

Broadway  
HouseChambers

# AGREEMENTS IN PRINCIPLE – HOW TO REOPEN OR VARY DEALS THAT HAVE NEVER MADE IT INTO A SEALED ORDER

NICK POWER

# OUTLINE

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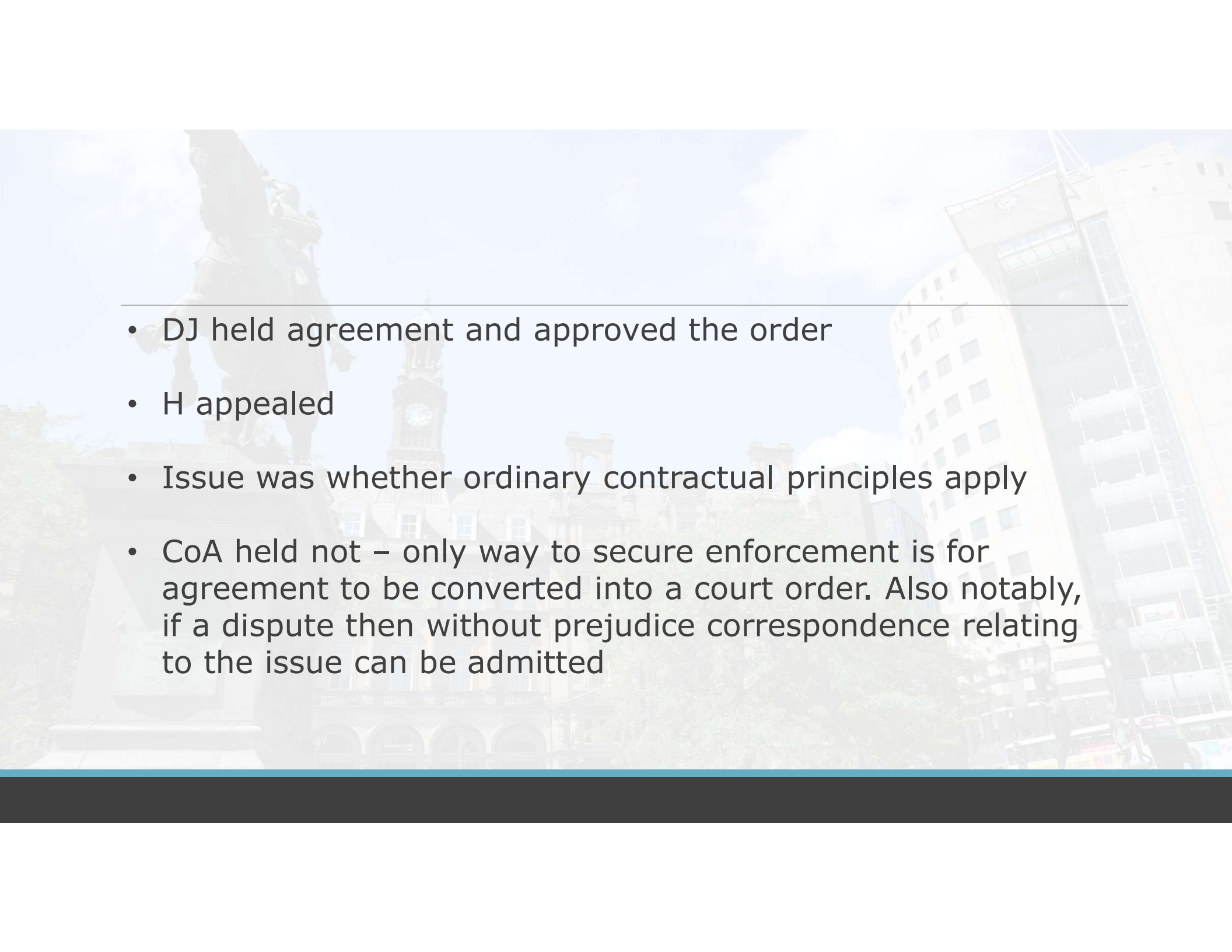
- XYDHIAS v XYDHIAS [1999] 1 FLR 683
- 3 RECENT AUTHORITIES
- THR V WAT [2025] EWHC 1125 (Fam)
- HA v EN [2025] EWHC 2436 (Fam)
- LIN v PAR [2025] EWFC 401
- HOW DO THESE ASSIST IF LOOKING TO REOPEN OR VARY AN AGREEMENT IN PRINCIPLE

# **XYDHIAS v XYDHIAS [1999] 1 FLR 683**

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## Case Overview and Outcome

- Settlement negotiated through counsel and solicitors in the days leading up to a 3 day hearing
- Hearing time estimate reduced to 45 minutes after agreement reached for the court to approve the order
- H withdrew from agreement at the hearing and application listed for trial
- W issued Notice to Show Cause

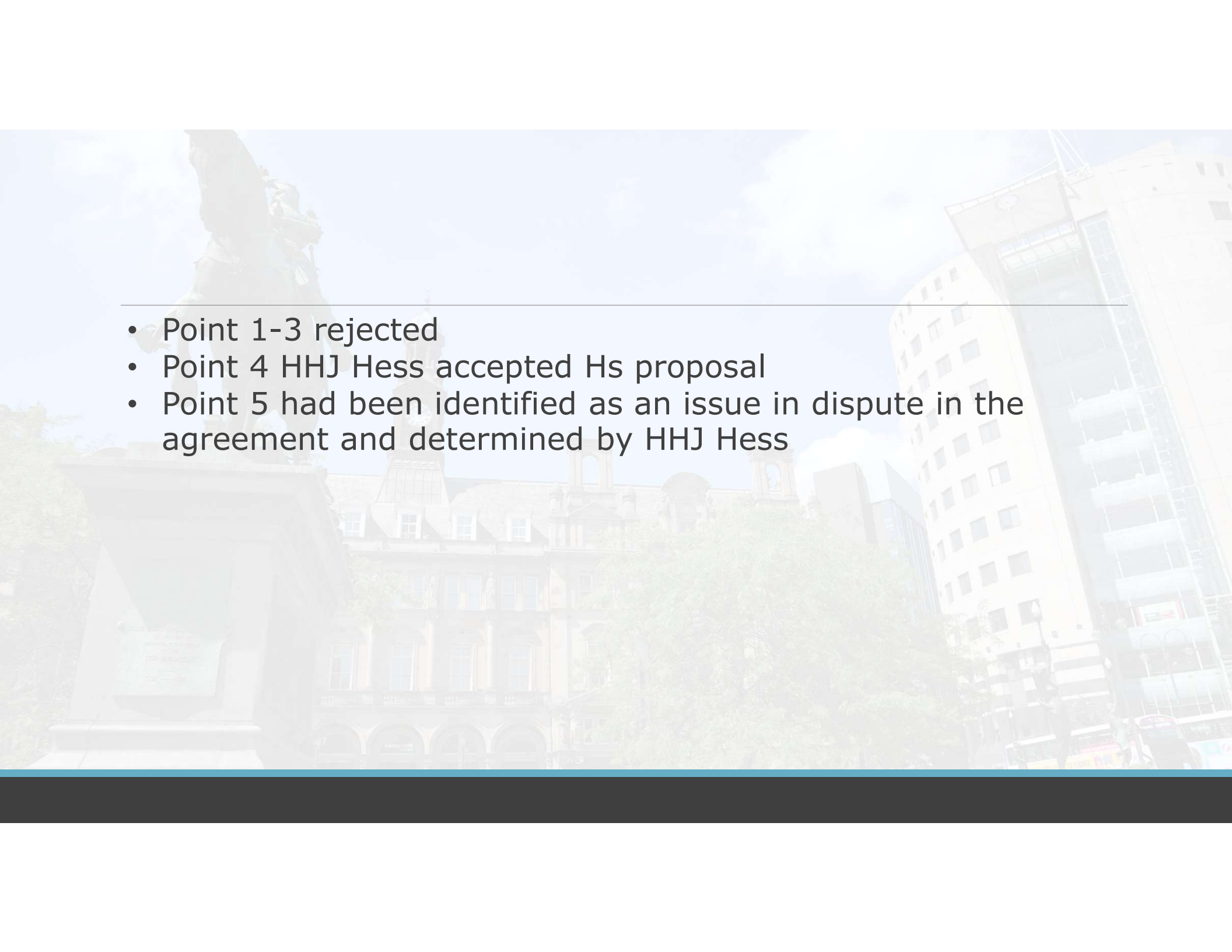
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- DJ held agreement and approved the order
  - H appealed
  - Issue was whether ordinary contractual principles apply
  - CoA held not – only way to secure enforcement is for agreement to be converted into a court order. Also notably, if a dispute then without prejudice correspondence relating to the issue can be admitted

# THR v WAT [2025] EWHC 1125

## Fam

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- HHJ Hess sitting as a High Court Judge in a 10 day final hearing
- Agreement reached on day 2
- Parties agreed they were Xydhias bound and hearing adjourned for order to be drafted and for any outstanding issues over the drafting to be resolved by the Judge
- 5 issues raised: -
  1. What did W already have?
  2. What element of Ws costs should be taken into account?
  3. Interest on lump sums until payment?
  4. Security for lump sums?
  5. Child maintenance

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- Point 1-3 rejected
  - Point 4 HHJ Hess accepted Hs proposal
  - Point 5 had been identified as an issue in dispute in the agreement and determined by HHJ Hess

# HA v EN [2025] EWHC 2436

## Fam

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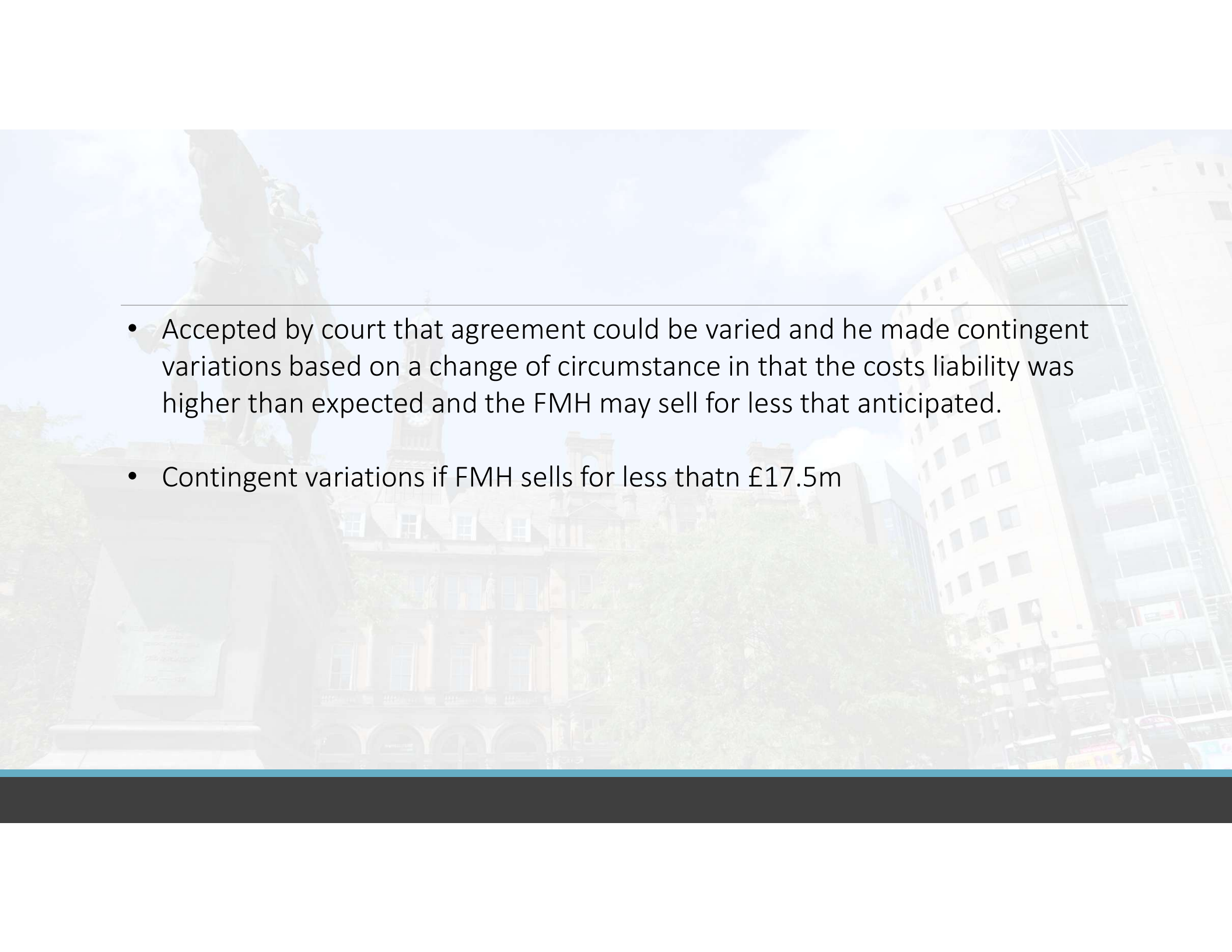
- Agreement reached day prior to commencement of trial
- Also agreed issues between them subject to court's ability to resolve
- Analysis of law since Xyhdias
- Soulsbury v Soulsbury [2007] EWCA Civ 969
- Ward LJ raising but not resolving conclusion in Xyhdias
- Haines v Hill [2007] EWCA Civ 1284

*"Once parties have reached an agreement to compromise an ancillary relief claim the court will not permit either party to renege save in exceptional circumstances"*

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- Issues resolved: -

1. Agreement was Ws costs would be repaid from a family fund but no figure set out in agreement;
  2. Agreement for payment of third party costs;
  3. Held both figures put forward by W were reasonable and had been open to H to agree a cap or figure.
- Led to application by H for variation of maintenance agreement pursuant to ss34 and 35 MCA 1973

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- Accepted by court that agreement could be varied and he made contingent variations based on a change of circumstance in that the costs liability was higher than expected and the FMH may sell for less than anticipated.
  - Contingent variations if FMH sells for less than £17.5m

# LIN v PAR [2025] EWFC 401

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- Peel J
- Separation in 2001 after 9 year childless marriage
- Consent Order prepared at the time but not made by the court
- Terms implemented – modest assets shared equally
- 2022 W pursues FR application
- H prospered post-separation – Ws first letter to H sought £10m for interim needs!
- W challenged agreement on the following grounds: -
  1. Material non-disclosure – agreement should be disregarded;
  2. Undue pressure – reduces weight to be attached;
  3. Not implemented – reduces weight;
  4. Court's duty to consider overall fairness.

# What does this mean in practice?

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## 1. Is there an agreement?

- If in dispute issue Form A
- Seek directions to stay FPR 2010 r9.14
- Without prejudice correspondence admissible
- Preliminary hearing to establish if there is an agreement

## 2. Material non-disclosure

- The same principles apply to non-disclosure leading to an agreement as they do to an order
- Is there evidence of non-disclosure and is it material?
- If fraudulent non-disclosure burden on non-discloser to show not material
- If inadvertent burden is on the other party

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### 3. Edgar Principles

- Is there any basis for agreement to be vitiated?
- Undue pressure or duress?
- Exploitation of the dominant position?
- In adequate knowledge?
- Possibly bad legal advice?
- Important change of circumstance?

### 4. Barder

- Has there been a new event since agreement reached which invalidates the basis of or the fundamental assumption on which the agreement was reached



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## 5. Mistake

- Was the agreement reached on facts not known at the time?
- If so, does that make a material difference?
- Cannot be the fault of the party seeking to resile
- Cannot have been discoverable with due diligence

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## 6. Fairness as against s.25

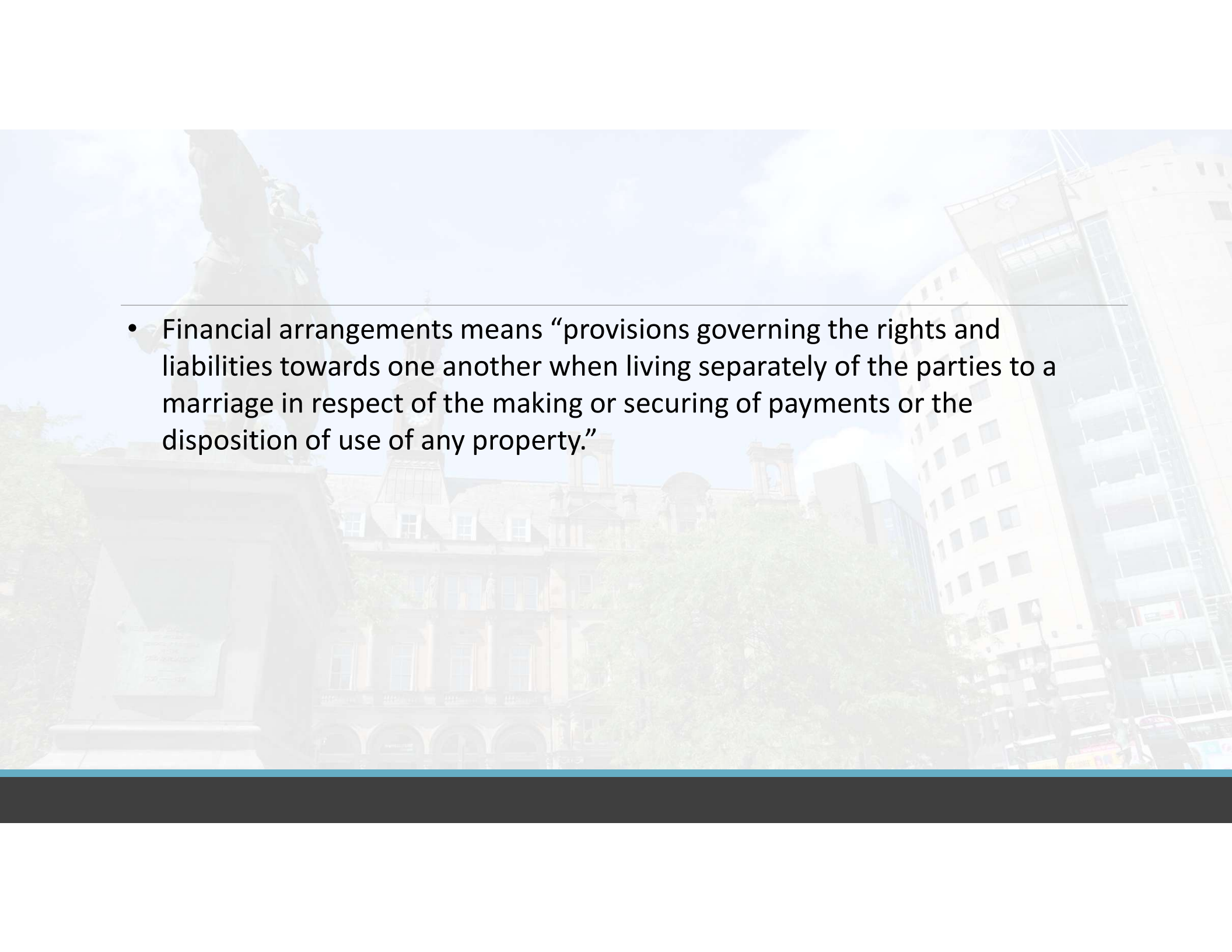
*'Where the repudiation of the agreement is based on the imprecise, inchoate ground that it is unfair, the court is not obliged to consider the financial evidence in granular detail. It is not obliged to tabulate all of the assets and liabilities and to work out the precise quantitative or relative outcomes for each party under the agreement. Instead, in a fairly summary manner, the court an instead standback, survey the evidence boadly and decide if the agreement meets the standard of basic fairness.'*

Cummings v Fawn [2023] EWHC 830 Fam

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## 7. Variation under s.35 MCA 1973

- Court can vary or revoke any financial arrangements contained in a maintenance agreement if “by reason of a change in circumstances in the light of which any financial arrangements contained in the agreement were made, or as the case may be, financial arrangements were omitted from it (including a change foreseen by the parties when making the agreement) the agreement should be altered to make different, or as the case may be, so as to contain, financial arrangements.”
- A maintenance agreement is any agreement in writing between the parties to a marriage which contains financial arrangements.

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- Financial arrangements means “provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage in respect of the making or securing of payments or the disposition of use of any property.”



Thank You for Listening!

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