



Marital and Civil Partnership Agreements

It is increasingly common for people planning to enter a marriage or civil partnership to enter into an agreement that shows what they intend to happen to their money and property if the marriage or civil partnership ends. This is commonly called a pre-nup or pre-cip. If the couple are already married or have already registered their civil partnership when the agreement is made, it tends to be referred to as a post-nup or a post-cip. The effect is potentially the same. All of these agreements are referred to as 'nuptial agreements' or 'marital agreements'.

In the case of *Radmacher v Granatino* in 2010, the Supreme Court said that,

"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."

As a result, it is more likely than ever before that a properly-drafted agreement will be upheld by the courts in the event of a disagreement on divorce or civil partnership dissolution. However, the Supreme Court did make it clear that it is still the court's role, rather than the role of the parties, to have the final say on what is appropriate financial provision on divorce or dissolution: it is never possible actually to prevent someone from applying to the court in these circumstances.

It is an essential part of the agreement that both of you set out your financial circumstances in full. The agreement is more likely to be considered fair by the court if both parties take independent legal advice on the agreement, and especially so if the agreement is actively negotiated. We can do this traditionally, collaboratively or in mediation.

When considering drawing up a pre-nup or pre-cip it is helpful to think about how you would deal with property

matters if your relationship were to break down; for instance,

- property you both brought into the marriage or civil partnership;
- the matrimonial or partnership home;
- any property given to you or inherited during the marriage or civil partnership, or any income or assets derived from trusts;
- money held in joint accounts and property purchased jointly;
- money earned during the marriage or civil partnership;
- pensions; and
- debts.

You might also consider:

- whether you would pay or receive any maintenance;
- what should happen if either of you dies;
- what kind of events between you might require the agreement to be reviewed – for example, if one of you becomes ill or if you have children. The more different the circumstances when the agreement falls to be enforced from those when it was signed, the less likely the court is to consider it fair; and
- what arrangements you would like to be made for any children you have or are likely to have, both in financial and in practical terms.

It is a key focus of the law that a nuptial agreement cannot prejudice the reasonable requirements of any children of the family. In *Radmacher v Granatino*, the court upheld the pre-nup in terms of its lack of provision for the husband as a spouse, but to recognise his obligations as a parent the court ordered the wife to provide him with the use of 2 properties until the children are 18, and child maintenance for the same period.