

WILL YOU BE ATTACHING A PRENUP TO YOUR PROPOSAL THIS VALENTINE'S DAY?



Authored by: Cerys Sayer, Barrister at Westgate Chambers

While marriage statistics have oscillated throughout covid times, prenuptial agreements (prenups) remain steadily on the increase in the UK.

Research from 'The Marriage Foundation' states: "One in 5 UK weddings now involve prenups."

This statistic may surprise some, especially given that prenuptial agreements in the UK are not automatically legally enforceable.

Legal position

As there is not yet any specific legislation in England and Wales to deal with prenuptial agreements, case-law has endeavoured to address the lacuna.

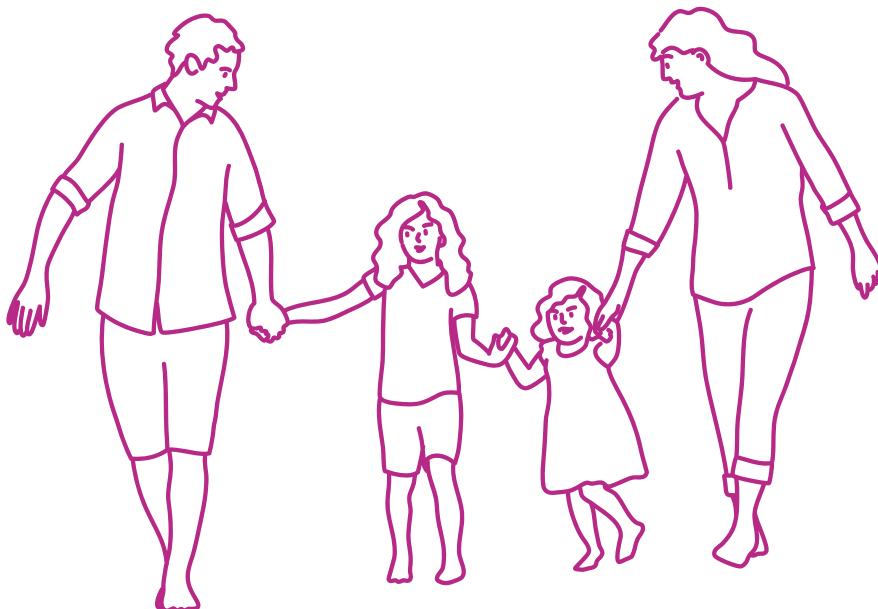
The case of *Radmacher v Granatino* [2010] UKSC 42 remains the guiding light in this area.

The brief facts of the case being that the appellant husband was a French national. The respondent wife was a German national. They signed the prenuptial agreement in Germany in August 1998, where the document was legally enforceable. This was at the wife's instigation, she was of considerable wealth, the husband, a banker at the time, declined independent legal advice. The pair married in London in November 1998. They had two daughters born 1999 and 2002. They separated in October 2006, 8 years post marriage. The prenup provided that neither would obtain any benefit from the property of the other during the marriage or on it ceasing.

The Supreme Court developed the following tripartite considerations, which if adhered to, may increase the weight attached to the prenup, the likelihood it will be upheld, and hopefully limit potentially destructive and damaging litigation:

1. The prenup must be entered into fairly and freely.

It is common sense and in accordance with recognised legal principles that the parties must have entered into the prenuptial agreement voluntarily, without pressure or coercion, being



totally aware of all its terms, having been provided with full, frank, timely disclosure plus independent legal advice.

2. The impact of the foreign element on the prenup, if relevant.

If parties from other jurisdictions get divorced in the UK, the legal standing of the agreement in their home country or where the prenup was drafted may be relevant. If the agreement was binding there at the time it was entered in to, it may be found that the parties intended to be bound by it.

3. Do precipitating events make the prenup unfair?

This enshrines the tenet that people should not be bound by an agreement which due to subsequent events and through no fault of their own, then impinges on their legal right to relief. 'A nuptial agreement cannot be allowed to prejudice the reasonable requirements of any children of the family' paragraph 77 of *Radmacher v Granatino*.

How to approach prenups in reality and optimise their future enforceability

The following pointers encapsulate good practice and provide a good starting point:

- Ensure that the prenuptials are prepared, drafted and discussed thoroughly, well ahead of the legal ceremony. Subsequent suggestion of rushing or pressure may undermine the prenup. Consider conclusion of the document 28 days ahead of the marriage as the bare minimum together with Heads of Agreement.
- Ensure that disclosure is comprehensive, clear and flows in both directions. Be transparent about what wealth there is and what you wish to ringfence. Questions can be exchanged if you feel further information is required from the other party.

- Both parties should receive independent legal advice from lawyers experienced in this area.
- The longer the marriage lasts, the less potent and relevant the prenup becomes therefore consider updating the agreement on a rolling basis as the relationship evolves.

So, whilst it is not advised that you ask your future fiancée to sign on the dotted line as you take the knee, do consider a prenup before you tie the knot!

