

TEN WAYS TO PROTECT FAMILY WEALTH AGAINST DIVORCE

COMPLIMENTARY GUIDE



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WHY YOU *MUST* CONSIDER THE FINANCIAL DANGERS OF DIVORCE

When thinking about protecting a family's wealth, it is in no way cynical to concede that divorce rates are *very* high – and increasing year on year as lifestyles and attitudes to matrimony shift. Statistics suggest that in the UK some 42% of marriages end in divorce now, while in countries such as Portugal and Belgium levels stand at stunning levels of 60-70%.

Although the end of a marriage is of course a very sad outcome on a number of fronts, the destructive power divorce can have on a family's financial assets is one of the biggest. Far too many people still go into matrimony without properly considering the full monetary ramifications should things go wrong – as they unfortunately so often do today.

Recent court cases in the UK have highlighted not only just how big the stakes are, but also how unexpectedly the vagaries of matrimonial law may play out. London being “the divorce capital of the world” means that settlements in the hundreds of millions of pounds are regularly sought here. Yet those without adequate protection in place will be further alarmed by a new precedent which appears to open the door to big-money claims being made even decades after a union was (seemingly) fully dissolved.

HEADS, *ALONGSIDE* HEARTS

At first glance, it may seem unromantic to confront the possibility of divorce well before vows have been said, and perhaps even more so some time after the event through a “post-nup”. But arguably there can be no more solid foundation for a marriage than preparing for the possibility of things going awry and putting clear contingency plans in place for all parties. Marriage, after all, represents a merger of financial

affairs as well as lives, and untangling those assets can be a drawn-out, messy affair, particularly when complex ones like business interests and pensions must be split.

While no-one should emerge from divorce having been unfairly treated, all too often the financially stronger partner may be justified in feeling disproportionately damaged. On the flipside, the weaker partner may make poor decisions about how assets like pension pots and property are divided up if they fail to take proper advice in good time.

For this eBook we have partnered with top law firm Shoosmiths to outline the key risks both sides need to pay heed to before saying “I do”. While billionaires may dominate the divorce headlines, divorce can have a devastating effect at *all* levels of wealth.

When it comes to preserving family assets and transferring them effectively at a time of sky-high divorce rates, the wealth management “rules” are the same as ever: take proper advice and get proactive as early as possible. Forewarned is forearmed, particularly concerning the spectre of divorce.

– LEE GOGGIN,
CO-FOUNDER
findaWEALTHMANAGER.com



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TEN WAYS TO PROTECT FAMILY WEALTH AGAINST DIVORCE

Marital breakdown is a huge – and increasingly common – destroyer of wealth for the unprotected. Here, Chris Longbottom (senior associate, family law) and Catherine Elliott (senior associate, wealth protection) at Shoosmiths outline key ways family wealth should be defended against the ravages of divorce.

While it may be thought unromantic and unduly pessimistic to consider planning for a marital split, we know almost half of marriages end in divorce.

Should a marriage end, those who have not given thought to what might happen to the assets could find themselves on the back foot.

DRAWING ON OUR MANY YEARS OF EXPERIENCE, WE OFFER THE FOLLOWING TOP TEN STRATEGIES:

1

TAKE ADVICE EARLY

Very few people consider taking advice from a divorce lawyer when considering marriage. However, it makes sense to consult a solicitor armed with a schedule of assets. Consider what may be at risk and the steps that might be taken, ahead of marriage, to reduce exposure in the event of separation and divorce.

2

CONSIDER KEEPING ASSETS “SEPARATE”

It may be easier to avoid a claim on particular assets or investments if these have been kept separate. For example, if an inheritance is put into joint names or used to repay the mortgage on a jointly-owned property it may be “lost”.

It may make sense from a tax viewpoint to put an inheritance into joint names, but by doing so it may be difficult to argue on divorce that it is not a marital asset to be divided equally.

3

COMMIT TO A PRE-NUPTIAL (OR POST-NUPTIAL) AGREEMENT

Clients are becoming less cynical about these agreements and increasing numbers understand their place and benefit in today's society. If drawn up properly, they will avoid the delay, uncertainty and expense of litigation in the event of a marital break-up.

A pre-marital agreement (or pre-nup) is a contract entered into by a couple before they marry. It will record the settlement the parties consider fair in the event of separation or divorce. A post-nuptial agreement has the same objective, but is entered into after the marriage.

While a conversation regarding a pre- or post-nup is not easy, it may be worthwhile in the long-run.

4

DISCRETIONARY TRUSTS: A WORD OF WARNING

As part of general wealth planning, it is often advisable to consider the use of trusts.

The most common form of trust is a discretionary trust which allows for a full discretion over capital and income. These allow the trustees to decide what gets paid out and when, and which persons benefit. Such trusts can provide tax planning opportunities as well as protect future generations.

For trusts to be discretionary there needs to be a class of beneficiaries. However, care is needed. If one party, i.e. a spouse, has been the only beneficiary and received monies when requested then, on divorce, the Court may well treat the assets in the trust as belonging to that spouse.

It may be advisable for trustees to exercise their discretion for the benefit of a number of beneficiaries to make such outcome less likely.

5

CONSIDER WHETHER ANY DIVORCE OUGHT TO TAKE PLACE IN ENGLAND OR SCOTLAND

The family circumstances may be such that it is possible to start the divorce process in either England or Scotland.

This can make a very considerable difference to the financial outcome.

For example, in Scotland spousal maintenance is generally payable for no more than two or three years. However, if the English court has the case, then a lifetime award is a possibility.

It is as well to take expert advice from a law firm with family solicitors in both England and Scotland to gain an understanding of which jurisdiction will produce the better result.

6

GIVE PROPER CONSIDERATION TO PENSIONS, AND UNDERSTAND THE IMPACT OF SPOUSAL MAINTENANCE AND CHILDREN

Almost 85% of divorced wives fail to properly consider pensions as part of their financial settlement on divorce. They often offset the value of their pension claim against the other assets. This may result in their retaining the family home when they may have been better off downsizing and retaining a pension. In many cases the value of the pensions is not understood.

Taking independent expert advice on the pensions is a must. There is now the opportunity to cash in Defined Contribution/ Money Purchase/ SIPP pension pots from the age of 55. Alternatively, it is possible to buy an annuity or leave funds invested for drawdown.

These options give persons over 55 the choice of spending their pension pots or leaving them intact to pass to their children free from Inheritance Tax (IHT). If it is clear at the outset what the plan was for the pension, this may support a case that after any need is met the fund should be ring-fenced so it continues to serve that purpose.

With regard to understanding the impact of spousal maintenance and children, the court will regard the needs of the receiving party.

While the standard of living during the marriage is considered, Courts have recently stressed that this should not imperil the prospects of the eventual independence of the receiving party – meaning, there needs to be an acceptance by the receiving party that there will be a reduction in the standard of living due to living in two homes (rather than one) after divorce.

The Court is looking towards “defined termed” maintenance - termination of the maintenance as soon as it is reasonable to do so. In addition, it would seem to be only in exceptional cases that the Court takes account of the loss of a career which would need to be fully evidenced with certainty as to value.

Beyond child maintenance, it may also be advisable to consider the use of a trust to prepare for education costs which could be used as a negotiation tool in any financial settlement on divorce while reducing a person’s asset base from claim by the spouse.

These issues regarding maintenance and children are capable of being addressed in a marital agreement.

7

DO NOT BURY YOUR HEAD IN THE SAND

The recent case of *Vince v Wyatt* highlights the importance of taking advice early and ensuring settlements are ratified by the Court.

In short, in this case the Supreme Court permitted a claim against the husband some 30 years after separation (and almost 25 years after divorce) in circumstances where the husband's wealth was generated after the divorce. The failure to obtain a "clean break" order when the marriage broke down cost him dearly.

8

TAKE EXPERT ADVICE

We recommend early advice is obtained from a specialist financial expert as well as a solicitor in the event of marital breakdown. The two working in harness can help devise a strategy at the outset.

Without a plan, you are more likely to be at the mercy of the "other side" or the Court.

9

CONSIDER JOINT ACCOUNTS/SAVINGS/LIABILITIES

In a nutshell, ensure your spouse is unable to take capital from joint savings.

It is equally important to ensure he or she cannot increase any joint liabilities unless agreed.

The use of a second credit card on an account may bring extra "gift points" - but this must be set against the possible exposure to ever-larger credit limits.

10

CONSIDER AN EARLY OFFER TO SETTLE

Once you have realistic advice from your financial expert and solicitor, weigh up the likely cost of litigation when deciding what offer to make (or accept) on divorce.

It is often the case an early offer in settlement is best - and cheaper - in the long run.

Even if not accepted by the other side, it will demonstrate to the Court your willingness to settle.

The Courts do not expect or want to see family cases run as if they were a species of commercial litigation. You will receive credit for early, realistic attempts to settle.

SUMMARY

ABOUT THE AUTHORS



Chris Longbottom, senior associate, family law, Shoosmiths

Chris heads Shoosmiths' family team in Manchester, working with high net worth individuals, business directors and personalities. He has particular experience of cases where disputes arise around inherited wealth and assets acquired pre-marriage, the valuation of businesses, tracing of "hidden" or overseas assets, and cases involving multiple parties.



Catherine Elliott, senior associate, wealth protection, Shoosmiths

At Shoosmiths, Catherine is a senior lawyer in the Wealth Protection team and specialises in advising high net worth individuals. She has focused on issues such as will drafting, estate administration, Lasting Powers of Attorney and trusts throughout her career.

ABOUT SHOOSMITHS

Shoosmiths is an award-winning law firm with ten offices throughout the UK. Clients come from a diverse range of organisations – from private to UK plc. Shoosmiths also advises high net worth individuals in family, wealth protection and property matters.

NEXT STEPS:

We all like to hope for the best, but failing to plan for the worst when entering marriage is a massive risk to wealth. In contrast, clear-sighted planning means all parties can regain their financial security as quickly as possible in the event of a marital breakdown, and side-step much of the turmoil and legal wrangling that can ensue.

The institutions on the findaWEALTHMANAGER.com panel are extremely well-versed in all the challenges and opportunities concerning managing family wealth – divorce included.

Some wealth managers even offer special divorce facilities like bridging loans to cover legal costs. They are also very well connected to other professionals, like lawyers and accountants, who can help put in place all the sensible plans you need to protect your assets or achieve speedy resolutions should a marriage fail.

To start the process of finding the right wealth manager for your profile and needs, simply try **our online configurator**.

Find A Wealth Manager is an independent service designed to help clients navigate the opaque world of finance and wealth planning. We partner with the leading UK firms who commit to best practice and better value fees. Use our configurator to get matched to the right firm and then our experienced team will help meet your best placed manager.

<p>READY TO GO ></p> <p>Use our configurator to get matched to wealth and investment management firms and have our team provide tailored introductions</p>	<p>FIND OUT MORE ></p> <p>Use our information centre packed full of guides, articles and eBooks to increase your knowledge and specific areas of interest</p>	<p>GET IN TOUCH ></p> <p>Our team of experts have a combined 70 years industry knowledge. We are straight talking, impartial and there is no obligation</p>
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