

Welcome to the August 2016 Family Law Newsletter.

AWB Charlesworth Solicitors have a team of experienced Lawyers who solely specialise in Family Law. In this issue firstly we introduce you to our new additions to the team following a recent Firm Merger with Worger Howcroft Solicitors in Bingley, then our team discuss Issues around school holiday arrangements with a number of suggestions for separated parents, the most frequently asked questions in relation to nuptial agreements, and finally they discuss the ins and outs of divorce.

*A warm welcome
to Amanda Worger
and Liz Hebden*



Liz Hebden joined AWB Charlesworth Solicitors as Head of Family in January 2016, soon followed by the most recent addition, Amanda Worger (of Worger Howcroft) as Partner and Bingley Family Law Specialist in April this year.

Skipton, Keighley, Bradford and Bingley based law firm AWB Charlesworth Solicitors are pleased to welcome 2 experienced family solicitors to the Skipton and Bingley teams.

Liz qualified as a Solicitor in 1988 and has many years of experience in dealing with divorce/civil partnership dissolution; resolution of financial matters on relationship breakdown (including cohabitation disputes); cases

and post-nuptial agreements. Liz now heads up the team in Skipton.

Amanda Worger has over 20 years' experience in providing expert legal advice and assistance. Amanda specialises in all aspects of family law with particular expertise in dealing with the financial consequences upon relationship breakdown.

Amanda joins the Firm along with Andrew Worger (Partner and Wills, Trust and Probate Solicitor), making the total Partners at AWB Charlesworth 10 strong.

Both Amanda and Liz are members of Resolution, an organisation of over 5000 family lawyers committed to conducting matters in a conciliatory and non-confrontational way.

School holidays can be a stressful time, particularly when there is a separation of the parents involved. Liz Hebden provides some sound advice as to how to make arrangements run as seamlessly as is possible.

With the school holidays currently ongoing and half term only around the corner again, many separated parents will be experiencing a range of emotions. Agreeing arrangements for children can be difficult for many families and arrangements that do work well during the school term may need to be changed.

Avoid conflict by heeding the following advice:-

- Communicate early with your former partner and make sure any plans are child focussed.
- Co-operate with each other and clarify the arrangements, preferably in writing.
- Do not make arrangements through the children and ask them to be a messenger.
- Do not ask children to choose. As adults, any decisions are your responsibility.
- Do however ask the children how they want to spend their summer holidays and take those views into account.
- Make sure the children have enough time to relax and spend time with their friends.
- Be aware that before the end of the holidays, children need

time to prepare for school and settle back into a routine.

- For peace of mind, share your travel plans with your former partner and provide accommodation details, flight numbers and contact information in case of an emergency.

Above all, do not argue with your former partner in front of the children or on the phone.

By planning ahead and keeping things civil holidays will become a happy childhood memory.

*For more information about the arrangements for your children on separation and divorce, please contact **Liz Hebden**, Head of Family, Skipton on **(01756) 692 871** or email:*

Elizabeth.hebden@awbcaw.co.uk



10 Frequently asked questions on Nuptial Agreements.

1. What is a Nuptial Agreement?

A Nuptial Agreement is a document signed by you and your partner in contemplation of your marriage or civil partnership. Its purpose is to clarify how financial affairs should be distributed if the marriage should break down.

2. When might a Nuptial Agreement be a practical option?

Whilst we would always suggest such an Agreement is considered, circumstances in which they are most commonly utilised are when one party to the marriage has assets which they wish to protect. These can include:-

- Property
- Inheritance
- Shares
- Business Interests

3. Pre-Nuptial or Post Nuptial Agreement?

This will depend on the point at which the couple wish to enter into such an agreement. If it is before the marriage, this would be a Pre-nuptial Agreement (pre-nup). It is vital to remember that a pre-nup must be signed at least 21 days before the date of marriage. The alternative is to enter into an agreement after the marriage by way of a Post-nuptial Agreement. Though not as common as a pre-nup, these usually take place if the couple have previously separated and are attempting reconciliation or in order to amend a pre-nup.

4. Will the Agreement be binding?

The starting point is no, due to the

fact you cannot restrict or opt out of the Court's powers to intervene. However, since the case of *Radmacher* in 2010, the Courts are now paying increasingly more attention to any such agreements.

5. Why might the Court set aside an Agreement?

When considering any matrimonial settlement, the Court's starting point remains s.25 Matrimonial Causes Act 1973 and that both parties' needs are taken into consideration. If under the terms of the Agreement the Court considers they are not and that the Agreement is prejudicially unfair, it may set aside the Agreement or the specific clauses which it deems to be unjust.

6. If the Agreement's not binding, why should I have one drafted?

The Matrimonial Causes Act also states the Court must take into account both parties' conduct, i.e. their decision to enter into such an Agreement. Although the Court must ensure both parties' needs are met, both you and your partner should seek



independent legal advice on its terms and implications. How it is interpreted may differ due to the Agreement and be considered as their basic needs only. The Agreement can also work as a deterrent as your spouse may be less inclined to pursue any further claims if the Agreement is in place.



If you have further queries about Nuptial agreements then please contact our Family Lawyer Andrew Foulds on 01756 692 877 or email Andrew on:

Andrew.foulds@awbclaw.co.uk

7. How must the Agreement be drafted so that its terms may be considered binding by the Court?

To ensure the best possible opportunity of the Court upholding any such Agreement, there are key principles that should be followed;

- The Agreement be entered into voluntarily
- Both parties to provide full financial disclosure
- Both parties be fully aware of the terms of the Agreement and implications
- The Agreement can still be considered to be fair

8. We're not getting married, should we still consider entering into an Agreement?

Yes, particularly if there is property involved. These are often referred to as 'Cohabitation Agreements' and can set out the ownership of property. If you are unmarried, any claims are considered 'civil' as opposed to 'family' and usually occur by way of a Trust of Land dispute ("TOLATA"). TOLATA's can be more difficult to commence and may have significant cost consequences. We would always recommend seeking legal advice if

you intend to cohabit but have no intention to marry.

9. Can you advise both me and my partner on the Agreement?

No. Although the Agreement is made when you and your partner are in a relationship, its purpose is to deal with financial affairs at the time of separation. It is therefore deemed to be a contentious issue and as a result, both you and your partner should seek independent legal advice on its terms and implications.

10. Does having the Agreement mean the marriage is bound to fail?

No – Whilst it is hoped that the terms of the Agreement will never have to be implemented, it is a fact that over a third of marriages in the UK end in divorce. The Agreement should be seen as a way of assisting you in such unfortunate circumstances to ensure that divorce does not lead to costly litigation. The Agreement is a private document and its terms and existence can remain confidential between you and your partner.

Divorce – What are the main concerns that people have when initiating divorce proceedings?

information is key in managing the process of Divorce.

1. When can I issue my Divorce Petition?

The earliest a divorce petition can be issued is 12 months and a day from the date of the marriage. It is possible to have an annulment of the marriage within 12 months though only in very specific circumstances. Although 12 months can be the shortest time to issue, a petition at this time can only be made on the grounds of adultery or unreasonable behaviour.

2. What reasons can I rely on to issue my divorce?

There is only one ground for divorce - that the marriage has irretrievably broken down. In order to prove that the marriage has irretrievably broken down, you will need to provide evidence on one of five factors:

- i) Adultery (by your spouse)
- ii) Unreasonable Behaviour
- iii) Desertion
- iv) Two Years' Separation with Consent
- v) Five Years' Separation

3. What's required to issue the divorce?

In addition to a divorce petition, the Court will also require you to file a marriage certificate and the Court's fee of £550. The marriage certificate needs to be the original, or if it is

lost, can be a certified copy received on request from the venue at which you marry (a small fee is often incurred to purchase a replacement). In certain circumstances you may be entitled to a fee exemption from the Court dependant on your employment status.

4. What happens after I've issued my divorce petition?

Once the divorce has been issued, a copy is sent to the Respondent together with an 'Acknowledgement of Service'. This needs to be completed by your spouse and be returned to Court. Should your spouse not return the Acknowledgement of Service to Court we would suggest seeking further legal advice as alternative methods of service may have to be considered.

5. Will the petition be defended?

Although it is possible for your former spouse to defend your divorce petition, in practice this happens very rarely. If it is defended, we would again suggest you seek legal advice immediately. One method to prevent the divorce being defended is to discuss the petition with your former spouse first so they can confirm they are agreeable to the facts of the petition before its issued.

6. Will I have to attend Court?

Provided the divorce is not defended, there would be no requirement for you to attend Court. This is true for both the



If you have any further queries about Divorce proceedings then please contact our Family Lawyer Amanda Worger on 01274 519 352 or email Amanda on:

Amanda.worger@awbclaw.co.uk

Pronouncement of the Decree Nisi and Decree Absolute.

7. Decree Nisi & Decree Absolute: What are they?

Once the Acknowledgement of Service is received, an application for the Decree Nisi can be made. The date for the Decree Nisi will be set by the Court once it has certified you have sufficient grounds for divorce. 'Nisi' is the Latin word for 'if', demonstrating the provisional nature of the decree. From the date of the Decree Nisi you must wait 6 weeks and 1 day before an application can be made for the Decree Absolute. Only once the Decree Absolute is attained will your marriage have been brought to an end.

8. Should I apply for the Decree Absolute straight away?

It depends! We would always recommend that you seek legal advice before the granting of the Decree Absolute, particularly if there is an ongoing dispute relating to finances of the marriage.

Granting it can have a significant effect with respect to inheritance rights or your former spouse's pension.

9. Does the divorce deal with financial issues or arrangements for our children?

No- traditionally, these were referred to as ancillary matters. They both require separate applications if they are to be finalised or determined by way of a Court Order.

10. What will be the cost of divorce?

At AWB Charlesworth we offer a fixed fee for an undefended divorce of £600 + VAT and the Court's fee. We would also consider and advise on whether it is possible to recover part or all of the costs from your former spouse.



****Fixed Fee Preliminary Consultation****

The most important thing is that you choose a lawyer that is right for your case. It is essential that you feel comfortable with and confident in your representative.

Before you commit to anything, we will offer you a preliminary consultation for a fixed fee of £60. We will help you understand your options and provide sensitive, impartial and honest advice for you to make choices.

'Thank you so much for your kindness, help and support at a very difficult time. Will be in touch with regards to consulting with your Private Client team about a Power of Attorney.' March 2016

AWB Charlesworth Solicitors aim to make life easier for you. Our team will provide you with expert legal advice for your personal life and your business presented clearly and efficiently. Each with their own specialist skills, our lawyers provide friendly local support backed by skilled expertise in a comprehensive range of legal services.

- ◆ Commercial Law
- ◆ Employment Law
- ◆ Dispute Resolution
- ◆ Commercial Property
- ◆ Residential Property
- ◆ Family Law
- ◆ Wills, Trusts and Probate
- ◆ Agricultural Law
- ◆ Inheritance Tax

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MEET OUR FAMILY LAW TEAM

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