



### Covid-19: cancelled weddings and pre-nuptial agreements

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The impact of Covid-19 is both unprecedented and extensive in its reach. It has affected many areas of daily life, most devastatingly being the loss of human life. As well as the disruption it has caused for commerce, the impact on the economy and the turmoil it has created for lives up and down the country, a further consequence of Covid-19 has been the cancellation or postponement of weddings.

In England and Wales, marriage carries certain legal and financial obligations and when a couple marry, they assume these obligations to one another. Following a divorce or a dissolution of a civil partnership, the Court has the power to make and enforce financial orders. Financial orders deal with the procedure of computing, dividing and transferring money and property between divorcing spouses, as well as the issue of maintenance payments. It is the prospect of being bound by such financial orders that prompts engaged couples to enter into pre-nuptial agreements.

A pre-nuptial agreement is a contract between two people in advance of their marriage, dealing with the division of money and property if they were to divorce. In England and Wales, the traditional approach adopted by the courts was that pre-nuptial agreements were not strictly enforceable. However, more recently and in recognition of the autonomy of consenting adults, the Court has held them to be persuasive, though not binding, provided certain procedural safeguards are followed. Furthermore, although nothing has yet been announced, Parliament has been considering reforms proposed by the Law Commission in its report *Matrimonial Property, Needs and Agreements (Law Com No 33)*, which endorsed the introduction of qualifying and legally binding pre-nuptial agreements.

In the leading case of *Radmacher v Granatino [2010] UKSC 42*, the Supreme Court deliberated on the weight to be given to a pre-nuptial agreement. It held that a 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*".

In essence, this means that:

1 For the agreement to be "*freely entered into*", the parties will have entered into it of their own free will, without undue influence;

2 For a “full appreciation of the implications”, the parties will ideally have received independent legal advice and exchanged full and frank financial disclosure; and

3 For the agreement to be considered “fair” this means that, if the parties are later held to it, it must have considered their needs (as at the time of the marital breakdown), ensured it does not prejudice the reasonable requirements of any children, provided some level of autonomy and, potentially, have had the opportunity for parties to review it, especially in the case of a lengthy marriage.

Please note that there are further steps that should also be followed to provide you with the best chance of having your pre-nuptial agreement considered fair and upheld by the Court.

For the majority, the existence of a pre-nuptial agreement is: an attempt for parties to agree their own outcomes on divorce; to encourage certainty; to save costs in any future proceedings for financial orders; and to protect wealth or family assets.

But, what happens if you and your *fiancée / fiancé* have signed a pre-nuptial agreement, compliant with the procedural guidelines, but Covid-19 has caused your wedding to be cancelled or postponed? What effect might Covid-19 have on the validity of your agreement, if not reviewed?

Firstly, Covid-19 has caused much disruption for businesses, both operationally and financially. Markets have suffered and property values have decreased. People have been made redundant and furloughed. It might therefore be that your pre-nuptial agreement no longer accurately and fully reflects your financial positions, which may impact on whether the agreement is considered fair and consequently its future enforceability.

Do you want to consider reviewing your agreement? You may think of entering into a new one, which more accurately reflects your current circumstances. You are able to do so with the consent of both parties and subject to the usual requirements.

Secondly, some pre-nuptial agreements contain ‘sunset clauses’. A sunset clause establishes a time following which the agreement will be invalid. For example, it might be that the pre-nuptial agreement in question will be entirely worthless, if the marriage has not taken place by a specific date. Make sure you review your agreement and ensure that you are not caught out by such a provision.

In the above scenarios, it would seem prudent that parties re-visit the accuracy and drafting of their pre-nuptial agreements.

For those who have had their wedding postponed, or those who are concerned about the impact that Covid-19 and the current lockdown will have, not only on their health and the economy, but on their relationship, now might be the time to consider, or even reconsider, whether a pre-nuptial agreement might be advisable.

A further consideration applies where, as a result of current restrictions on movement and delayed weddings, couples decide to cohabit and have children together in advance of their re-arranged wedding date. In such cases, agreements dealing with cohabitation rights or parenting arrangements might be also sensible. Whatever your circumstances, preparation and clarity are key.

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