Perspectives

Personal law updates from Morr & Co

Newsletter
SPRING 2024

Hello,

Welcome to the latest edition of Perspectives, our newsletter which provides useful information, news and insights into the most recent legal developments that may affect you and your family.

As we welcome the arrival of spring, I want to take a moment to express my gratitude for your ongoing trust and support.

At Morr & Co, our commitment to upholding the highest standards of integrity and excellence remains resolute. With this in mind and to support closer collaboration among our departments going forward, we made the strategic decision to close our Ash Vale and Camberley offices towards the end of last year and have moved the respective teams into our Fleet office.

I am also thrilled to share that our Private Client and Contentious Probate teams have recently been shortlisted for 5 awards at The Probate Industry Awards. This is a fantastic achievement and acknowledgment of the hard work they put in every day for their clients. We hope to celebrate this achievement together at the awards ceremony in April.

Catherine Fisher
Managing Partner

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The power of prenups

Pre-nuptial and post-nuptial agreements (which I refer to in this article broadly as "prenups" and "postnups") are increasingly commonplace in England. Here at Morr & Co, enquiries for these have increased 10-20 fold. Why?

The three most likely reasons are:

Awareness. Coming into practice over 30 years ago, there was little talk of nuptial agreements: it just wasn't done, even if you'd heard of them. Nuptial agreements happened among the stars and uber-wealthy, or in Europe and America, not here in the UK. However, nowadays more people ask why the Royals do not have prenups than ask why so many people do.

The power of prenups has grown. Courts are less patriarchal in their approach than they were 30 years ago and are now far more willing to accept as binding the express wishes of couples signing such documents prior to or during their marriages.

Whilst they remain informative rather than strictly binding as to the outcome of financial splits on divorce, we have seen a huge shift in the caselaw, in favour of such agreements. In the 90's they were barely acknowledged by divorce courts: now, almost the reverse applies, with courts generally seeking to uphold them, provided that well-advised parties signed up with full knowledge and understanding – unless, of course, they produce patently unfair outcomes or are otherwise problematic. Even where they do not succeed in full, they are more often than not, at least partially upheld.

Societal change. Marriage remains popular and almost half the cohabiting couples in England and Wales are married. However, there is a general move towards autonomy, self-determination and personal choice and a wish to dictate financial terms on marital breakdown can be seen as part of that.

As longevity has grown, lifespans now readily permit two or three marriages of 20+ years. Nuptial agreements have always been the primary domain of second and third marriages, where couples enter into relationships with a more practical understanding of marriage, a wish to avoid the costs and uncertainty they may previously have experienced, and an eye on protecting finances for children of previous marriages.

These days, international travel and foreign marriages are commonplace and prenups are standard-fare in most western cultures.

Top tips for creating a powerful prenup:

(i) **Get a lawyer.** This may sound self-serving but it's not: if you cannot prove that the agreement has been entered into with full knowledge and understanding, there's little chance it would stand up to challenge on divorce. Contractual issues cannot be ruled out eg, mistake, misrepresentation and duress. If both parties are independently legally advised, it is much less likely that such factors might apply and each can be fatal to the agreement.

(ii) **Financial disclosure must be exchanged**. Unless you're a billionaire, in which case the extent of your disclosure to the agreement would simply be "I'm a billionaire". For most of us, the purpose of disclosing your finances at the start of the marital journey is to try to ring-fence assets away from the marital pool: no disclosure – no protection!

(iii) **Allow thinking time.** The existence of undue pressure or duress in any form can undermine a legal contract, prenups included. So it's best to remove the innate pressure of the wedding itself. There is no deadline for the agreement to be signed pre-wedding. In 2014, the Law Commission's proposed a minimum 28-day timeframe, but this seems to have fallen by the wayside in recent caselaw. The approach now tends to focus more broadly on the need for sufficient time for full advice and understanding to have been undertaken – the earlier the agreement was negotiated and signed before the wedding, the lower the likelihood of the wedding itself posing problematic pressure on either party.

(iv) **Sign a postnup.** It is possible to sign nuptial agreements before or after the wedding day, with postnups often viewed more favourably than prenups because the wedding induced pressure has gone.

(v) **Keep it up to date.** The birth of children, receipt of inheritance, ill health and other significant changes can all dramatically impact the efficacy of a prenup, and most have a default clause requiring updates every five years or so.

As with wills, it's important that prenups reflect our current situations. If you're thinking you need to update your will, you probably need to update your prenup too.

Divorces are often difficult. Entering into nuptial agreements before or during a marriage is not the only way to protect your position and minimise the stress and financial headaches of a difficult divorce, but they help.

If you have any questions or would like any further information on the content of this article, please do not hesitate to contact our Family team, who will be happy to help.

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What's happening in the property market?

In February, the property market saw a noticeable resurgence in activity, with an uptick in both buyers and sellers, as indicated by the latest findings from Zoopla.

Zoopla highlighted a significant increase in home sales compared to the same period last year, with agreed sales seeing a notable 15% rise, accompanied by an 11% surge in buyer interest. This positive momentum suggests a potential increase in annual home sales by 10%, projecting a figure of around 1.1 million transactions for the year – a notable leap from the previous year's tally of 1 million.

This has been noticeable for us as a firm. We have taken on a considerable increase of new transactions in this period and the mood music is one of cautious optimism. Caution is indeed the watch-word; with another potentially turbulent political and geo-political year ahead, it would be a brave person who would care to predict how it will play out. One thing is for sure though, given the rather stagnant past year, the pent-up demand is building again and history shows us that buyers are not slaves to interest rates forever.

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The importance of preparing a will

There are a number of reasons why it is important to have a will but they can be summarised under two categories: increasing your ability to control the destination of your assets and minimising the stress and cost for loved ones.

Retain control

The importance of having a will is directly related to the fact that without one, the law imposes on us "intestacy rules" which sets out what will happen to most of your assets upon your death. There are other rules that determine what will happen to other assets, like property you hold jointly or held by a trust.

For example, did you know that if you are married or in a civil partnership and have children, your spouse is not automatically entitled to the entire estate? In fact, your spouse would only be entitled to the first £322,000 (and personal possessions) and then the rest of your estate would be split equally between your surviving spouse and children. If you are not married or in a civil partnership, then your partner is not entitled to any of your estate under intestacy rules.

You may find that in your circumstances, instead of providing for your close loved ones, your assets go to other individuals in your wider family (or ultimately the Government) who would be set to inherit under the intestacy rules.

Empowering individuals

By contrast, wills empower us to decide exactly how we want to distribute our assets. If you are obtaining legal advice when preparing a will, you are able to set out:

- Who will oversee the administration of your estate?
- Who will be the beneficiaries of your estate and you can put in place measures for vulnerable beneficiaries (including leaving gifts on trust to disabled loved ones or give charitable gifts which are treated favourably for Inheritance Tax (IHT) purposes)?
- Who will take care of any minor children you may have?
- How your digital assets will be dealt with?
- Your preferences for funeral instructions?

Minimise stress and cost

With a well-drafted will and good legal advice during your lifetime, you are likely saving your future executors and beneficiaries time, money and stress from potential court proceedings, especially if loved ones are unhappy with their entitlement under intestacy. This is because you are setting out what you want, and you can put things in place if you are concerned about potential disputes.

You may think that the default intestacy rules suit you, but even in the unlikely event that it does, you may want to look closer at the default statutory provisions that apply and what it would be like practically for your loved ones to administer your estate without a will.

If you have any questions or would like any further information on the content of this article, please do not hesitate to contact our Private Client team, who will be happy to help.

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Whistleblowing claims on the rise

The whistleblowing charity, Protect, recently announced a 23% spike in whistleblowing calls in 2023 compared to 2022. According to sources, 41% of callers to Protect's Advice Line stated that their whistleblowing concerns were ignored by their employer with 73% saying they were victimised or forced to resign after raising concerns.

The charity revealed that calls came from a variety of sectors, with the majority from the private sector (42%), and nearly a quarter from each of the public (24%) and charity (23%) sectors.

It's perhaps no surprise then that our employment team, have also seen an increase in these matters from both employers and employees in recent months. This may partly be because charities like Protect have worked hard at raising awareness about the protections and rights available around individuals who 'blow the whistle' on their employer.

It may also have something to do with the fact that, in the case of higher earners, a dismissal after disclosing information which amounts to a whistleblowing claim, may entitle the individual to uncapped compensation as opposed to an ordinary unfair dismissal claim where a cap of £105,707 is applied.

Another potential factor may be a mechanism which, although not common, is unique to whistleblowing claims. It is only available to employees who have just been dismissed and can show that they are "likely" to win their whistleblowing claim.

This mechanism allows individuals to make an application for interim relief within seven days of a dismissal. If the application is successful, the employer is duty bound to reserve an individual's employment (at least so far as pay is concerned) until after the tribunal has decided their claim for unfair dismissal. Such an application is difficult to win, but potentially very valuable as the substantive hearing for a case is likely to take place more than a year after the dismissal occurs.

For individuals concerned around 'blowing the whistle' on an employer, it's important to be aware that you are protected by law if you report any of the following:

- A criminal offence, for example fraud.
- Someone's health and safety is in danger.
- Risk or actual damage to the environment.
- A miscarriage of justice.
- The company is breaking the law, for example does not have the right insurance.
- You believe someone is covering up wrongdoing.

The list isn't as long as many expect. It does not include personal grievances, for example bullying, harassment, discrimination, unless the particular case is in the public interest. In addition, the individual has to reasonably believe that they are acting in the public interest in making that disclosure.

The bar is relatively high, and the legal test is complex. There are also time limits to consider. We strongly encourage anyone with a concern to take advice from an early stage, either by speaking to a charity like Protect or contacting a member of our team for support.

If you have any questions or would like any further information on the content of this article, please do not hesitate to contact our Employment team, who will be happy to help.

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