



Henry Chambers

Willans Family Law Breakfast 2026

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**Nuptial
Agreements.....
because nothing says
love like a contract!**



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Brief overview:

- Called to the Bar in 2014.
- Completed mixed common law pupillage in 2017.
- Practiced both at the Employed Bar and Self-employed Bar.
- Founded Henry Chambers in May 2023

Nuptial Agreements: A Brief Overview

- "Nuptial agreements" refers to both pre-nuptial agreements and post-nuptial agreements. Remember the civil partnership counterparts, pre-registration or pre-civil partnership agreements and post-registration or post-civil partnership agreements.
- A nuptial agreement sets out which party owns or will own certain assets on a future breakdown of the marriage.
- "It is estimated that more than 20% of all married couples in the country have signed one of these agreements"

Objective of nuptial agreements

Essentially the objective for these agreements are the same:

- ✓ Protection - To protect assets (such as inherited wealth or pre-marital property) from a later financial claim.
- ✓ Clarity - To clarify how the parties will conduct their financial affairs during the marriage. This may also assist the financially weaker party to feel financially secure within the marriage.
- ✓ Limiting the scope for uncertain, emotionally draining and financially costly court proceedings in the event of the future breakdown of the marriage.
- ✓ Transparency and potentially reducing acrimony on divorce.
- ✓ Potential to improve communication.

Radmacher v Granatino [2010] UKSC 42

- ❖ The game changer!
- ❖ The Supreme Court considered the weight that should be given to a nuptial agreement by a court when exercising its discretion under section 25 of the MCA 1973. The Supreme Court held:

*“The court should give effect to a nuptial agreement that is **freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to the agreement.**” (At paragraph 75.)*

The key question remained: what is fair?

In *Radmacher* the Supreme Court emphasises that the famous cases of *White v White* [2000] UKHL 54 and *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24 established that fairness is informed by the following three principles:

1. Need – fairness requires that provision is made for both parties' housing and financial needs.
2. Sharing – marriage is a partnership and fairness requires that each partner should be entitled to an equal share of the assets of the partnership unless there is good reason to the contrary.
3. Compensation - once needs are met, the court should consider whether one party's financial situation is stronger as a result of how the parties divided their responsibilities within the marriage.

Fairness goes beyond this?

Fairness can be assessed by applying the following three-stage test, as set out in *Radmacher*:

1. The agreement must be freely entered into.
2. The parties must have a full appreciation of the implications of the agreement.
3. It must be fair to hold the parties to their agreement in the circumstances prevailing.

(At paragraph 75.)

What does that really mean?

- Both parties should enter into the agreement of their own free will, without undue influence or pressure.
- The agreement is unlikely to be upheld if there is any evidence of duress, fraud, misrepresentation or unconscionable conduct, such as the exploitation of a dominant position to secure an unfair advantage.
- A party's emotional state at the time of making the agreement is a relevant consideration, together with factors such as age and maturity and previous experience of long-term relationships.

Some helpful sections from Radmacher

- *“A nuptial agreement cannot be allowed to prejudice the reasonable requirements of any children of the family” (paragraph 77).*
- *“The reason why the court should give weight to a nuptial agreement is that there should be respect for individual autonomy..... It would be paternalistic and patronising to override their agreement simply on the basis that the court knows best” (paragraph 78).*
- *“Often parties to a marriage will be motivated in concluding a nuptial agreement by a wish to make provision for existing property owned by one or other, or property that one or other anticipates receiving from a third party. The House of Lords in White v White and Miller v Miller drew a distinction between such property and matrimonial property accumulated in the course of the marriage. That distinction is particularly significant where the parties make express agreement as to the disposal of such property in the event of the termination of the marriage. There is nothing inherently unfair in such an agreement and there may be good objective justification for it, such as obligations towards existing family members.” (paragraph 79).*



Valentines Day Facts!

- Everyone knows that Valentine's Day is named after St Valentine but which one?
- Nobody knows for sure if it is named after St Valentine of Rome or St Valentine of Terni. Legend has it that St Valentine of Rome helped defy Roman Emperor Claudius II's bans on soldiers getting married and he chose to marry them in secret.
- Another legend is that St Valentine fell in love with a jailer's daughter and when writing her letters he signs "From your Valentine".

It's not just Radmacher!

- On 27 February 2014, the Law Commission published a report entitled Matrimonial Property, Needs and Agreements. In this report, the Law Commission recommends legislative reform to make nuptial agreements that are in a prescribed form, and adhere to certain safeguards, legally binding.
- A nuptial agreement that meets the criteria is called a "qualifying nuptial agreement". Qualifying nuptial agreements would prevent the court from making financial orders on divorce that are inconsistent with the terms of the nuptial agreement, unless an order needed to be made to meet one of the parties' financial needs, or for the benefit of a child of the family

Law Commission Report - Continued

A qualifying nuptial agreement must meet the following criteria:

- It must be contractually valid. Any evidence of mistake, misrepresentation, duress or undue influence may cause the agreement to fail.
- It must be validly executed as a deed and contain a "relevant statement" signed by both parties confirming that they understand the agreement is a qualifying nuptial agreement.
- It must not have been made within the 28 days before the wedding.
- Both parties to the agreement must have received disclosure of material information about the other party's financial situation. Full disclosure!
- Both parties must have received legal advice at the time they entered into the agreement.
- It must not prejudice any children. If the agreement makes insufficient financial provision for children, it will be set aside by the court.
- Both parties' needs must be met. Need is measured with reference to standard of living during the marriage.

International Considerations

- International issues often arise in cases involving nuptial agreements so think about jurisdictional issues!
- In *Radmacher*, the parties were nationals of France and Germany.
- The Supreme Court explained that the English court will normally apply English law when exercising its jurisdiction to make an order for financial remedy under the MCA 1973, irrespective of the domicile of the parties or any foreign connection (*at paragraphs 103-108*).

Key drafting considerations

Top Tips

- Consider time – it is not your friend! There is a lot more work involved than the clients will often think - N.B. remember the 28 days before the wedding – post-nup?
- Disclosure – this is the absolute bedrock of any nuptial agreement worth the paper they are written on.
- Time to reflect and process!
- Consider the types of orders that would be made in contested proceedings.
- Consider a draft order based on the terms of the nuptial agreement.



Valentines Day Facts!

- The oldest Valentine sent on record is from 1415!
- Charles, Duke of Orleans, wrote to his wife while he was a political prisoner in the Tower of London. One of the lines in the poem said “*I am already sick of love, my very gentle Valentine*”

Enforcement

Enforcing a Nuptial Agreement

- As detailed in *Radmacher* the courts cannot be bound to give effect to the terms of a nuptial agreement. The court instead engages on an exercise to consider the agreement, the context in how it was reached, the circumstances of the parties, their needs and those of any children.
- A party seeking to rely on the terms of a nuptial agreement must make an application to the court for a financial remedy. Until the nuptial agreement has been made into a court order (by consent or otherwise), its terms cannot be enforced by any method.

Continued

- In its report *Matrimonial Property, Needs and Agreements*, (Law Com No 343), the Law Commission recommends the introduction of qualifying nuptial agreements that would be binding and would override the court's jurisdiction to divide a couple's finances, provided the agreement complies with certain conditions and safeguards.
- But we are not there yet!
- In *Radmacher*, the Supreme Court did not decide whether nuptial agreements are contracts and can be pleaded as such. The majority considered the contractual status of nuptial agreements to be a red herring (*at paragraph 63*).

Procedure

- If a party is seeking to enforce the terms of a nuptial agreement, they must file a Form A (FPR 5.3(1))
- If the other party consents to an FRO that is based on the nuptial agreement terms then it is the same procedure as a standard consent order.
- In a contested case, consider the expedited procedure – *Crossley v Crossley* [2007] EWHC Civ 1491
- Remember the overriding objective (FPR 1.1) to expedite the procedure, therefore saving expense and court time, and respecting proportionality and the autonomy of parties who enter into a nuptial agreement.

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- If the party wishing to rely on the agreement wants the court to expedite the proceedings in this way, they must issue a notice to show cause why the other party should not be held to the terms of the agreement.
- The notice to show cause should be listed under FPR 18 by using a Form D11.
- If the notice to show cause application is made before the first appointment, then directions can be dealt with at the listed first appointment. If there has already been a first appointment, the application should seek a preliminary hearing

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The expedited procedure as approved in *Crossley* is as follows, subject to the court's discretion to make such directions as it sees fit to comply with FPR 1.4(2)(c)(ii) and the overriding objective:

- ❑ Form A is filed and a notice to show cause is filed (using *Form D11*) either by the applicant or the respondent.
- ❑ Forms E are completed without supporting documents.
- ❑ There is no disclosure by way of questionnaires.
- ❑ In Form E, the parties must explain why the nuptial agreement is (or is not) “a knockout blow” that should “rule the outcome of an ancillary relief claim” (*Crossley*, at paragraphs 5 and 18).
- ❑ Once the court has considered the parties' Forms E and any other documents the parties have filed, and made any appropriate directions, there is a notice to show cause hearing. At this hearing the parties argue whether or not the court should uphold the terms of the agreement. The judge will apply the factors set out at section 25 of the MCA 1973 and consider the weight to be given to the nuptial agreement.

Recent Cases

FO v PN [2025] EWFC 327 (B)

- HHJ Hess explored the weight which should be given to pre-nuptial agreements and Deeds of Revocations where the Deed of Revocation is entered into shortly before the demise of a marriage.
- The parties entered into a Pre-Nuptial Agreement, signed by the parties on 22 May 2012. The court also had before it a Deed of Revocation dated 28 April 2022.
- The parties met in August 2008 and began a romantic relationship in April 2010. They began cohabiting in November 2010 and got engaged in July 2011, marrying in June 2012. They had an age difference of 27 years, which the judge commented may have contributed to a power imbalance.

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- The marriage produced two children who were 12 and 10 years old.
- The W brought little wealth to the marriage, whilst the H's wealth was substantial.
- It was agreed that this pre-nuptial agreement was consensually executed and, upon divorce, would have led to an unequal division of capital assets in the husband's favour. At the time of marriage, the wife considered the division to be fair, even generous to her. Both parties had the benefit of full legal advice and the process involved suitably full disclosure.
- The key issue was with Property G, which was identified in the pre-nuptial agreement as being owned by the H, but turned out in fact to be owned 99% by X, the H's daughter, and just 1% owned by the H. The W discovered this fact in about June 2012. The W also became unhappy with what she perceived as the generally unfair and unequal nature of the pre-nuptial agreement. The parties took further legal advice and entered into the Deed of Revocation, which revoked the pre-nuptial agreement and provided for equal division of assets in the event of a divorce.

The Husband's case

The H sought to persuade the court this would not be a fair or proper outcome using three lines of attack.

- The Deed of Revocation was procured by a deliberate and cynical manipulation of the situation by the W, amounting to misrepresentation: it was suggested the W never had any intention of continuing with the marriage and was just pretending to do so to obtain the Deed.
- The Deed of Revocation was procured by undue pressure: the H asserted the facts were similar to the facts in *SC v TV* [2022] EWFC 67.
- A general analysis of fairness, the fact the marriage ended soon after the Deed of Revocation and the outcome was substantially different to the outcome the court would have reached without the Deed, meant the court should exercise its discretion to disregard the Deed completely.

The Decision

- The total asset base was largely agreed and totalled £17,967,054.
- The W's case was equal division of assets (both to receive £9,976,291). The husband said the division should disregard the Deed of Revocation so the W would receive £6,384,000.
- The judge was persuaded that a methodology needed to be found which produced for the W assets worth £9,976,291, in addition to periodical payments for the children. A costs order of £100,000 was also made against the H.

Entwistle v Helliwell [2025] EWCA Civ 1055

- This is a case that is a reminder that, with pre-nuptial agreements, disclosure isn't just a polite formality, it's the absolute bedrock and foundation!
- H and W married in 2019 after a period of short cohabitation
- W came from considerable wealth as her personal assets were £60-£70million. H an accountant and had assets of around £850,000.
- On wedding day they signed a 'drop-hands' pre-nup. Each party keeps own assets and jointly owned property divided 50/50.
- Crucially, there were recitals to say that both had given 'full and frank' disclosure.....they hadn't!

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- W's disclosure showed assets of £18m....she missed off £47.8m (73% of her wealth)
- The High Court upheld the agreement and awarded the H £400,000. The H appealed.
- The judgment's critical finding in *Entwistle* was that the W's non-disclosure was **fraudulent**. She knew the omitted assets were legally hers, had discussed them with her father, and consciously chose not to list them

Takeaways

- Disclosure clauses have teeth and they can bite!
- Fraudulent non-disclosure creates a burden on the perpetrator to prove the truth would have made no difference
- Radmacher is clear – if a pre-nup is tainted by fraud, undue pressure, or misrepresentation, it should be set aside before fairness is even considered.
- Advice must follow disclosure
- There must be complete disclosure with appropriate time allowed to review and consider matters

Where does this leave us?

- 12 years since the Law Commission's report *Matrimonial Property, Needs and Agreements* (Law Com No 343). This report recommended introducing “qualifying nuptial agreements” on the provision that certain conditions were met.
- Law Commission published scoping report on financial remedies on divorce dated 18th December 2024 – incorporated into a draft Nuptial Agreements Bill attached to our *Matrimonial Property, Needs and Agreements Report*. However, Government did not take recommendations forward.
- Nuptial Agreements are becoming an ever-increasing aspect of the life of a family lawyer.
- They are not agreements limited to the extremely wealthy.
- We must be aware of how to advise, draft and use these agreements and their implications.



Valentines Day Facts!

- Nearly 250 million roses are grown each year in preparation for Valentine's Day.....given the time of year most come from Ecuador, Kenya and Columbia!

Any questions
following the session:

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