



Are Pre-Nuptial Agreements Legally Binding?

A pre-nuptial agreement is a formal agreement between a couple which is normally designed to take effect in the event of a marriage break down. Such agreements may be drawn up to apportion rights to property and other finances. 'Pre-nups' are dealt with in accordance with the normal principles of contract law, however, should such an agreement subsequently become a matter of dispute in the context of divorce proceedings, then any stipulated terms of the agreement will be subject to the discretion of the court under Article 26(1) of the Matrimonial Causes Order

(Northern Ireland) 1978 which allows the court to 'vary for the benefit of the parties to the marriage and of the children of the family...any ante-nuptial or post-nuptial settlement.'

Historically pre-nuptial agreements have not been enforceable on the grounds that they were contrary to public policy and therefore void, but there has been a shift in the approach of the courts, particularly since the 1990s when Mr Justice Wilson in *S v S (Divorce Staying Proceedings)* 1997 2 FLR sounded a 'cautionary note' against the growing belief that no significant weight should be afforded to a pre-nuptial agreement and indicated that 'there will come a case...where the circumstances surrounding the pre-nuptial agreement...when viewed in the context of the other circumstances of the case could prove influential or even crucial.'

In 2002 such a case came before the courts in *K v K (Ancillary Relief: Prenuptial Agreement)* (2003) 1 FLR when a wife sought to depart from a prenuptial agreement entered into between the parties. The court in that case held the wife substantially to the terms of the agreement but cautioned that entry into such an agreement should be considered as 'conduct which it would be inequitable to disregard' under the terms of the governing legislation.

As the law currently stands, the court may consider the terms of a pre-nuptial agreement, however, if assets have to be used to meet the needs of one of the parties, a pre-nuptial agreement is unlikely to enable a party to ring fence his or her assets from being distributed in a fair manner to both, save in exceptional circumstances.

If contemplating entering into such an agreement, always bear in mind the limitations of doing so. If you decide to proceed, take separate and independent legal advice, pay from your own resources for such advice, exchange full disclosure of all the relevant finances and take time to negotiate and consider the precise terms of any agreement. Consider that, in the event of such an agreement being called in to question, much will turn on whether the arrangements contained in the

agreement will enable each party to meet its reasonable needs and requirements, especially having regard to the position of any minor children.