

# Should you sign a pre-nuptial agreement?

Pre-nuptial agreements can be useful for older couples getting married.  
**Amanda Melton and Josh Gibbons of IBB Solicitors explain**

**I**T WAS recently reported that Cheryl Cole had refused to sign a pre-nuptial agreement before her marriage to Jean-Bernard Fernandez-Versini last summer. She told her new husband he will never have to work again and can rely on her £16m fortune, a decision met by incredulity in press reports. Does Cheryl Cole's position reflect the general view, or are pre-nuptial agreements still a growing trend?

## The starting position

Pre-nuptial agreements have been around for many years, but an increasing number are coming before the courts to ascertain their enforceability. The starting position is that such agreements are not legally enforceable in the jurisdiction of England and Wales.

When a couple divorces or dissolves their civil partnership, the court has the final say on how their financial assets will be divided, and even when the parties are in agreement, the court will give final approval. It considers a number of factors but, in general, it wants to achieve a fair settlement taking into account both parties' needs, resources and contributions.

The idea behind pre-nuptial agreements is that the parties seek

to negotiate, before they marry, what will happen should they later divorce. To find such agreements legally enforceable (see panel) would set a dangerous precedent as it is seeking to oust the jurisdiction of the court to

determine a fair financial settlement. The contrary view is that two adults should be allowed to determine the outcome for themselves.

## Who benefits?

Following on from the 2010 decision, the largest growth area in pre-nuptial agreements is in older couples who are perhaps marrying for the second time. Couples with sizeable assets may wish to consider entering into a pre-nuptial agreement, particularly where one of them brings assets to the marriage that have accrued before the relationship.

Additionally, if the people have children from a previous relationship, they may want to reach an agreement that certain funds are not treated as a marital asset to protect the later

inheritances of these children. A second marriage in the over-50s is often a difficult time. The children of a first

marriage can become very sensitive to the potential for a new spouse to encroach upon what they may see as their inheritance.

This is particularly so where the child's other parent may have died and all money passed to the surviving parent. In this situation, couples usually remember to negotiate what will happen on their death, to make sure the children of their first marriage are not excluded.

However, there is also a risk to their inheritance should the marriage fail. This second risk will often remain unaddressed, which ideally would be covered by a pre-nuptial agreement.

Now that these agreements

have greater weight in the courts' overall discretion, it is well worthwhile considering one to cover this eventuality.

## The disadvantages

It must be remembered that the situation of the couples may change. For example, one may come into inheritance themselves or, for younger couples, there may be the birth of a child of the relationship. Both of

these events are likely to affect the agreement and the weight the court will ultimately give to it.

A frequent review of the agreement is the only way to cater for such eventualities, although this is likely to place a significant strain on the relationship. It is advisable that both parties ensure they have taken legal advice before entering into any agreement, to avoid the potential for arguments.

Parliament has steered clear of legislating on this issue, preferring to leave it to the court to decide. However, following the Radmacher case, a Law Commission report recommended "legislation be enacted to introduce 'qualifying nuptial agreements'".

This indicates that the government is seeking to clear up this uncertain area of family law.