

Pre Nuptial Settlements – Do You Need One?

A view on the growing number of pre marital agreements and their treatment in Court

There have been two recent high profile divorce cases which have attracted a great deal of attention from the media, the public and lawyers. How will these cases, involving couples with assets running into millions of pounds and earning high levels of income, affect the approach taken by Solicitors when considering the division of assets and maintenance in a “run of the mill” divorce?

In the case of Miller, the Court had to decide whether Mrs. Miller should receive a share of her husband’s wealth even though it was only a short marriage of just two years and nine months. The House of Lords decided that Mrs. Miller should receive £5 million (made up of a property in London worth £2.3 million and a lump sum of £2.7 million). The reason given was that she had a legitimate expectation that the standard of living she had during the marriage would last for her entire life. In the

case of McFarlane, the Court awarded Mrs. McFarlane a significant share of her husband’s future income as compensation to her for having stayed at home to care for children whilst her husband pursued his career. In other words, the Court decided that no distinction should be made between the wife staying at home and the husband going to work. By choosing to stay at home Mrs. MacFarlane’s individual finances suffered and once her marriage had broken down and she no longer shared a family income with her husband she was entitled to compensation.

So what can be learnt from these decisions? Neither the Millers nor McFarlanes had Pre-Nuptial agreements. In Miller, had there been a pre-nuptial agreement this could have made a big difference to Mr. Miller as it may have enabled him to ring fence his

assets which he earned before the marriage to prevent Mrs. Miller from claiming a share if the marriage broke down. Although pre-nuptial agreements are not currently legally binding they are extremely persuasive when the Court is dealing with a short marriage and there are no children. It is also likely to hold significant weight for those couples entering into second marriages who want to protect assets for children of their first marriages. There is building pressure from lawyers for a change in the law to allow properly negotiated Pre-Nuptial Agreements to become legally enforceable.

The McFarlane case also opens the door for those who have already divorced with a provision for maintenance (sometimes for just 5p a year) to ask the Court to consider whether this should be increased to a more meaningful sum.

If you think these cases might affect you, why don’t you call one of our Family Team to see if we can help on 01480 454301.

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