Marriage and divorce Added

Welcome to London, the divorce capital of the world

A recent court ruling is expected to bring a new flood of 'divorce tourists' seeking higher payouts

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Earlier this month, in a rain-drenched London, Natalia Potanina, the ex-wife of a Russian billionaire, won the right to pursue her divorce claim in the English courts, despite the separation being formalised in Russia more than a decade earlier.

Potanina, who for 30 years was married to Vladimir Potanin, a former first deputy prime minister of Russia — and twice ranked by Forbes as the country's richest person — is seeking a multibillion-dollar settlement from his estimated $20bn fortune.

The ruling paves the way for the biggest divorce case ever heard in the UK. But more than that, lawyers say, it will encourage an even greater number of "divorce tourists" — which Potanina's team insist she is not — seeking more favourable payouts to come to England, cementing London's reputation as the divorce capital of the world.

"This case doesn't just open the door to 'divorce tourism' — it opens the floodgates to post-divorce tourism," says Michael Gouriet, partner in the UK family law team at Withers. "It sends a message that people who already have a divorce settlement elsewhere could still try their luck in England if they can establish a connection."

The prize for pursuing a claim in London can be highly lucrative — at least for one half of a separated couple. The English and Welsh legal system is attractive to the financially weaker party because it focuses on splitting combined marital wealth equally, even if one partner was the main breadwinner.

The approach differs from that in Scotland and many European countries, where financial awards are far less generous and maintenance is often limited to a few years, with an expectation that both parties will become financially independent.

The discrepancies can even result in a "race" to file for divorce: the financially weaker spouse seeks to file in England, while the main breadwinner prefers another jurisdiction.

Charles Hale KC, barrister at 4PB, says: "International businesses come to London for their complex litigation. Wives come for their divorces. The reasons are the same: the quality of the judiciary and their adherence to the rule of law, the legal excellence of the English Bar and the flexibility of the English legal system to adapt to achieve fairness."

Hale predicts that many international or expatriate husbands who have been divorced in jurisdictions that do not insist on full financial disclosure — for example, where family assets held in companies, trusts or pensions cannot be divided — may now face further litigation in London even after a "final" order has been made abroad.

"If a wife — and it's almost always a wife — can satisfy the jurisdictional hurdles and bring a claim in England . . . the law is now clear," says Hale. "If they have a good arguable case for a further share of the assets, even after a full-blown divorce elsewhere, they will be allowed to bring their claims before an English judge."

So, while national divorce rates are near their lowest level in more than 50 years according to the Office for National Statistics, London lawyers who deal with globally complex, high net worth cases say they are busier than ever.

But the rise of London as the break-up capital of the world comes with wider costs. Critics point to the added strain these high profile cases put on an already stretched judicial system. What's more, should London really be interfering with legal decisions made elsewhere?

High-value divorce cases in England

Princess Haya and Sheikh Mohammed Al-Maktoum (2021)	£554mn
Tatiana Akhmedova and Farkhad Akhmedov (2021)	£453mn
Kirsty Roper and Ernesto Bertarelli (2021)	£400mn
Jamie Cooper-Hohn and Sir Chris John Hohn (2014)	£337mn
Christina Estrada and Sheikh Walid Juffali (2016)	£75mn
Pauline Chai and Khoo Kay Peng (2017)	£64mn

Source: Spear's

A pathway for those who divorced abroad to bring claims for financial relief in England and Wales has been open since 1984, under part III of the Matrimonial and Family Proceedings Act. This allows divorcees to bring a claim in London if they can establish sufficient links to the UK and demonstrate that the outcome overseas was unfair. But it was not until the early 2000s that London truly established its reputation as the world's "divorce capital".

The turning point was a landmark case between two divorcing farmers, Martin and Pamela White, which established that marriage is a partnership of equals. "There should be no bias in favour of the money earner and against the homemaker and child carer," ruled Lord Nicholls of Birkenhead.

Since then, the starting point for courts in dividing assets has been to split them equally, under the so-called "yardstick of equality" principle. Judges can, and do, deviate from this position, but only with "good reason".

In addition to equal division of assets, English courts have also been willing to grant ongoing maintenance orders. The Matrimonial Causes Act 1973 requires the courts to consider the standard of living enjoyed by the family before the breakdown of the marriage.

The extent of that principle was demonstrated in 2016 by the case of Christina Estrada, a former supermodel, who was awarded a £53mn cash settlement following her divorce from Saudi billionaire Sheikh Walid Juffali.

Her "needs" submitted to the court included a budget for £1mn a year on designer clothes (including £40,000 annually for a fur coat) plus £8,000 for pet expenses, £138,000 on beauty care and £26,300 on mobile phone bills.

Such eye-watering sums could be dwarfed by the Potanin case. Natalia Potanina was awarded about $40mn by Russian courts when she divorced her billionaire former husband Vladimir Potanin in 2014. Seven years ago she filed a claim in England, arguing that the Russian settlement was unjust because it did not meet her needs given the lifestyle she had enjoyed during the marriage.

She has contended that she is entitled to about $6bn, including wealth tied up in trusts and companies in which her ex-husband is a beneficial owner. After a protracted jurisdictional battle, the Court of Appeal ruled in September that she could indeed bring her case in London, as she had a "real and meaningful connection" to England.

That decision overturned the High Court, which blocked her claim in 2019 on the basis that the couple had little connection with the UK. Mr Justice Sir Jonathan Cohen said at the time that if it proceeded, there would in effect be "no limit to divorce tourism".

But the Court of Appeal disagreed, highlighting that Potanina lived in the UK having obtained an investor visa and bought a London property in 2014. In its ruling, the judges said Cohen had "formed an adverse view about the wife's motivation for taking up residence in this country, namely in order to make a financial remedy claim" but that "this conclusion is unfair to the wife, and indeed unsound".

Before their high-value split: Christina Estrada with her ex-husband Walid Juffali © Alan Davidson/Shutterstock

In practice, "divorce tourism" is available only to the wealthy. "Costs can run into hundreds of thousands, and now, given the value of cases that are being litigated, sometimes into the millions of pounds," says Clare Wiseman, partner at law firm Irwin Mitchell.

The financially weaker party can sometimes recover their costs, especially if the courts regard the other side as failing to act properly, such as by failing to disclose assets. But the general presumption is that each party bears its own costs.

A more serious obstacle is enforceability. How payment would be secured in the Potanin case is unclear, given that the husband is Russian and under UK sanctions for ties to the Kremlin.

"The case history is littered with examples of people who have what I would call an expensive piece of paper," said Peter Burgess, a partner at Burgess Mee. "Getting their hands on the money is more difficult than they would like."

Gouriet agrees. "Even if she wins a billion-pound award, the real challenge is enforcement. In these situations, English orders can end up being . . . difficult to cash in," he says.

One notorious example was the divorce between Russian billionaire Farkhad Akhmedov and his ex-wife Tatiana Akhmedova. London's High Court ruled in 2016 that Akhmedov should pay her £453.58mn, but he resisted the award, triggering a battle over assets that stretched across Monaco, Dubai and England. Five years later, his ex-wife accepted a settlement, having tried unsuccessfully to seize his superyacht, Luna.

Tatiana Akhmedova leaves London's High Court in 2021 after a five-year legal battle with her former husband Farkhad Akhmedov © PA

Bryan Jones, a partner at Hughes Fowler Carruthers, which represented Natalia Potanina, says: "In any international divorce there is always a question of enforcement, and some jurisdictions can be trickier than others about enforcing an English order. But there is a long history of English court orders being enforced abroad."

A ruling in July showed the limits of English courts' generosity. The UK's Supreme Court ruled that Anna Standish, the wife of UBS's former chief financial officer Clive Standish, was not entitled to half of £78mn he had previously given her during the marriage, as the sum had been given to avoid inheritance tax and for the benefit of their children. The couple had therefore never truly shared the assets, making it "non-matrimonial property". The ruling significantly reduced her settlement.

More broadly, lawyers say, judges have become less generous than a decade ago. "We used to see lifetime maintenance [awards], and we never see that now," says Sarah-Jane Lenihan, a partner at Dawson Cornwell. "There is a real expectation that an individual maximises their income capacity."

Courts are now saying "if you've got an earning capacity you should get back to work as soon as possible," Wiseman says.

English courts are also increasingly attaching weight to prenuptial agreements, offering greater protection for the financially stronger party.

Even so, few, if any, other jurisdictions come close to England.

"If Ms Potanina had moved to Scotland rather than England after her Russian divorce, she would have had no claim at all," says Gouriet at Withers. "The Scottish test, in a different part of the same statute, is much stricter: the marriage itself must have a substantial connection to the jurisdiction. Here in England, the bar is lower — and notably in this case, her connections have only deepened in the years since her divorce."

He adds: "The irony is that if this case had been heard in 2019, her connection to England would have been much weaker. The longer it drags on, the stronger her links become."

This case raises bigger questions for Gouriet, such as should the law be revisited? Should jurisdictional hurdles be raised? He goes on: "If we asked a lay person in the street they might find it odd that England allows people to bring a claim after divorce, when the marriage itself had no real connection here."

Others caution against over-interpreting its significance. Sean Hilton, a partner at Stevens & Bolton, says: "There is a lack of transparency and reporting on the volume and types of cases that are being dealt with each year within the Family Court and it may be that there are fewer cases involving those from other jurisdictions than we might assume. 'Divorce capital of the world' certainly has a nice ring to it, but it is important to look beyond the name in practice."

Shivi Rajput, a partner at Stowe Family Law, agrees. "The English court must be satisfied there are substantial grounds for the claim. It is not enough merely to dislike the settlement granted abroad. The court will scrutinise the applicant's links with England — habitual residence, property, residency, visa status — and whether the foreign proceedings were fair and comprehensive. If connections to England and Wales are too tenuous, a claim may be rejected or only partly allowed."

Yet London's enduring global appeal has drawn criticism, not least given significant delays for ordinary cases. The family courts, like much of England's justice system, are beset by lengthy waits. Official figures released this week showed an increase in how long couples need to wait to finalise divorces. The average time from application to conditional order stands at 41 weeks, near a record high.

"Day in, day out, we struggle with delays and a lack of judicial availability," Lenihan says. "To see court time being taken up with a case like this [Potanin's] is pretty frustrating."

She adds: "We shouldn't be interfering. If the couple had spent all or the majority of their married life here, fine. But I don't think it should just be an open door."