/receipts by the trustees, and their source (for a proportionate/relevant number of years)*

*Dispositions made by the trustees (for a proportionate/relevant number of years)*

*Details (or estimate) of the current value of assets recorded*



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# What to ask for – Benefit

*Schedule of all capital and income distributions to the beneficiary*

- *or at his direction?*
- *whether outright or by way of loan?*

*(for a proportionate/relevant number of years)*

*Copies of all requests for the above*

*Details of any particular purpose or reason for the making the above, or making them in the manner in which they were made*



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# What to ask for – Involvement

*The role played by the beneficiary*

- *in the business activity or investment(s) of the trust*
- *in the determination of any request from any beneficiary*

*Any benefits received by the beneficiary as a result*

*Correspondence/other communications between the beneficiary (or on his behalf) and the trustees or protector*



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# The Court's Supervision



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# Foreign Assistance



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