

Family Newsletter

Pre-nuptial agreements: an investment for the future

Sir Paul McCartney's love life has hit the headlines again over recent weeks.

Not because of whom he is marrying, but rather because he is embarking upon his third marriage without demanding a bullet-proof prenuptial agreement to protect his hard-earned wealth.

Heather Mills received capitalised maintenance and assets totalling £24 million, plus child maintenance totalling some £35,000, per year. Luckily for Sir Paul, this fell significantly short of the £125 million financial relief she was seeking.

This time round, the bride-to-be is Nancy Shevell, a successful fifty-something divorced businesswoman. She is the vice president of her family-owned business and a board member of the New York transportation authority. With her own wealth and a solid career behind her, it is apparent she is not out to make money from the marriage. Perhaps then, one can see the sense in Sir Paul dismissing the need for a marriage contract.

The most important thing to Sir Paul is that the trust funds for his children are protected and it is thought that Ms Shevell will sign a simple page-long document, agreeing that she will not make a claim on the children's trust

funds in the event that the marriage fails. It is thought that nothing else will be set in writing.

Following the recent Supreme Court ruling in *Radmacher v Granantino* [2010] UKSC 42, confirming that "appropriate weight" should be given to prenuptial agreements on divorce, the legal world has predicted a growth in the demand for such contracts.

Asking your spouse-to-be to sign up to prenuptial agreement is hardly the most romantic gesture with a wedding on the horizon. However, when you haven't got the multi-million pound asset reserve that Sir Paul boasts, but still want to protect pre-marital wealth, a "marriage contract" can save the heartache, financial strain and large legal fees that can be incurred upon separation.

I do... Do I?

Historically, most fully accept the need and benefit of insuring every other aspect of their lives, from the Big Day itself, to the house, pets and holiday—planning for the worst case scenario in the hope it won't ever happen. So why should separation be any different? Over the past year, here at TLT we have seen an increasing number of people accepting that a prenuptial agreement is not something that contradicts the notion of true love and the romanticism of a fairytale wedding, but simply another form of trying to protect oneself against the unknowns of the future.

Both in the United States and the UK people have started to investigate the merits of divorce insurance. However, whilst this may protect against escalated solicitors' costs relating to the divorce itself, a prenuptial agreement can avoid incurring hefty solicitors' fees altogether on marriage breakdown. It will not only factor in everything that a solicitor would usually advise upon during a divorce, even down to determining which country should take priority in a divorce involving people of different nationalities, but can also ring fence assets brought to the marriage which could become vulnerable in financial proceedings upon divorce.

Where there is wealth passing through generations, whether in the form of a contribution towards a property purchase, or even as a means of efficient inheritance tax planning, it is important that there is every opportunity to try to protect those assets. A prenuptial agreement can act as a ring fence, meaning that on separation such assets can remain intact, be returned to their original owner, or divided in accordance with a prior agreement.

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Information

If you would like further information on any of the issues raised in this newsletter, then please contact Natalie Drew on +44 (0)117 917 7506 or natalie.drew@TLTsolicitors.com

No matter the size of the assets involved, the aim of all prenuptial agreements is to clearly establish in both parties' minds what happens in the unfortunate event that the relationship breaks down, and therefore potentially avoid significant legal costs at that stage.

With the average divorce costing some £13,000 many couples will realise that a prenuptial agreement at the outset of a marriage is a small price to pay in order to prudently protect against the unknowns of the future.

Natalie Drew is an associate in TLT's Family team who acts for a wide range of clients in areas including premarital agreements, divorce, separation, cohabitee disputes, harassment issues and domestic violence. She has particular expertise in cases involving children.

Re E: TLT Supreme Court success

Of the thousands of Family cases before the courts in England and Wales each year, only a few are ever heard in the Supreme Court. It is therefore not every day that you have the satisfaction of knowing that you have successfully defended a client in an appeal brought before the highest court in the land.

Re E – the facts

In the case of *Re E (Children) [2011] UKSC27*, associate in TLT's Family team, David Wheeler represented the father; a Norwegian national who was seeking the return of his two children aged 4 and 6 to Norway. The mother admitted from the outset that she had abducted the children and taken them to London without the father's consent. She based her defence on Article 13(b) of the Hague Convention, arguing that an order requiring her to return the children to Norway would expose them to a grave risk of physical or psychological harm or an intolerable situation. At the first hearing she produced evidence from a psychologist that she suffered from a depressive illness which would be exacerbated if she returned to Norway. That would affect her ability to care for the children. Her argument was rejected by Mrs Justice Pauffley in the Family Division who found that the package of support and undertakings offered by the father would provide the mother and children with sufficient protection pending a decision on custody in the Norwegian court.

The appeal

The mother appealed that decision arguing that there should have been a full welfare investigation and that approach had some support from four recent decisions in the European Court of Human Rights. The Court of Appeal and now the Supreme Court rejected that argument.

This was a welcome decision and one which will have a beneficial impact for abducted children throughout Europe. The underlying principle of the Hague Convention is to return children to their home country so that the parents can resolve the issues of custody and access in the home jurisdiction. The practical effect of a full welfare investigation in every Article 13b case would inevitably be delay and increased cost which would only prolong the period of uncertainty for the family while the investigation was completed.

In this particular case, the two children have been successfully returned to familiar surroundings in Norway and are able to spend time with both parents whilst the Norwegian court makes a final decision on custody.

Through David's involvement with Reunite, a national charity which provides assistance and support for parents whose children have been abducted, David is contacted by distraught parents from many jurisdictions who need urgent help in dealing with this difficult issue.

David Wheeler is a nationally-recognised child abduction law expert. He can advise parents on what steps to take if a child is abducted, or if a parent feels abduction may happen.

Team news

We are delighted to report that the forthcoming Chambers Directory 2012 edition will see all of the Family team at TLT rated as "Leaders in their Field". Natalie Drew joined TLT in March 2011 having been previously ranked as a Leader in Chambers 2011. David Wheeler, whose recent success in the Supreme Court is detailed below, has also been recognised for his expertise. This means they both join David Woodward and Nicky Howarth in sharing this accolade.

In addition to this achievement, the Family team is delighted to announce that Nicola Warner, who trained with TLT, is joining the Family team next month as a solicitor.



Nicola Warner

Family Justice Review: A changing landscape

2012 will be a pivotal year for Family lawyers, the most significant factors being the impact of the Government changes in legal aid and the implementation of the Family Justice Review.

Although the exact figure for Family Law is ambiguous, details from the Ministry of Justice and the Legal Services Commission are clear that the legal aid cuts will result in a substantial reduction in those that are eligible for legal aid. The Family Justice Review report is due to be concluded in October 2011 and this is set to make radical recommendations which will change the face of current Family Law provision, both in terms of funding and how services are delivered. The interim report, published in March 2011, concluded that, "Family Justice does not operate as a coherent managed system" and most professionals including Judges would agree.

The report recommends the creation of a Family Justice Service led by a National Family Justice Board to ensure that children and families are supported to navigate their way to an early resolution of their problems.

The report concentrates upon the needs of children and recommends for public law (care cases) a refocusing on issues of whether the child can safely remain with parents, family/friends or should there be permanent alternative care arrangement, i.e. with the local authority.

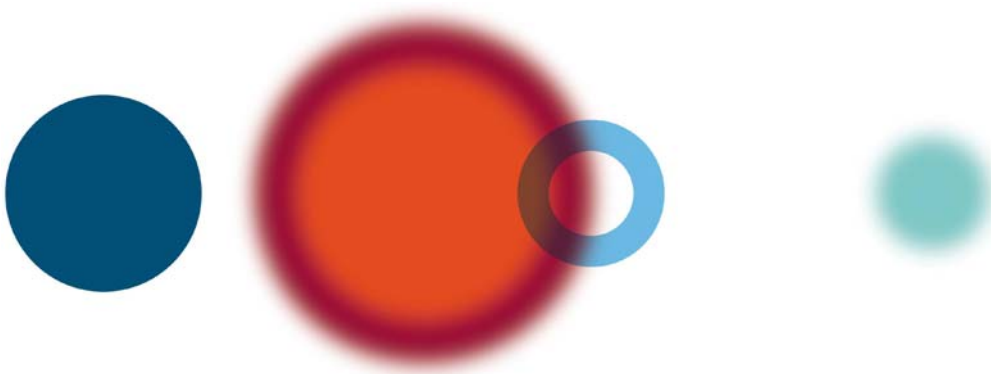
For private law, the court should emphasise parental responsibility, reinforce the child's need to have a meaningful full relationship with both parents and an emphasis on the time spent rather than residence or contact orders.

The report recommends an information hub and help line followed by a filtering process, at the end of which there may be the opportunity of issuing a court application. The filters would comprise of an "information meeting" to assess suitability for mediation, compulsory attendance at a parental information meeting, an attempt at alternative dispute resolution and finally the opportunity for permission to use the court process. Once in the court process, the court would be expected to be robust in managing the application to ensure that core issues are identified and addressed at the earliest opportunity.

The report recognises that the history of family justice reviews (seven since 1989 and a unified court proposed as long ago as 1975) is of fine words but little or no action. Why should this report be any different? The answer is, according to David Woodward, that "only one member of the review body is a practising lawyer and the Chair is a distinguished public servant with experience in industry. I understand that they have kept in close touch with Ministers and they are determined to only make recommendations which the Government will accept and implement."

The significance of the report for family lawyers is not to be minimised, as the proposals would dramatically impact on how we currently practice Family Law. 2012 will be a year to remember.

David Woodward is head of the Private Business Group of TLT, National Secretary of Resolution and a member of the Law Society's Family Law Committee.





David Woodward
Partner

David is head of the Private Business group and has been in practice for over 30 years. David specialises in complex financial matters, particularly involving businesses and is an accredited specialist in pensions and emergency financial remedies.

David is a former Chair of Bristol Resolution (formerly Solicitors Family Law Association), a member of the Law Society Family Law Committee, Secretary of Resolution, Chair of the National Resolution Standards Committee and member of the Executive and National Resolution Committee. He is an accreditation examiner and contributor to Resolution Family Law Handbook, Family Mediation Past Present and Future and Law Society Family Law Protocol (3rd edition). David is recommended as a 'Leader in the Field' in leading legal guide Chambers UK. He is also a qualified mediator and chair of Bristol Family Mediation Association Limited.

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Natalie Drew
Associate

Natalie has particular expertise in cases involving children and has acted for a wide range of clients in areas including divorce, finance, harassment issues, separation, cohabitee disputes and domestic violence. Natalie is an accredited specialist in Private Law children and children finance.

Natalie, who is rated as a 'Leader in the Field' by legal guide Chambers UK, is a member of Resolution and sits on the Resolution Children Committee. She is also a trustee for Off the Record, a Bath-based children's charity.

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David Wheeler
Associate

David is an accredited specialist in private law children, advance financial provision and child abduction, especially cases where there is an international element. He is also a trained collaborative lawyer and mediator.

David is also a specialist in Contested Probate work, being an accredited member of the Association of Contentious Trust and Probate Specialists. David is recommended as a 'Leader in the Field' of Family/Matrimonial work by Chambers UK.

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Nicky Howarth
Associate

Nicky specialises in resolving financial and children issues on divorce and separation. She is also actively developing a specialism in jurisdictional matters, advising on international and cross border issues. Nicky is an accredited specialist in pensions and financial provision.

Nicky is recommended as a 'Leader in the Field' of Family/Matrimonial in leading legal guide Chambers UK.

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Nicola Warner
Solicitor

Nicola recently qualified into the Family team and specialises in divorce and civil partnership dissolution, financial remedies, separation agreements/pre and post nuptial agreements and domestic abuse and harassment cases.

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