

Viewpoint: London's status as the billionaire divorce capital under threat



By **Nicholas Fairbank and James Nottage**

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One of the UK's leading family judges, Mr Justice Cobb, recently gave a speech titled "London – 'Divorce Capital of the World'?" This is certainly how our capital city is widely viewed. Whilst Mr Justice Cobb remained equivocal about whether

this title is deserved, he did suggest that the Supreme Court's decision in the case of *Potanin v Potanina* would impact London's status in that regard.

The issue troubling the Supreme Court is whether Mrs Potanina should be *allowed* to bring a claim against her former husband, the Russian billionaire Vladimir Potanin, in the English courts. This would be just the latest round of divorce litigation between the pair – Natalia Potanina has well over \$100 million after the parties' divorce litigation in the Russian courts. Her case is a drop in the ocean compared to what she says is her former husband's overall net wealth.

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Mr Potanin and Mrs Potanina married in 1983 in Russia and lived there throughout their marriage. Mr Potanin took advantage of the opportunities created by Russia's transition to a market economy in the 1990s to amass a fortune of some \$20 billion, and the parties enjoyed a lifestyle that matched their wealth.

They were divorced in Russia in 2014, and at the end of lengthy Russian financial remedies proceedings, Mrs Potanina was awarded between \$40 million and \$84 million, in addition to some \$70 million of assets the husband had transferred to her during the marriage. She says that this is a tiny proportion of the total matrimonial assets and a figure arrived at because the Russian courts do not recognise separate legal and beneficial ownership, thus ignoring the vast bulk of the wealth held not in Mr Potanin's name but in various trusts and corporate vehicles.

The English court system allows a party who feels they have not been sufficiently provided for in their foreign divorce proceedings to try and bring further proceedings for financial provision in this country. There is a filter mechanism – an applicant first needs the court's permission before being allowed to proceed with litigation. That is what the appeal in the Supreme Court concerns.

Mrs Potanina was initially granted permission (under the Matrimonial and Family Proceedings Act 1984) having bought a house in London in 2014 and having lived in London permanently since 2017. The court must not grant permission unless it considers that there is "substantial ground" for the application for financial relief.

Mr Justice Cohen initially granted Mrs Potanina permission in January 2019 at a hearing of which Mr Potanin was not given notice - and at which he was therefore not represented. Mr Potanin applied to set aside this decision; a hearing took place in October 2019. In his judgment, handed down in November 2019, Mr Justice Cohen reversed his earlier decision, holding that he had been unintentionally misled about the facts of the case and about Russian law.

He made an order refusing permission on the grounds that Mrs Potanina's background and married life were "firmly fixed" in Russia and that she was seeking to take advantage of the English courts' more generous approach. He accepted the submission on behalf of Mr Potanin that "if this claim is allowed to proceed, then there is effectively no limit to divorce tourism. The Court of Appeal, in turn, reversed that decision in May 2021, allowing the wife's appeal from Mr Justice Cohen's second decision.

Now, the Supreme Court must decide if the Court of Appeal got it right.

Even if Mrs Potanina does succeed in the Supreme Court, her legal troubles do not end there. Her next hurdles will be persuading the High Court to make the order she seeks and then enforcing it, notwithstanding that Mr Potanin is subject to sanctions imposed since the Russian invasion of Ukraine. This means that all his assets are frozen: no person may deal in them, and to do so is a criminal offence.

There is, however, a licensing regime run by the Office of Financial Sanctions Implementation within HM Treasury. The boundaries of that regime have so far been considered in respect of commercial litigation, but this case might lead to the Family Division weighing in.

assumption of a 50/50 split of assets accumulated during the marriage, and judges have a very broad discretion.

The English courts have the power to make orders for generous spousal maintenance payments, often without an endpoint, or at least for a considerable amount of time. Comparably, in other jurisdictions, these spousal maintenance payments may be much less, or will end after a period of three or five years, for example. But it's not just the financial gains which have created this foundation for London as a divorce capital - our judges are world-renowned, and those going through a divorce in London are reassured by the history, quality and strength of the judiciary and the enforceability of the judgments.

This particular court case has implications for both the perception and the reality of how open this jurisdiction is to applications by foreign spouses for financial relief in London. For example, if Mrs Potanina does not succeed in the Supreme Court, it may well dissuade other litigants from trying to bring their divorce claims to London. This could mean the financially weaker spouse is limited with proceedings in another jurisdiction, which aren't as favourable, and they are left, post-divorce, without much support.

For family offices, there are obvious implications depending on where the divorce is brought and how assets may be divided as a result of the local laws. If London does begin to fall from favour for these big-ticket international divorce cases, family offices may have to deal with less well-known jurisdictions, some of which have very significant court backlogs, or experience issues with the enforceability of judgments.

The English courts, and many wealthy international families, therefore await guidance from the Supreme Court with bated breath.

[Nicholas Fairbank](#) and [James Nottage](#) are both barristers at the London law chambers, 4PB