



**Your guide to creating a binding
prenuptial agreement**

Prenups are nothing new, they have been around for a long time and in many parts of the world are quite commonplace. In the UK, Scottish Widows conducted research which suggested that 56% of those yet to be married would consider a prenuptial agreement.¹



42% of marriages end in divorce

What is a prenuptial agreement?

A prenuptial agreement (more commonly referred to by the public as a prenup) is a document prepared by a couple to set out their wishes should their relationship breakdown. The agreement will primarily consider financial matters.

Why you need a prenup

Unfortunately, not every marriage survives. Sadly, figures from the Office of National Statistics (ONS) show that **42% of marriages in England and Wales end in divorce**. 34% of marriages are expected to end in divorce by the 20th wedding anniversary.²

You will regularly see media coverage commenting on celebrities who have chosen to have a prenup and those who have decided against. It's reported for example that Britney Spears (worth an estimated \$120) gave a mere \$1m to dancer Kevin Federline in their divorce, after ensuring a watertight prenup. In contrast Sir Paul McCartney's decision, not to have a prenup, with his then wife Heather Mills, is reported to have cost him £24.3m.³

Whilst many divorces that we deal with at Woolley & Co, Solicitors are dealt with amicably (and therefore cheaply) you do hear horror stories about ordinary couples spending tens of thousands of pounds in legal fees trying to reach agreement about their finances when they divorce. In a report in *The Telegraph* (*The Hidden Costs of Divorce*⁴) they quote an average spend of £44,000.

Creating a water tight prenuptial agreement minimises the likelihood that you will suffer this kind of financial cost.



*'Average spend of
£44,000'* *The Telegraph*
The Hidden Costs of Divorce

Prenups in the UK

Prenuptial agreements are not very common in the UK at present. This may be because they have historically not been considered legal binding. However, in 2010 a **Supreme Court** case (*Radmacher v Granatino*) indicated that in the 'right case' a prenup would have decisive weight in a divorce settlement.

Creating a water-tight agreement

If you are thinking about a prenup, there are some important things you need to know. Whilst prenuptial agreements are not absolutely binding on a divorce court, recent case law has determined that where they have been properly set up they carry very significant weight.

To be upheld by the Courts a prenuptial agreement needs to be prepared in a particular way.

To make sure you create a binding prenup you must address these five points:

1. The prenuptial agreement is entered into freely

The agreement should be entered into of both parties' free will, without any undue pressure from each other or a third party.

The agreement should be negotiated as far in advance of the wedding as possible, and finalised at least 28 days before the wedding.

The court will consider individual circumstances such as you and your partner's age, maturity, previous experience of long-term relationships as well as both of your emotional states at the time of the agreement.



Are **WE** in
AGREEMENT?

2. The implications of the agreement are fully understood

You should be in possession of all the information material to deciding to enter into an agreement before signing it. And you should both receive specialist family law advice on the terms and implications of the agreement.

3. The agreement is fair

The agreement will be considered to be unfair:

- if it fails to meet the reasonable requirements of any children.
- if it left one of you with less than you need, while the other is comfortably provided for.
- if there is a fundamental and unforeseen change in circumstances, such as one of you losing all your money or becoming severely disabled.
- if one of you has a strong argument for an element of compensation (for example, for loss of earnings after a joint decision to give up a career to care for the family), then a prenuptial agreement that ignores that element of compensation may be considered unfair.



4. The agreement accounts for your children

The agreement must ensure that appropriate financial provision is made for any children that you have together, whether at the time the agreement was created or children you may have during the course of your marriage.

5. There are arrangements for regular reviews

The longer a marriage lasts, the greater the chance that it may not be fair to hold the couple to the terms of an agreement. It is therefore sensible to commit to regular reviews of your prenuptial agreement and update it if circumstances have changed (for example after the birth of a child, sale of your company, redundancy or inheritance).

Prenuptial agreements are becoming increasingly popular, with the high proportion of second marriages and couples coming into relationships with assets of their own. **Getting a prenup makes a lot of sense**, but it is really important to take advice from a specialist family lawyer and make sure the agreement is drawn up correctly and you are advised throughout the process.



¹ Scottish Widows research 2009

² ONS data report – What proportion of marriages end in divorce <http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/rel/vsob1/divorces-in-england-and-wales/2011/sty-what-percentage-of-marriages-end-in-divorce.html>

³ <https://www.supremecourt.uk/docs/prenuptial-agreement-debate-pack.pptx>

⁴ <http://www.telegraph.co.uk/women/sex/divorce/11041341/The-hidden-cost-of-divorce.html>

Legal advice

Woolley & Co can help by

- offering initial advice on the merits of a prenuptial agreement and explaining their legal status;
- preparing a prenup;
- advising on the implications of a prenup drafted by a 3rd party;
- reviewing and updating prenups when circumstances change.



Take advantage of a free initial chat with one of our lawyers to discuss your circumstances. Call **0800 321 3832** or book online at www.family-lawfirm.co.uk



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