This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Neutral Citation Number: [2026] EWFC 275

Case No: 1752585892877372

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 September 2026

Before :

MR JUSTICE PEEL

- -

Between :

EC	**Applicant**
- and -	
EC	**Respondent**

- -

- -

Charles Hale KC and Anita Mehta (instructed by **Stowe Family Law LLP**) for the **Applicant**
Judith Murray KC and Charanjit Batt (instructed by **Kingsley Napley LLP**) for the **Respondent**

Hearing dates: 27-29 July 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Wednesday 23 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE PEEL

Peel J:

1. These are financial remedy proceedings brought by the wife ("W") against the Husband ("H") by Form A dated 1 August 2025.

Preliminary issue

2. On 15 April 2026, at a directions hearing, I determined that the financial remedies application should be listed for a preliminary issue hearing in respect of a pre-nuptial agreement ("PNA") entered into by the parties on 30 October 2008. I identified the issues for consideration as:

   i) Whether the PNA is valid or has been vitiated; and/or

   ii) Whether the weight to be attached to it should be reduced by certain factors; and/or

   iii) The meaning of it; and/or

   iv) Whether the parties had a full appreciation of its implications; and/or

   v) Its impact in any event on the substantive financial remedy proceedings.

3. H seeks to rely on the PNA as a material factor. I directed W, who submits that the PNA should be disregarded in its entirety, to identify in a letter to H's solicitors her grounds of challenge to the PNA. On 5 May 2026, she listed her grounds as:

   i) Undue influence/ inappropriate pressure;

   ii) Lack of independent legal advice;

   iii) Lack of understanding about the implications/consequences;

   iv) Misrepresentation of assets/ lack of financial disclosure/ mistake;

   v) Failure to meet needs.

4. Of those it seems to me that the last ("failure to meet needs") is more appropriately to be considered at the subsequent disposal hearing, once findings have been made as to the circumstances in which the PNA was entered into.

5. To have a preliminary hearing on the impact of a PNA is a legitimate case management decision. It forms part of the continuum of a financial remedies application and, once

the identified findings and determinations have been made, the same judge should go on to hear and dispose of the distributive stage of the proceedings at a subsequent hearing.

6. In **BI v EN [2024] EWFC 200 (Fam)** Cusworth J said this:

"106. I will only add that it may be wise in cases such as this to consider the following course, where the parties have signed a contract such as the one here, or executed an English nuptial agreement, and there are very substantial available assets which are subject to significant valuation issues. Then, at an early stage of any proceedings, a court may consider whether a preliminary hearing as to the validity of the agreement might be appropriate. This would not usually be a *Crossley* type hearing where there would be a strong possibility that at the end of the hearing a claim could be dismissed or significantly curtailed. Rather it might enable the court, on the basis of appropriate findings, to move forward proportionately to carry out the exercise mandated by the MCA 1973. In this case, such a hearing might have saved significant time and money for the parties.

107. Where there is found to be an unimpeached agreement, whether or not purportedly comprehensive, there may well still need to be consideration given to budgets, and to property valuation, to determine whether any receipt under the agreement would be sufficient to meet needs, or to understand the broad range of possible values for the available resources to enable necessary cross-checking to be undertaken. This is especially if those resources would otherwise have been classed as matrimonial. I do not suggest that this would be suitable in the majority of agreement cases. However, taking such a course may in an appropriate case prevent the need for involved accountancy and tax arguments such as have arisen here, in an attempt to achieve extensive and precise cash equivalent valuations of every asset, in circumstances where that level of precision ultimately has not proved to be a requirement of achieving a fair outcome in this case."

7. As far as I am aware, the listing of a preliminary issue to consider a PNA is relatively unusual; one example is **HJB v WPB (Financial Remedies) (Separation Agreement – Application to Show Cause) [2024] EWFC**. It has been suggested to me in a number of cases where there is a direct challenge to the terms of a PNA, but I have hitherto resisted it. Normally, in my view, it is quicker and less expensive to list a final hearing to consider all the s25 factors, including the impact of a PNA. Further, it is generally preferable to hear all the evidence together so as to be able to view the case in the round, evaluating the impact of the various strands of evidence on each other; in short, to consider the case in the round. In the normal way, a FDR or Private FDR can take place before the final hearing.

8. In this case, however, I made an exception. By pure chance, when the question of a preliminary issue was being considered at the hearing on 15 April 2026, some court time in late July had just been freed up by another case settling. The parties were available. It would not have been possible to hear the entirety of the case because (i) there was not time for a FDR before any final hearing at the end of July, and (ii) there would likely have been the need for expert valuation evidence which would have delayed the final hearing beyond July in any event. On balance, therefore, I decided to list this preliminary hearing. Once my determinations on the preliminary issue are made, the application can be listed for FDR and, should the case not settle, final hearing.

9. I am not for one moment suggesting that this will generally be the appropriate way forward when a PNA is in dispute. Indeed, I suspect that in cases before me it will be the exception rather than the rule. But in the right cases, carefully case managed, it is an available option for the court. For the avoidance of doubt, where a preliminary issue is listed in this way, and findings on a PNA are made, the court will still have to survey the s25 criteria in the round before deciding on the overall outcome, and the same judge should deal with both stages.

The general background

10. This was H's second marriage, and W's third. H is 81 years old. He has three adult children by his first marriage, and another child by a different relationship. W is 73 years old and has five adult children from her previous two marriages. H and W have known each other socially for many years. According to W, they started a relationship in 2004. H considers that the relationship started in 2006. Since, on either account, they did not live together at that time, the difference is in my view immaterial. They became formally engaged in either August 2007 (per W) or August 2008 (per H); again, I doubt that the difference adds much to the case, although I am satisfied that on any view they were in a committed relationship from August 2007, and anticipated that it would lead to marriage. They started living together in December 2007.

11. On 30 October 2008, they signed the PNA, and on 27 December 2008 they married. At the date of marriage, H was 64 years old, and W was 56. They did not have children of their own. In mid 2025, they separated, so that this was a marriage of some 16 ½ years. W's divorce petition was issued in July 2025. The Conditional Order was made in January 2026. The parties continue to live under the same roof at the Former Matrimonial Home ("FMH). I have no doubt that their current living arrangements have generated some tension.

12. W in her Form E describes the standard of living during the marriage as having been "luxurious", whereas H in his Form E portrays it as comfortable rather than extravagant. Whatever the outcome of the preliminary issue hearing, W's needs will need to be considered as part of the holistic s25 exercise, and no doubt the lifestyle during marriage will be relevant to that exercise.

13. The great bulk of the assets in the case were built up by H before the marriage. H started buying real estate in the 1960s, and over time acquired multiple residential and commercial properties (including hotels). He established a property holding company in 1971. H told me, and I accept, that there has been little or no property churn (i.e purchase and sale of properties) since the parties married, save for a US property portfolio acquired after marriage which was treated by the parties as a joint asset and was separate from H's business.

14. At the start of their cohabitation, W was a businesswoman running three children's nurseries. According to W (but disputed by H), she reduced her workload in order to devote herself to H, and to assist him in his business activities; on her account, she went into her nursery businesses one or two days a week rather than six days a week. This coincided with one of the nursery businesses having been transferred by W to her daughter in January 2008. W says that she contributed to the marriage as a homemaker and carer for H as his health declined from 2020 onwards, leading to a diagnosis of vascular dementia and early stage Alzheimer's. W also says that she contributed as a

company director, point of contact and sounding board within H's businesses, specifically after H was disqualified from acting as a director in 2017.

15. It became clear during the evidence that W's contribution to the business was restricted to activities in the smaller companies. She played no role in the main company, X Plc., or the next biggest company, Y Ltd. Those two businesses, on the ES2, have a value of about £38m gross, whereas the residual, smaller businesses, have a combined value of about £7m gross, i.e 15% of the total gross business values. I accept that no valuation evidence has yet been obtained, and these are based on H's estimates, but on any view the direct contribution of W to the businesses was limited to a minority thereof.

16. Further, on the basis that there was negligible property investment made by H after 2008, the businesses were essentially holding vehicles which generated a significant rental income. Any increase in value since 2008 was likely to have been, in large part, due to passive, or latent growth, rather than as a result of active management.

17. In short, I am sceptical whether, even if the PNA is disregarded as W seeks, she has any meaningful sharing claim.

<u>The financial resources</u>

18. Because of the case management focus on the preliminary issue, the presentation of resources at this stage is largely dependent on what the parties have said in Forms E, with some updating. No SJE valuation of H's business interests has taken place.

19. H's case is that the assets are in the region of £42m net. W believes this to be a significant underestimate, suggesting that £50m is likely to be more accurate. I doubt whether the gap between the parties will make any difference to the eventual outcome.

20. Based on present information, the assets comprise, in broad terms:

   i) The FMH (an 8 bedroom property with an additional 3 bedroom cottage, all set in just over an acre): £1m. It is owned by a discretionary trust dated 29 October 1992 of which H is the principal beneficiary. The trustees are his daughter and an employee of his business. The house was transferred by H from his sole name into the trust on 19 November 1992 to give protection from potential creditors.

   ii) Multiple residential properties (44 in all), of which 37 are in H's personal name, 2 are owned by a company of which H is the 100% shareholder and 5 by the Trust: £6.1m.

   iii) Two properties in W's sole name with a combined net value (after mortgage and costs of sale) of £942,000:

      a) Business premises A, bought over 30 years ago and valued at £540,000 net (£760,000 less mortgage of £197,000 and notional costs of sale).

      b) Business premises B, bought in 2007 and valued at £402,000 net (£415,000 less costs of sale).

The current rental income from these is £45,000pa gross from business premises A and £27,000pa from business premises B; the latter arrives net in W's account as it is repayment of a DLA. There is a mortgage on the property of business premises B £2,400pm.

iv) A portfolio of 9 jointly owned properties in the USA, entirely or almost entirely bought during the marriage. The precise legal ownership (via US companies) is not clear, but it is agreed that these were intended to be treated as jointly owned, albeit largely funded by H (W says she contributed £250,000, but this was not explored in evidence and I do not need to decide if indeed she did so). The combined value of the properties is £3.25m based on the evidence of a Single Joint Expert. A SJE report has been commissioned to assess the applicable tax.

v) Cash and liquid investments in H's name of about £1.3m.

vi) Cash and a small business interest in W's name totalling about £50,000.

vii) Money owed to H by W's son: £1m.

viii) Liabilities owed by H: -£4.5m. This includes a director's loan owed to the business of -£2.4m.

ix) W has liabilities of -£227,000 to friends and family as well as unpaid costs of -£87,970.

x) H has interests in 12 companies with a total value (according to him) of £34.2m:

a) 89.98% of X Plc which has 8 subsidiaries. H puts the value of his holding at about £32.55m gross.

b) Varying levels of shareholdings in the other 11 companies, which H puts at about £12.65m gross.

In total, he puts the total of all his business interests at £45.2m gross, less estimated CGT of -£11m if all the interests are sold, thus arriving at the net value of £34.2m.

The terms and effect of the PNA

21. The PNA dated 30 October 2008 is relatively short, consisting of only three pages, but in my judgment it is admirably clear and easy to understand. Its most significant terms are as follows:

i) It is a formally executed deed, signed by both parties, whose signatures are witnessed.

ii) It records (Recital 1) that the parties intend to marry on 27 December 2008.

iii) It records (Recital 3) that H has "existing assets including ownership of [the FMH] valued at approximately £1.5m and X Plc where he has 91% of the Shares and where the business holds capital assets with a gross value of approximately

£36m. Those capital assets include the ownership of hotel properties, together [sic] residential properties which are let out to tenants". His income is said to be "approximately £300,000-£400,000 per annum gross".

Pausing there, it was in fact the case that (as mentioned above) the FMH was held in a trust and not owned legally by H.

iv) It records (Recital 4) that W "has "assets of approximately £2m including ownership of three Day Nurseries and one residential property", together with "income of approximately £100,000 gross per annum".

Although not expressly identified, W's properties were:

a) Business premises A, day nursery premises which W still owns and are leased out at a rent of £45,000pa gross.

b) Business premises B, which were bought in 2007, which W still owns and has been rented out since 2011. The current rent is £27,000pa, which is remitted tax free to W via a Director's Loan arrangement.

c) Business premises C. The business was transferred to her daughter in January 2008, before the PNA, with W retaining the property. W leased the property to her daughter. The property was sold to the daughter in 2011 for £350,000 although W says some of that was applied towards the mortgage on business premises B.

d) A residential property which was subsequently sold for about £200,000 net.

W told me in oral evidence that the £2m was a gross, pre-mortgage figure and that the income figure of £100,000pa was overstated. In both instances, I am satisfied that these are figures which, whether accurate or not, she provided to H to be inserted in the PNA.

v) It records (Recital 5) that they "wish to regulate the terms of their marriage and possible dissolution of their marriage and are entering into this Deed for that purpose".

vi) It records (Recital 6) that "The parties have taken separate and independent legal advice on the matters referred to in this Deed".

vii) At paragraph 1, "the parties intend to live at [the FMH] which property is owned in the sole name of [H]" and that "It is the parties' intention that [H] will retain the legal and beneficial interest in this property" on the basis that he pays the outgoings.

viii) At paragraph 3, each retains property in their respective sole names, and any property they acquire in their sole name in the future.

ix) At paragraph 4, both parties are to make Wills, and H will provide for W to occupy the FMH for "a period of time" in the event of his death. The "period of time" is unspecified.

x) At paragraph 5, each bears responsibility for their own debts.

xi) At paragraph 6, they shall retain contents bought individually, and divide jointly purchased items, (or sell them and divide the proceeds equally).

xii) At paragraph 7, they shall retain their respective pensions.

xiii) At paragraph 8, they shall retain their own savings.

xiv) At paragraph 9 "It is agreed that neither [W nor H] will make no claim [sic] in respect of any business interest held by the other being the businesses established prior to the parties' marriage".

xv) At paragraph 10, there is a "presumption" that any asset acquired in joint names is intended to be equally shared.

xvi) Paragraph 11 provides that the Deed is governed by the laws of England and Wales.

22. The PNA does not expressly exclude any periodical payments claims on divorce.

23. In terms of the impact of the PNA on the parties' divorce, if it is applied to the letter, W will receive/retain the following:

i) Her own assets now worth about £942,000 plus modest other assets of £20,000.

ii) Half of the jointly owned American property portfolio, about £1.625m less any tax.

24. By open letter dated 29 July 2025, H offered W:

i) Implementation of the agreement; and

ii) A Duxbury award to meet her income needs. No figure was put forward.

25. By open letter dated 23 July 2026, H offered:

i) W to retain her own assets: £942,000 plus the £20,000, less her liabilities of -£227,000 and unpaid costs of -£87,970.

ii) W to have half of the US properties: £1.625m less any tax.

iii) £750,000 lump sum.

That is a total of about £3.022m less tax on the US properties.

26. W has not made an open offer.

Law on PNAs

27. In **AH v BH [2024] EWFC 125** I attempted to articulate the general propositions relating to PNAs (also referred to as pre-marital agreements or PMAs) as follows:

“43. The court’s overarching duty is to achieve a fair outcome, taking into account the s25 criteria, and bearing in mind that the children are the court’s first consideration.

44. There is no doubt that a PMA is one of the relevant criteria, but it is not the only one. The terms of a PMA must be seen in the context of the s25 factors. The extent of the weight to be attributed to a PMA will vary from case to case.

45. The leading authority is, of course, **Radmacher v Granatino [2010] UKSC 42** from which the following propositions can be drawn:

i) If an ante-nuptial agreement, or indeed a post-nuptial agreement, is to carry full weight, both the husband and wife must enter into it of their own free will, without undue influence or pressure, and informed of its implications (para 68).

ii)“What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end” (para 69).

iii) “The first question will be whether any of the standard vitiating factors: duress, fraud or misrepresentation, is present. Even if the agreement does not have contractual force, those factors will negate any effect the agreement might otherwise have. But unconscionable conduct such as undue pressure (falling short of duress) will also be likely to eliminate the weight to be attached to the agreement, and other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, would reduce or eliminate it” (para 71).

iv) The court may take into account a party's emotional state, and what pressures he or she was under to agree. But that again cannot be considered in isolation from what would have happened had he or she not been under those pressures. The circumstances of the parties at the time of the agreement will be relevant. Those will include such matters as their age and maturity, whether either or both had been married or been in long-term relationships before. For such couples their experience of previous relationships may explain the terms of the agreement, and may also show what they foresaw when they entered into the agreement. What may not be easily foreseeable for less mature couples may well be in contemplation of more mature couples. Another important factor may be whether the marriage would have gone ahead without an agreement, or without the terms which had been agreed. This may cut either way (para 72).

v) It is to be assumed that each party to a properly negotiated agreement is a grown up and able to look after himself or herself (para 51).

vi) “The reason why the court should give weight to a nuptial agreement is that there should be respect for individual autonomy. The court should accord respect to the decision of a married couple as to the manner in which their financial affairs should be regulated. It would be paternalistic and patronising to override their agreement simply on the basis that the court knows best. This is particularly true where the parties’ agreement addresses existing circumstances and not merely the contingencies of an uncertain future” (para 78).

vii) “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.” (para 75).

viii) Where the ante-nuptial agreement attempts to address the contingencies, unknown and often unforeseen, of the couple's future relationship there is more scope for what happens to them over the years to make it unfair to hold them to their agreement. The circumstances of the parties often change over time in ways or to an extent which either cannot be or simply was not envisaged (para 80).

ix) “Of the three strands identified in White v White and Miller v Miller, it is the first two, needs and compensation, which can most readily render it unfair to hold the parties to an ante-nuptial agreement. The parties are unlikely to have intended that their ante-nuptial agreement should result, in the event of the marriage breaking up, in one partner being left in a predicament of real need, while the other enjoys a sufficiency or more, and such a result is likely to render it unfair to hold the parties to their agreement. Equally if the devotion of one partner to looking after the family and the home has left the other free to accumulate wealth, it is likely to be unfair to hold the parties to an agreement that entitles the latter to retain all that he or she has earned” (para 81).

x) “Where, however, these considerations do not apply and each party is in a position to meet his or her needs, fairness may well not require a departure from their agreement as to the regulation of their financial affairs in the circumstances that have come to pass. Thus, it is in relation to the third strand, sharing, that the court will be most likely to make an order in the terms of the nuptial agreement in place of the order that it would otherwise have made” (para 82).

xi) It is the court that determines the result after applying the Act (para 83).”

28. In **Helliwell v Entwistle [2025] EWCA Civ 1055**, the wife had asserted in a PNA that she held assets of £18.2m. She failed to disclose other (principally business) assets to which she was entitled of £47.8m. The first instance judge found that the wife “did not give full disclosure” but nevertheless held the PNA was not vitiated. Importantly, in my judgment, the non-disclosure was not a product of identifying an asset and providing a figure which was lower than the truth. Rather, it was a product of not identifying or disclosing the asset at all, which accounted for an undervalue of the true wealth by 73% (paragraph 65 of the Court of Appeal judgment). The Court of Appeal concluded that the first instance decision could not stand, the PNA was vitiated by deliberate, fraudulent non-disclosure and the husband’s claims should be reconsidered without taking into account the terms of the PNA.

29. In this case, W specifically pleads undue pressure as one of the reasons for setting to one side the PNA. Undue pressure is referred to in **Edgar v Edgar [1981] 2 FLR 19** at page 25:

“To decide what weight should be given in order to reach a just result, to a prior agreement not to claim a lump sum, regard must be had to the conduct of both parties, leading up to the prior agreement, and to their subsequent conduct, in consequence of it. It is not necessary in this connection to think in formal legal terms, such as misrepresentation or estoppel, *all* the circumstances as they affect each of two human beings must be considered in the complex relationship of marriage. So, the circumstances surrounding the making of the agreement are relevant. Undue pressure by one side, exploitation of a dominant position to secure an unreasonable advantage, inadequate knowledge, possibly bad legal advice, an important change of circumstances, unforeseen or overlooked at the time of making the agreement, are all relevant to the question of justice between the parties."

In **Royal Bank of Scotland v Etridge (No 2) [2001] UKHL 44** Lord Nicholls said this:

"13. Whether a transaction was brought about by the exercise of undue influence is a question of fact. Here, as elsewhere, the general principle is that he who asserts a wrong has been committed must prove it. The burden of proving an allegation of undue influence rests upon the person who claims to have been wronged. This is the general rule. The evidence required to discharge the burden of proof depends on the nature of the alleged undue influence, the personality of the parties, their relationship, the extent to which the transaction cannot readily be accounted for by the ordinary motives of ordinary persons in that relationship, and all the circumstances of the case.

14. Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs, coupled with a transaction which calls for explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof. On proof of these two matters the stage is set for the court to infer that, in the absence of a satisfactory explanation, the transaction can only have been procured by undue influence. In other words, proof of these two facts is prima facie evidence that the defendant abused the influence he acquired in the parties' relationship. He preferred his own interests. He did not behave fairly to the other. So the evidential burden then shifts to him. It is for him to produce evidence to counter the inference which otherwise should be drawn."

30. In **LIN v PAR [2025] EWFC** 401 I said this at para 103:

Where one party asserts that an agreement is vitiated by non disclosure:

i) The approach to non-disclosure is the same whether the agreement is a pre-nuptial agreement, post-nuptial agreement, **Xydhias** agreement, or **Edgar** agreement: para 94 of **Helliwell v Entwistle [2025] EWCA Civ 1055.**

ii) Non disclosure can be either fraudulent or inadvertent.

iii) Per Mostyn J in Cathcart v Owens **[2021] EWFC 86** at para 30:

"Fraud is classically defined as wrongful deception intended to result in financial or personal gain. In the field of ancillary relief the traditional grounds for seeking the set-aside of a final order are conventionally stated to include both fraud and non-disclosure: see for example FPR PD 9A para 13.5. Deliberate non-disclosure is, of course, a species or subset of fraud for both in law and morality *suppressio veri, suggestio falsi.* The reason for separately identifying fraud and non-disclosure as grounds for a set-aside is that there are some rare cases whether the material non-disclosures is inadvertent and therefore not fraudulent.

iv) The question for me in this case, adapting Mostyn J's words at paragraph 46 of **Cathcart (supra)**, is: "Did [H] in the period leading up to the making of the [draft] order, practise a deception on [W] with the intention of gaining a personal or financial advantage for himself?".

v) If non-disclosure is found to be intentionally fraudulent then it is assumed to be material and the burden of showing otherwise lies with the representor (in this case H). Where non-disclosure is found to be inadvertent, it is for the representee (in this case W) to prove materiality. These principles can be collected from **Sharland v Sharland [2015] UKSC 60, Gohil v Gohil [2015] UKSC 61, and Helliwell v Entwistle (supra)**.

vi) In my judgment, whether non-disclosure is fraudulent or inadvertent, materiality means whether a court would likely have made the same, or a materially different order. It is not enough for the applicant to say that he/she would have considered matters afresh and might have approached the case differently. That is likely to be a necessary ingredient (if the applicant would have done nothing different, then the agreement/order would likely not have changed), but is not sufficient by itself for in the end it is the court which makes the order. Accordingly, the later court must do its best to determine whether an earlier court would have made a different order in the light of the impact of the non-disclosure. The authorities repeatedly refer to the need to show the effect of non-disclosure upon an order i.e whether a different order would have been made: paragraph 33 of **Cathcart (supra)**, paragraph 33 of **Sharland (supra),** page 830E of **Livesey (supra)** and para 44 of **Gohil (supra)**.

31. The burden of establishing the vitiating factor lies on the asserting party, in this case W.

<u>The evidence of the parties</u>

32. The PNA events took place nearly 18 years ago. It would not be surprising if the parties' recollections are impaired. I bear that in mind when assessing the evidence. Given the passage of time, I take the view that the contemporaneous documents are of particular assistance in this case, although I have considered all the evidence in the round. The solicitors' files (to the extent they have been retrievable) provide an anchor for consideration of how the PNA came into being.

33. W gave evidence first. She was forthright and direct. Her oral evidence and written evidence differed in some fundamental respects, such as:

i) She said in written evidence, more than once, that H accompanied her to her solicitors on 18 September 2008 for her first meeting with them, but told me categorically in oral evidence that was a mistake and in fact he accompanied her to her solicitors after the PNA had been signed on 30 October 2008.

ii) She said in writing that her solicitors did not take her through the PNA on 18 September 2008, did not explain its terms, and did not explain the relevant law, even though a letter to her from her solicitors dated 24 September 2008 said that all of the above had in fact taken place. In written evidence, she in effect said that the letter of 24 September 2008 was wrong. In oral evidence, however, she accepted that her solicitor had done all of the above, and that she had approved the terms of the PNA. Given the centrality of the letter of 24 September 2008 to the circumstances in which the PNA was entered into, it is startling that W was so adamant in her written account, and equally adamant, but to the exact opposite, in her oral account. In my judgment, this is a critical piece of evidence when considering W's understanding of the PNA and indeed her overall case, and tends to undermine W's evidence generally.

34. She told me (which again was not really apparent from her written case) that her real concerns when signing the PNA were (i) that H would support her to a comfortable level and (ii) he would re-do his will to make provision for her on death. She told me he fulfilled the former in that he provided a very comfortable standard of living for them. She believes he did not fulfil the latter, although, as I will come on to, it seems to me that he did.

35. Given that she accepted she had been provided for by H during the marriage, as he had promised, I was a bit perplexed about her case as it seemed that her real complaint was about H not making sufficient provision for her on death. I asked her what she wanted out of these proceedings, to which she replied that she preferred to trust a judge rather than H's daughter, but essentially wanted to be fully provided for in terms of housing and income for the rest of her life. She mentioned getting a "fair share" but that was in the context of what she said about her needs and a bit of an afterthought. I rather wondered what was the point of it all, as needs must be considered regardless of the validity of the PNA.

36. She also told me that she thought they would never get divorced. In the end, however, it was she who issued divorce proceedings, and she agreed that H would not have wanted the marriage to end. I asked her what prompted the divorce. She told me that H changed his Will in 2024, and she felt it did not make proper provision for her, reducing her from the potential entitlement under a 2020 Will. I accept that (as I will explain) her potential entitlement was reduced, but under the 2024 Will she was a beneficiary entitled to income for life and within the class of persons to whom capital appointments could be made; this was significant potential provision, not nil provision. Again, I was a bit perplexed as to why she was seeking to challenge the validity of the PNA, which essentially concerns distribution of assets on divorce as set out at Recital 5 of the PNA, if all she wanted was better provision upon H's death. Further, as I record below, the three wills executed by H after the PNA, including the one in 2024, all made considerable ongoing provision for W. I thought her approach to this was inflexible; she brought the marriage to an end for reasons which were a bit obscure, given that she was well provided for under the Will, and now seeks to challenge the entirety of the PNA which relates to provision on divorce.

37. W told me that she believed H was worth far more than he said at the time of the PNA, but that it would have made no difference to her even if H had deposed to greater wealth than was the case. Even if, she said, H was worth £70m (the Rich List figure), rather than the figures presented in the PNA, she would have signed. She had not expressed her position in that way in her written evidence. Given that the accuracy of disclosure

in the PNA was immaterial to W, I struggled to see on what basis she was relying upon a non-disclosure case.

38. Overall, I did not find her evidence particularly satisfactory.

39. H was a bit confused in his evidence. I thought that was unsurprising given the passage of time. He did his best to help the court but he struggled with details. However, I am satisfied that he understood the questions (even if occasionally they had to be re-put). On some matters, his recollection was hazy. On other matters, however, he was clear, and in particular I thought he was more credible on who suggested the PNA.

The circumstances surrounding the execution of the PNA

40. W has waived privilege over her solicitor's file from 2008, which is therefore before the court. By contrast, H's then solicitors have not retained the file, which has now been destroyed given the passage of time. All that H can produce is three letters from his solicitors to him which he has retained.

41. The parties disagree about who first suggested a PNA. W says it was H, at the instigation of his daughter. She understood that she had to sign the agreement, or else there would be no wedding. She says she thought the PNA was trivial*,* a bit of a technicality and was happy to go along with H. She emphasised in oral evidence that her priorities at the time were for H to provide for her during the marriage and in the event of his death.

42. H says that he had never heard of a PNA. He is adamant it was W who suggested it, and it had nothing to do with his daugther. Although his recollection on some other matters was a bit uncertain, on this he was crystal clear. His version is supported by a letter to him from his solicitors dated 9 September 2008 which says that: "W had indicated that she wished to enter into a PNA". I read that as H saying W had suggested it, not (as urged upon me by W's counsel) that she agreed to enter it at H's insistence. W submitted through counsel that she had no reason to want a PNA. I am not sure that is necessarily so. Because, as she told me, her priorities were for H to support her in life and in death, it was important to her that H should make Will provision. The PNA expressly includes a clause about Wills, which in my judgment is probably a consequence of W having suggested the PNA to include something about provision for her on H's death. The fact that H approached solicitors first about the PNA, and they did the first draft, is not probative of him having suggested the PNA. It seems likely to me that when W suggested it, H took the lead in making it happen; after all, by that stage they were living together and H was paying for all expenses. Overall, I was not convinced by W's oral evidence on this. On balance, I prefer H's account that W suggested the PNA.

43. Regardless of who suggested it, it is clear, in my judgment, that both were in favour of it and willing to enter into it. I am sure that they were happy together, and neither thought they would get divorced. I am satisfied that H told W that he would look after her, and that she would be provided for financially during their marriage and in the event of his death. That being so, their discussions about the consequences of divorce were probably brief and informal, but given their ages, and that both had been previously married, this was a paradigm case for a PNA along the lines agreed. Thus, they agreed to insulate their respective businesses from divorce proceedings, and to

divide equally any jointly acquired assets. They also talked about testamentary provision. Their discussions were informal, good-natured and matter of fact, and they agreed the essential terms.

44. Once they had decided the essential terms of a PNA, they located solicitors. H approached solicitors who had been used by his business. The evidence suggest that he met the head of family law at her office on 5 September 2008. H recalls W accompanying him to his solicitors on one occasion, but not necessarily that day. As he recalls, his solicitor suggested that W should go to another firm who W had used in the past for business purposes, and with whom he had no connection.

45. On 8 September 2008, H's solicitors wrote to W's solicitors, saying that "the parties' intention is relatively straightforward and that is that they will each retain such assets that they hold in their sole name and that they accumulate in the future". This, in my judgment, confirms that they had already reached a broad outline agreement between themselves. It goes on to say: "we have provided in the Agreement a very rough approximation of [H's] assets. Our understanding is that in fact [W] has assets in excess of [H's] investments on a net basis and in circumstances where both parties have substantial assets and are marrying later in life where there is no prospect of any children being born to the marriage we take the view that the disclosure between the parties can be relatively limited. If you have an issue in this regard then of course please do not hesitate to contact us". I shall return to the words "Our understanding is that in fact [W] has assets in excess of [H's] investments on a net basis" which seems to have been a mistake and had no effect on the PNA.

46. It is not entirely clear whether the draft PNA was sent by H's solicitors to W's solicitors that day, or a few days later, but it was around that time.

47. On 9 September 2008, H's solicitors sent to H a letter of engagement in which they say: "You instructed me that you were due to marry [W] on the 27 December and that [W] had indicated that she wished to enter into a Pre-Nuptial Agreement. We discussed the fact that you would wish to ensure that assets that you had already acquired, or may acquire in the future in your sole name, should be retained by each of you, and you also explained that you were living in the property that was already owned by you and that there was no intention that [W] would have any claim against that property if you were to divorce in the future. Further, you are in the process of updating your Will pending your marriage".

48. W attended her solicitors' office on 18 September 2008. According to W, the appointment was arranged by H; H says he does not recall making the arrangement but it seems perfectly possible to me that he asked one of his business assistants to do so. In her written evidence, W says that she and H attended together and met her solicitor, that the meeting was no longer than about 20 minutes, they did not go through the PNA and she was not given any advice or explanation of what it meant. In her oral evidence, she told me the exact opposite, i.e H did not attend the meeting, her solicitor took her through the PNA, explained the terms and advised her on the law. I consider this contradiction to be of considerable significance in establishing what W did, or did not, understand about the PNA.

49. On 23 September 2008, a telephone call took place between the parties' solicitors in which they discussed (at W's solicitor's instigation) two amendments to the PNA which

were matters of form and clarity, rather than affecting the substantive provision.

50. On 24 September 2008, W's solicitors wrote to W. They referred to W's meeting with her solicitor at their office on 18 September 2008. The letter accords with what W told me in the witness box, but not what W had attested to in writing:

i) There is no suggestion that H had accompanied W.

ii) They say expressly that they "proceeded to go through the PNA" with W.

iii) They say that "In essence the PNA was approved as drawn" i.e W agreed it.

iv) They refer to the couple of amendments discussed the day before by both solicitors.

v) They say: "I explained to you the ramifications of entering into a prenuptial agreement and the fact that although it is not binding it is extremely persuasive and will potentially limit your financial claims in the event of the marriage irretrievably breaking down. You confirmed your understanding of the agreement and were happy to accept the deed as drawn with further confirmation that you accept the asset position was set out in the Deed as true and accurate".

vi) They go on to say that the next step is to have the deed signed by both parties.

I am satisfied that this letter accurately reflects what had taken place on 18 September 2008, i.e. that W was taken through the PNA, understood the terms, had the law explained to her and approved the document.

51. On 24 September 2008, W's solicitors wrote to H's solicitors, saying: "We have now had the opportunity of meeting with our client to go through the Pre-Nuptial Agreement". They suggested the two previously discussed amendments to the PNA.

52. On 2 October 2008, H's solicitors wrote to W's solicitors with a revised PNA, taking account of the matters which the solicitors had discussed.

53. That same day (i.e. 2 October 2008), W's solicitors wrote to W enclosing the revised PNA for her to review and sign. They specifically asked her to read through and sign the document in the presence of an independent witness. I am confident that W received this letter. I think it likely that she read it, and had no issue with it; she knew that it was essentially the same as the first draft which she had approved.

54. H's solicitors sent a chasing reminder to W's solicitors on 15 October 2008.

55. On 20 October 2008:

i) An attendance note on W's solicitors' file refers to the amended PNA having been received from H's solicitors.

ii) W's solicitors wrote to H's solicitors saying, "We will revert to you shortly".

iii) W's solicitors wrote to W saying that the amended PNA had been received, asking her to go through it carefully, sign it in the presence of an independent witness and then return it with appropriate ID.

56. On 27 October 2008, W's solicitors wrote to H's solicitors saying they had received back from W the completed and witnessed PNA. The finalised document was sent to H's solicitors.

57. On 28 October 2008, H's solicitors sent the PNA, as signed by W, to H. They asked H to sign it in the presence of a witness and return it to them. The letter records that "…I confirm that the Deed makes provision for you and [W] to each retain the property which you hold in your sole name and provides that if you obtain any property or debts in your joint names that you agree that you will generally be equally responsible or entitled to the benefit of that property or debt". Ms Stuart asked H to let her know if he had any queries. She went on to say that "we also need to review your Will", which would be done by one of her colleagues.

58. On 30 October 2008:

    i) H's solicitors wrote to H enclosing a copy of the completed PNA which had been signed by H and W. The letter says that they had discovered that the FMH was in fact held in trust for H and was not in his sole name. The PNA file was to be closed, and a final fee note was rendered.

    ii) H's solicitors wrote to W's solicitors enclosing the agreement as signed by H. In that letter, they said that it had become clear to them that some time before, "the [FMH]…was placed in trust so that [H] has effectively a life interest in the property entitling him to reside in the property, but the benefit of the property will ultimately revert to the trust in due course….[the relevant solicitor] has confirmed that within the context of [H's] will being updated he is going to make provision that [W] should have the ability to remain living in the property on H's death in order to comply with the parties' wishes and feelings and also, in particular, clause 4 of the PNA". I am satisfied that W's solicitors and W were made aware that the FMH was held in trust, but raised no queries or concerns.

59. On 31 October 2008, a letter from W's solicitors to W confirmed that the PNA had been finalised.

60. On 3 November 2008:

    i) W's solicitors wrote to W enclosing a certified copy of the PNA and saying the file would be closed upon payment of their invoice.

    ii) W's solicitors wrote to H's solicitors acknowledging receipt of the letter of 30 October 2008, and noting the reference to the trust interest in the FMH. I am confident they would not have reverted in this way without having discussed the new information about the trust with W. She told me she had no recollection of being told about the trust arrangement, which I doubt. It is possible she has simply forgotten, as these events took place many years ago.

61. W told me that she did not see all of the solicitors' documents at the time. She suspects that H intercepted her post, which I considered highly improbable, particularly as he

trusted her with handling some of his business correspondence during the marriage. I can see no reason why he would have done so. H was not cross examined on this, but in any event I am satisfied that W saw all the solicitors' correspondence.

62. I pause to comment that at no time during the nearly two months of this process did W or her solicitors raise any concerns about the terms of the PNA, question disclosure, or suggest that W was under any pressure or did not understand what she was signing. This was an entirely uncontroversial process conducted with the benefit of solicitors well in advance of the intended marriage.

Subsequent events

63. Thereafter, during the marriage the parties kept their assets separate, save in respect of the joint US property portfolio. H met all the household outgoings and general expenditure and paid W's credit card expenditure of about £2,000pm. In accordance with what he had assured W, he looked after her and provided a very comfortable standard of living. Moreover, to meet W's other concern and in accordance with the PNA, he made testamentary provision for W, about which I say more below. In other words, he fulfilled his part of the bargain.

64. Neither party appears to have given any thought to the PNA until 2018 when an incident took place between one of H's children and W, as a result of which W became concerned about her financial security. W then instructed a different firm of solicitors, Stowe Family Law, about a post-nuptial agreement, but did not proceed as the marriage was happy and she did not think they would separate. It is of note that the solicitors did not write to H with any concerns about the PNA.

The Wills

65. W's real complaint, as her oral evidence developed, was about the provision by Will made for her. This, it should be recalled, was in the context of the PNA which said that H would "provide for W to have a period of time to reside in [the FMH] in the event of his death". The "period of time" was not specified. In his oral evidence, H said orally that they had intended W to have a life interest in the FMH, and there is one reference to life interest in one of the solicitors' letters, but W makes no reference to "life interest" in her evidence and it did not appear in the PNA. At no stage during the two month period leading up to the PNA was the wording in the PNA about the FMH challenged by either party. I tend to the view that whatever they may or may not have discussed, in the end the PNA is clear about a "period of time" (albeit unspecified) and both parties signed up to the clause.

66. On 6 November 2008 (shortly before marriage, and after the PNA had been signed), H executed a new Will which expressly states at the beginning that it is executed "in expectation of" his marriage to W. In it, H provided for a discretionary trust with W and his children as beneficiaries. He signed a letter of wishes which said that the estate should be divided equally between his children, and that W be permitted to remain in the FMH "for a reasonable period" until she found alternative accommodation. The letter of wishes says that "These wishes extend to [the FMH] which is held in separate trust and in respect of which I have already conferred on my wife a terminable interest in possession with effect from my death".

67. I have seen a separate Deed of Appointment dated 24 November 2008 which (i) refers to H as "first life tenant" and W as "second life tenant" and (ii) appoints to W the income from the trust. On balance, it seems likely that provision for W under the FMH trust to occupy the property had been made in accordance with the PNA (as the letter of wishes says) although the legal document to that effect was not in evidence. Indeed, potential provision went beyond mere occupation rights as it includes income from the trust fund. There is no evidence that subsequent steps were taken to remove W from the FMH trust.

68. After the incident in 2018, W said she was unhappy with the testamentary provision, and asked H to change his Will. He did so. By a Will dated 4 June 2020, he provided for a discretionary trust which included W, his two sons, and all his grandchildren as beneficiaries, but not his daughter with whom he was at that time on poor terms. The Will provides, in Clause 6, for W to receive the income of the Will trust for life, with the power to distribute capital to her. In an accompanying letter of wishes, H directed the trustees to pay W the trust income for life, with discretion to pay her capital (i.e the letter of wishes was in the same terms as the Will). His expressed intention was that she should enjoy the same standard of living as during the marriage. True, it did not expressly provide for her to remain in the FMH after his death, but it may be that W continued to benefit from the FMH trust by virtue of the FMH trust Deed of Appointment dated 24 November 2008. The 2020 Will went further than the PNA in that it included income and potential capital provision.

69. For reasons which were not entirely clear, H changed his Will on 11 December 2024. H suggested in the witness box that he thought the 2020 Will had been wrongly altered behind his back. I make no findings about this, which could not be fully explored. At all events, the new Will deleted the specific Clause 6 in the 2020 Will, and there was no letter of wishes. However, it provided for a discretionary trust which included W, all H's children (including his daughter) and all his grandchildren, with W to receive income from the trust during her lifetime, and power to distribute capital to any of the beneficiaries. This Will therefore contained less specific provision for W's benefit than was provided for by clause 6 of the 2020 Will, but nevertheless contained significant potential benefit in the event of his death. Again, it may be that W continued to benefit from the FMH trust by virtue of the Deed of Appointment dated 24 November 2008.

Conclusions

70. My overarching conclusion is that both parties entered into the PNA willingly and freely, with a full appreciation of its meaning and implications. W suggested it and H was happy to join in with it. Even if (contrary to my finding) it was H who initiated the PNA, W was perfectly happy to go along with it. The PNA was uncontroversial. Both wanted their assets (particularly business interests), to be excluded from distribution on divorce. W wanted testamentary provision in the event of H's death, to which he readily agreed. The PNA was negotiated with the assistance of specialist lawyers. W received advice on the PNA, its meaning, terms and legal status. Her solicitor explained these matters to her at the meeting on 18 September 2008 and again in writing on 24 September 2008. It is mystifying that W categorically denied in her sworn statements having received legal advice, but in the witness box accepted that she had. I am quite sure that she fully understood the implications of the PNA, and readily signed. It was executed two months before the marriage, and there is not even a hint that in that two month period either party had second thoughts, or any doubts about what had been

signed. Rudimentary disclosure was given, and neither had the slightest inclination to seek further details. W, as she told me very clearly, would have signed the PNA on those terms whatever H's level of wealth.

71. Both had been married and divorced before, were of a certain age, had built up assets of their own and they did not intend to have children. This was the paradigm set of facts for a PNA to be entered into. W knew that H was far wealthier than her, but she had £2m of her own assets and, in my view, was an independent woman, proud of her achievements and anxious to ensure that her children benefited from her own hard work. Both are and were intelligent, astute and capable people. Neither was naïve. They both fully understood what they were signing. They had discussions between themselves, and their solicitors exchanged correspondence over nearly two months. W could easily have sought different terms, but she did not do so because the proposed terms suited her and were thought by both of them to be fair. I am quite sure that there was no undue pressure on either of them. The discussions between them were conducted amicably and without rancour. There is nothing in the written or oral evidence to suggest that H put W under any pressure to sign. These were mature discussions between experienced adults who were ad idem. I acknowledge that in many cases one or other party may feel some degree of pressure to sign, because the alternative may be that the marriage will not go ahead. But such pressure must be "undue". In this case, I am quite sure that W did not feel any "undue" pressure, or any pressure at all. Of course, they both wanted to marry, but H did not threaten W, or place her in an intolerable situation. Far from it; this was a straightforward decision between consenting adults.

72. It is, in my judgment, notable that after the marriage, the parties conducted their finances in line with what was intended by the PNA, with no quarrel by W. No issue about the PNA was raised. H changed his Will as provided for in the PNA. They kept their finances separate, save for the joint purchase of the US property portfolio. They did not have a joint account. There was no mingling of resources. H, as he had promised W, ensured that she was well provided for, paying her credit card bills and meeting general outgoings so that she did not have to worry about money.

73. After the event, W is, it seems to me, endeavouring to shift the focus from what mattered to her at the time of the PNA (provision on H's death, and being looked after financially during his life) to a full frontal assault on the PNA which they both freely and unconditionally entered into. W told me that her real concern was about testamentary provision, but the PNA at clause 5 is expressly about finances in the event of divorce. She elected to divorce H, even though the 2024 Will made significant provision for her. I am unclear as to what was the purpose of this exercise given that (i) W's main concern was about H providing for her in his Will, rather than the provision on divorce and (ii) she told me that she wants a house to live in, and income for the rest of her life. That is essentially a needs claim which can be brought regardless of the PNA.

74. I turn to consider each of W's grounds for setting the agreement aside, but emphasise that I have considered all the evidence in the round, and by addressing each pleaded ground I have not compartmentalised W's case.

Undue influence/ inappropriate pressure

75. There is, in my judgment, nothing to suggest that W was placed under undue influence or inappropriate pressure by H. I note that in her Form E, W said that she had been placed under "duress". Although she did not pursue that as a ground at trial, it typifies what in my judgment has been an exaggerated narrative by W who has convinced herself that H is intent on denying her a fair outcome. In the written evidence and oral evidence, there is not even a hint of H applying undue pressure on W. To assert that H's behaviour was unconscionable has no foundation. The exchanges between solicitors are constructive and amicable, with no suggestion of concern about W being pushed into a PNA despite misgivings or worries. There is nothing to suggest that W's solicitors were concerned about W. There is nothing to suggest W saying to her solicitors that she felt under pressure. On her own case, there was not a lot of emphasis on the PNA which she thought was "a trivial matter" and which she was "happy to go along with". As she says, "I didn't really think much about it". I am confident that the discussions between H and W at the time were similarly uncontroversial; there is not a scintilla of evidence to the effect that their personal discussions were argumentative, testy or forceful.

76. In the solicitors' files, it is apparent that W readily agreed to the PNA which, as I have found, was her original idea. They both had legal advice, the PNA was prepared over nearly two months, and it was signed two months before the wedding. W told me that she signed because she loved H, and he had promised to support her. In her written evidence she said that she "understood" that the marriage was conditional on signing the PNA. In answer to a question from me, she said that the pressure she felt under was the possibility that the marriage "might" not go ahead. Her account did not persuade me that H demanded she must sign, or the marriage would not go ahead, let alone did he say such words in a domineering, forceful manner. In cases with PNAs, there is almost always a degree of pressure as both parties are aware of the possibility that a marriage might not proceed. The critical question is whether the pressure is undue, which will depend on all the circumstances. As Moor J said in **MN v AN [2023] EWHC 613 (Fam)** at para 60:

> "[Counsel] He also reminds me that it is not unfair or undue pressure to state that you will not get married without an acceptable pre-nuptial agreement (see, for example, <u>KA v MA</u> at [60]. This must be correct as the ability to apply for financial remedies after the breakdown of a relationship is entirely dependent on there having been a marriage. A wife cannot secure the right to apply for financial remedies via a marriage by signing a pre-nuptial agreement only to renounce the agreement thereafter on the basis that she only signed it because he said there would be no marriage if she did not."

Here, I am satisfied that there was no undue pressure. She was quite happy to sign a PNA, which both parties readily agreed to do so with the benefit of legal advice. It reflected their intentions, and they fully understood the implications.

77. A specific point made by W is that H's solicitors drew up the PNA (which is correct) and inserted in the document that W's income was £100,000pa gross. She produces tax returns from the time suggesting her income was more like £45,000pa gross. I am not persuaded by this argument:

i) The reference to £100,000pa gross must have come from her at the time. H would not simply have made it up. If W overstated her income, that was down to her.

ii) In Replies to Questionnaire, W said that her income at the time was £117,000pa gross.

iii) It was open to W at the time of the PNA to correct the figure through her solicitors. She had the draft, which included the reference to £100,000pa, for about 6 weeks before it was signed and could have inserted the correct figure. In any event, as she told me, the disclosure of finances by each of them was an approximation and made no difference to whether she signed or not.

78. Further, W told me that the capital figure of £2m ascribed to her in the PNA was gross, and did not allow for mortgages. Again, I am satisfied that she told H the figure of £2m, which then appeared in the PNA. She at any time could have corrected it to reflect the net figure, and again all the figures were an approximation and that she did not really care as she would have signed anyway.

79. It does not seem to me that these points about W's own disclosure impugn the PNA to any degree.

<u>Lack of independent legal advice</u>

80. I reject the suggestion that W did not have independent legal advice. H had no connection with W's solicitors, who were suggested by his solicitors, whereas W did, having instructed them before on business matters. The letter to W from her solicitors dated 24 September 2008 is contemporaneous and likely to record faithfully what took place at W's solicitor's meeting with W on 18 September 2008. H did not, contrary to W's written case, attend that meeting. W's solicitor, contrary to W's written case, took her through the terms of the PNA. W's solicitor, contrary to W's case, explained the legal framework. In oral evidence, W accepted that all of this did in fact take place. That being so, it is evident that she had independent legal advice. Moreover, the involvement of solicitors was over the best part of two months. She had every opportunity to raise matters if she had any concerns, or comments, or wanted to make amendments, but she did not do so. She has not called her solicitor to give evidence to cast any doubt on, or shed light on, what took place in the relevant period according to the file. W told me more than once in oral evidence that the PNA was "not binding", pointing to the words in the letter of 24 September 2008, although the same letter says "…it is extremely persuasive and will potentially limit your financial claims in the event of the marriage irretrievably breaking down". I thought she was selective in picking out the words "not binding" without reference to the rest of what is in the letter. The reality, I am confident, is that she was told about the legal implications verbally, and received a letter setting it out in writing. These events took place before the seminal case of **Radmacher**, but in my judgment what W's solicitor said neatly encapsulated the legal position at the time, which has since been cemented in **Radmacher.** The Deed itself records, correctly, that they had both received independent legal advice.

<u>Lack of understanding about the implications/consequences</u>

81. I am satisfied that W was fully aware of the implications and consequences of signing. It was explained to her by her solicitors on 18 September 2008, as confirmed in their letter to her on 24 September 2008. It was a simple PNA, easily comprehensible to an intelligent woman like W. That letter states in terms: "You confirmed your understanding of the agreement and were happy to accept the Deed as drawn". I am

confident that she read this letter. At no point is it suggested on the court file that she said she did not understand the PNA. I am confident that she discussed the terms with H directly, as well as with her solicitors. She and H were clear about what they wanted to achieve, and the essential thrust of it is straightforward. I can see nothing in her written or oral evidence to substantiate her assertion that she did not understand what she was signing up to.

Misrepresentation of assets/ lack of financial disclosure/ mistake

82. In my judgment this aspect of the case has been reconstructed by W ex post facto. The starting point is that she was well aware of a substantial difference in wealth between her and H. She knew of the Sunday Times Rich List reference. The reference in that to H's wealth as £70m is not of evidential value as to the quantum of his wealth, but the fact that she had read it does indicate that she was aware, or believed, that he was very wealthy. The suggestion by W that she was "completely in the dark" (as her written evidence says) about his finances seems to me to be an exaggeration.

83. The letter from H's solicitors to W's solicitors dated 8 September 2008 says: " we have provided in the Agreement a very rough approximation of [H's] assets. Our understanding is that in fact [W] has assets in excess of [H's] investments on a net basis and in circumstances where both parties have substantial assets and are marrying later in life where there is no prospect of any children being born to the marriage we take the view that the disclosure between the parties can be relatively limited. If you have an issue in this regard then of course please do not hesitate to contact us". This seems to me to have been a reasonable approach to take to disclosure, and at no point did W seek to follow up the disclosed assets, seek further information or clarification, or challenge it. The letter to her from her solicitors dated 24 September 2008 says, referring to their meeting on 18 September 2008: "You confirmed your understanding of the agreement and were happy to accept the deed as drawn with further confirmation that you accept the asset position was set out in the Deed as true and accurate". W had ample opportunity to seek further disclosure but chose not to.

84. It is of note that W's own financial disclosure was approximate, as she told me in the witness box. The reality here is that neither party was particularly concerned about the extent of wealth of the other. They had a broad understanding, which was more than sufficient for the limited purposes of the PNA. Neither sought more details, or documentary evidence, although they had ample time to do so.

85. The specific totals in the PNA referred to by H were £1.5m (the FMH) and £36m (his 91% share in X Plc). But the PNA does not limit itself to those assets. It says that "[H] has existing assets **including** [the FMH and X Plc]" (emphasis added). On a plain reading, this "very rough approximation" included, but was not limited to, the FMH and H's interest in X Plc. H had other assets at the time, including, as the PNA said, "hotel properties". W told me in oral evidence that she knew there were other assets, which were not specifically identified. Further, the biggest asset by far was the interest in X Plc and in my judgment any comparison with **Helliwell (supra)** is not valid given that (i) in **Helliwell** the deliberate non-disclosure accounted for 73% of the wife's assets at the time of the PNA and (ii) in **Helliwell** the wife did not disclose the existence of a very large asset whereas here at its highest the challenge is to the quantum of the assets, not lack of knowledge of their existence. I note that the figure of £36m is the balance sheet figure on the accounts of that time. There is no evidence that the accounts were

used for the PNA figure, but it seems likely to me, and at the very least gives some foundation for the asserted value in very approximate terms.

86. If and insofar as there was any non-disclosure (and I conclude that there was not), in my judgment it was plainly unintentional. H was not attempting to conceal anything from her to secure an advantage for himself. He had nothing to gain. And I am satisfied that even if additional figures had been provided for the other businesses, it would have had no material impact on the PNA. W and H were happy with the terms of the PNA regardless of the figures which were rough and ready. At their stage of life, and with their respective assets, they would have entered into a PNA along these lines even if H's disclosure had been fleshed out. W's concerns at the time, as she repeatedly told me in the witness box, were for H to provide for her during the marriage and for there to be testamentary provision upon his death. Neither depended on the precise quantification of disclosure, which was more than sufficient for those purposes. W told me in the witness box that whatever the assets, she would have signed the PNA, even if, for example, he was actually worth £70m as per the Rich List. She clearly did not really care how wealthy he was. That being so, I struggle to see how she can pursue this challenge to the PNA.

87. As it transpired, H was not cross examined on non-disclosure of the matters referred to above, perhaps because of what W said in the witness box.

88. W (through counsel) places emphasis on the words of H's solicitors' letter dated 8 September 2008 that "Our understanding is that in fact [W] has assets in excess of [H's] investments on a net basis". The wording of this is slightly odd and it is not possible so many years on to establish exactly what was meant. If they meant that H was asserting W's wealth to be higher than his, that was patently wrong (as the figures in the PNA demonstrate) and must have been a mistake, which everyone ignored. At about this time, or shortly after, the draft PNA was sent to W's solicitors with references to assets in excess of £30m, and W knew full well that H was much wealthier than her. I consider it highly unlikely that H would have deliberately said to his solicitors that W was wealthier than him. I reject the submission that H was lying and deliberately misleading W to cause her to enter into the PNA. Of course, W could have asked what was meant by that sentence, but she did not do so because it must have been obvious to her that they were an error. In the witness box, W did not seem troubled by these words. and I am satisfied that they did not induce her to enter into the PNA. I am not persuaded that these words are evidence of misrepresentation by H or that they had any impact on W signing the PNA.

89. W also submits that H was not in fact the sole owner of the FMH. In a legal sense, that is true. It was owned by a trust of which H was (and remains) the principal beneficiary. H told me he knew it was in trust, and the trust structure had been set up to protect him from creditors. I find that he believed that, whatever the formal structure, it was, in layman's terms, "his" property and the trustees would be expected to do with it as he directed. I am not persuaded that this constituted non-disclosure. H was deposing to it as a resource available to him, which he clearly thought it was regardless of the formal structure. The structure was, in a sense, immaterial for these purposes as H has never attempted to row back from the declaration that it is and was an asset of his. It has consistently appeared in his Form E and the ES2s as his resource. The intention in respect of the property was clear; H was to retain it. Its only relevance to the PNA was that H would (per clause 4) make a Will for W to have a period of time to live in the

property upon his death, a provision with which H complied. Further, the letter from H's solicitors to W's solicitors dated 30 October 2008 picked up the error which had been spotted by the solicitor dealing with H's Will: "the [FMH]…was placed in trust so that [H] has effectively a life interest in the property entitling him to reside in the property, but the benefit of the property will ultimately revert to the trust in due course….[the solicitor] has confirmed that within the context of [H's] will being updated he is going to make provision that [W] should have the ability to remain living in the property on H's death in order to comply with the parties' wishes and feelings and also, in particular, clause 4 of the PNA". W was made aware, but did not seek further information or an amendment to the PNA. The three Wills executed post marriage made significant provision for W. I am not persuaded that the PNA is vitiated by this discrepancy of ownership. It would have made no difference had H said that it was in a trust of which he was the principal beneficiary, provided he accepted (as he did) that W could live there for a while after his death. Further, I accept the submission that in accordance with paragraph 11 of the Deed, if the FMH arrangement rendered that part of the Deed invalid or unenforceable (which in my judgment it did not), by paragraph 11 of the PNA the fact of invalidity of one provision does not affect the validity or enforceability of other provisions. Finally, I am not persuaded that concerns about testamentary provision justify W's case that the entire PNA, which concerns finances on divorce, should be wholly disregarded.

Needs

90. In my judgment, the challenge to the PNA on the ground of needs must await the next and final hearing when I will determine the fair outcome taking account of all the s25 criteria, including the existence of a valid PNA, H's assurance that W would be looked after, the standard of living, the length of the relationship, and the resources. The PNA itself does not exclude a periodical payments claim. In her Form E, W's needs claim is put at £2.563m for housing, car and furnishings, and £74,000pa income requirements. In my view, needs should always have been the focus of this case which has been made longer and more expensive by the challenge to the PNA. I reject W's submission that H should have accepted the PNA should be disregarded. The reverse, in my view, is the case; W should have accepted the validity of the PNA and concentrated on her needs claims.

Conclusion

91. I have reached the clear conclusion that there is no vitiating factor such that the court should disregard the PNA in its entirety. Nor is there anything to justify reducing the weight to be attached to the PNA. In my judgment, the PNA is presumptively dispositive. By reference to some of the dicta from **Radmacher**:

i) Both parties entered into the PNA of their own free will, without undue influence or pressure, and informed of its implications (para 68).

ii) Both parties had all the information that was material to their decision, and each party intended that the agreement should govern the financial consequences of the marriage coming to an end (para 69).

iii) None of the standard vitiating factors: duress, fraud or misrepresentation, is present. Nor was there any unconscionable conduct such as undue pressure (falling short of duress) which would be likely to eliminate the weight to be attached to the PNA, or other unworthy conduct, such as exploitation of a dominant position to secure an unfair advantage, to reduce or eliminate such weight (para 71).

iv) The PNA was freely entered into by each party with a full appreciation of its implications (para 75).

92. That is, of course, not the end of the matter as I will need to consider at a future hearing the appropriate outcome taking account of all the s25 criteria including the PNA. In my judgment, the following may be material:

i) Although in theory W is not barred from pursuing a sharing claim to reflect any increase in value of the assets since 2008 (the door to making a sharing claim even when a PNA is in play was left ajar by the Court of Appeal at paragraph 103 of **Brack v Brack [2018] EWCA Civ 2862**), in my judgment it is highly improbable that W would succeed on such a claim:

a) The purpose of the PNA was to prevent claims being made against the other's assets, including business assets. To make a sharing award would make something of a nonsense of the PNA which I have found not to be impugned.

b) I am not aware of any reported case where, despite the dicta of **Brack**, an effective PNA has given way to a sharing claim, rather than a needs claim.

c) On the evidence I have seen and heard, W's claim that she played an active role in the businesses is limited to the minor business interests and, in any event, I am sure that H continued to be actively involved.

d) The business is a property company. All, or almost all of the property portfolio was acquired in the 30+ years before marriage. Any increase in value is likely to have been in the main due to passive, rather than active, growth.

ii) In my judgment, W's realistic claims are in respect of her needs. It is relevant that the PNA did not exclude periodical payments claims and therefore my provisional view is that there would be no good reason to adopt a restricted or "needs light" approach to income, as might otherwise have been the case if the PNA had provided for a clean break. W's present and future needs will likely be judged in the conventional manner, having regard in particular to the resources, the parties' lifestyle, and the length of the marriage.

93. A court or private FDR hearing must be listed. I will also list a final hearing, with appropriate directions.