



No 18 Chambers

Financial Remedies Update

John Franklin

Introduction

- Third update of 2025
- Focus on the Court of Appeal case of *Helliwell v Entwistle*
- Brief look at enforceability of pre-nuptial agreements
- CC v UU
- Questions

Giving effect to a PNA

- It's important that both parties intend the agreement to determine financial obligations (Y v Y (Financial Remedy: Marriage Contract) EWHC 2920 (Fam)).
- *'The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.'*
- Agreement will not have effect if there is evidence of the standard vitiating factors. It is not necessary to identify such vitiating factors in a strict legalistic or contractual sense [R v G 17 & 173].

Helliwell v Entwistle [2025] EWCA civ 1055

- Appeal by H of final order by Francis J in 2024
- Lady Justice King, Lord Justices Moylan and Snowden
- W's assets £60M-£70M and income of £650K p/a
- H assets £850K
- Drop hands PNA (entered on day of marriage) upheld at first instance in High Court

H v E

- Short marriage – 3 years
- W disclosed on £18,206,735 of her assets in Appendices (27%).
- W's evidence at first instance was although legally hers, 73% was inheritance planning and really belonged to her father whose privacy she wanted to protect

H v E

- Francis J at first instance found in relation to the central drop hands clause 24 that “it was hard to think of a more comprehensive clause dismissing future financial claims”
- “the idea that H in some way signed with his fingers crossed behind his back relying on the representation “You will be alright because have married a Helliwell” is risible.

H v E

- [93] it follows from Lord Phillips first stage of the analysis, that if the parties agree that disclosure should be provided, and there is then either deliberate non-disclosure or deliberate misrepresentation to a party's assets, the court must consider whether that vitiates or negates the agreement.
- First stage is to look for vitiating factors.
- At [96] referred to Cummings v Fawn[2023] EWHC 830 (Fam) – non-disclosure in the context of a Xhydias agreement – “non-disclosure is a species of fraud”

H v E

- [98] LJ King quotes para 75 of the Mostyn J's judgment in Sharland "Where the court is dealing with an application to set aside a consent order on the ground of fraudulent non-disclosure..the consent order and underlying agreement must be set aside unless the non-discloser can show by clear and cogent evidence that a reasonable person in the position of the victim...would, if she had full knowledge of the facts, have reached the same agreement"
- [99] King LJ "I agree a similarly stringent approach must be taken in a case of fraudulent non-disclosure"

H v E

- [101] “If the misrepresentation was intended to cause the representee to enter the agreement the representor will have the burden of rebutting a strong evidential presumption that the misrepresentation played a material part in the decision of the innocent party to enter into the agreement: rebutting that presumption will require clear and cogent evidence”.

H v E

- [112] W deliberately failed to disclose the majority of her assets.
- [113] finds W's non-disclosure was fraudulent – “deliberate non-disclosure falsified and made untrue W's express representation at Recital (R) of the agreement that she had made full and frank disclosure”

H v E

- [114] W's deceit was made all the worse because the agreement contained a certificate signed by her lawyer that she had been given legal advice and where her lawyer had given a clear indication to H in the email of 19 June 2019 that he would be advising his client to make fully disclosure of her assets.
- [115] Statements intended to induce H to enter the agreement.

H v E

"Good evening

Thank you for your email.

I did seek legal advise [sic] but the lawyer stated she could not sign the required documentation without having seen the appendices.

I am satisfied now with the agreement as it stands without any amendments required from my side.

As I see it there are two options -

1) The Appendices are omitted completely and my lawyer will sign to say she has over seen on my behalf

2) The Appendices are inserted and I will sign and note that I did not wish for legal advise [sic]

Option 1 is preferable as this is truthful, however if it is legally required for the Appendices to be inserted then I shall agree to go with Option 2.

Please note that Jenny and I will be traveling now and return to Dubai on the 19th June when we will be keen to get this agreement signed and the matter closed.

Kind regards,
Simon"

H v E

- King LJ states at [122] “the law is unchanged. So long as there is no statutory scheme then Radmacher will continue to bind this court. Disclosure is desirable but not essential”

Disclosure

- Before signing the agreement, each party should be in possession of all the information material to their decision to sign the agreement
- In determining whether an agreement has been freely entered into by each party with a full appreciation of its implications there is no absolute rule for full disclosure or independent legal advice
- The question is whether in the individual case there is a material lack of disclosure, information or advice (See Kremen v Agrest (No 11) Financial Remedy: Non-Disclosure Post-Nuptial Agreement) [2012] EWHC 45 (Fam) at [72(ii)] and AH v PH [2014] EWHC 3873 (Fam) at [50].

Mostyn J's regret

- Mostyn J blogged “Helliwell v Entwistle: Some Troubling Aspects”
- First is in relation to fraud – 3 things needed:
 - The conduct must be dishonest
 - The perpetrator of the fraud must achieve some gain (Cathcart v Owens [2021] EWFC 86
 - Someone must be prejudiced by the conduct - “It need not be anyone in particular. Someone in general will do. If anyone may be prejudiced in any way by the fraud that is enough “ – Lord Denning in Welham v DPP [1961] AC 103.

Mostyn J's regret

- Dishonest means no more than an individual's state of mind at the time of the transaction in question would be so found applying the objective standards of ordinary decent people.
- Mostyn agrees that W may have been dishonest, but is troubled by the absence of an explanation of W's gain and H's loss in the circumstances.

Mostyn J's regret

- To avoid being set aside, the non-discloser must satisfy the test of non-significant difference both subjectively and objectively.
- “Clear and cogent” is a lazy trope – non-discloser only has to meet the civil standard of proof.
- Mostyn J agrees that “Francis J did not analyse the evidence in a way that permitted a valid conclusion [on the non-significant difference] but disagrees that the CoA has excluded that issue from reconsideration.
- Permission to appeal to the Supreme Court was given on 11 September 2025.

Review of Law

- Both parties must enter the agreement of their own free will, without undue influence or external pressure [R v G [68]].
- Sound independent legal advice will provide strong evidence of a party's understanding of the implications of the agreement, though it is not necessarily conclusive (WH v HW [2015] EWHC 1844 (Fam))

Pressure

- AT v BT [2023] EWHC 3531 Francis J held that W had been under pressure when signing because it was signed the day before the wedding, and she was 4 months pregnant and knew her earning capacity in her sector of expertise was damaged.

Emotional State

- A party's emotional state at the time of the making of the agreement and factors such as age, maturity and previous experience of long-term relationships are relevant considerations. Such factors may inform what pressures a party felt under to sign the agreement (R v G para 72)
- AB v BD [2020] EWHC 857. Cohen J refused to accord any weight to an agreement signed the day before the wedding ceremony where the parties had not discussed the contents, and W was in great turmoil having just learned her father was terminally ill..

Would the marriage have happened anyway?

- In the case of a pre-nuptial agreement a consider whether the marriage would have gone ahead in the absence of any agreement in the terms signed ([72] R v G)

CC v UU [2025] EWFC 214

- Can a party apply for a LSPO under s.22ZA MCA 1973 after a clean break
- W sought £50K as the COA was considering permission to appeal against the discharge of a freezing injunction.
- W also sought to set aside the final order in financial remedy application made in December 2023 – sale of FMH, equal split, and clean break

CC v UU [2025] EWFC 214

- [39] If a final order has been made, claims have been dismissed, and the proceedings have ended, in my judgment it cannot be that a party may thereafter invoke s. 22ZA for an ancillary purpose such as to pursue an appeal or to seek enforcement or to set aside.
- [40] If the order provides for a clean break except as provided for by the order, then no s.22ZA claim may be thereafter made.
- [40] If, however, it provides that the clean break takes effect upon implementation of the order then a s. 22ZA claim may be made up to and until the point of implementation.

Any Questions?

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BARRISTERS CHAMBERS