

Statute

Section 25 of the Matrimonial Causes Act 1973

Case law / background

- **Radmacher v Granatino** [2010] UKSC 42
- The Supreme Court held that “the Court should give full effect to a nuptial agreement that is freely entered into by each with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement” and there was “no material distinction between an ante-nuptial agreement and a post-nuptial agreement” [§57]
- **HD v WB** [2023] EWFC 2 Peel J reviewed Radmacher
- **WC v HC** [2022] EWFC 22 Peel J: ‘I do not need to look beyond Radmacher v Granatino’

Not binding, but upheld

Recent examples include **HD v WB** [2023] EWFC 2, **MN v AN** [2023] EWHC 613, [2023] 2 FLR 756, **Backstrom v Wennberg** [2023] EWFC 79. Contrast with **S v H** [2020] EWFC B16 in which HHJ Booth disregarded the agreement because of lack of legal advice and insufficient understanding.

Reform?

‘Matrimonial Property, Needs and Agreements’ Law Commission February 2014 recommended the introduction of Qualifying Nuptial Agreements (QNAs) via legislation

‘Financial remedies on divorce and dissolution - A scoping report’ Law Commission 18 December 2024 Ch 7

Drafting

Cover *all* points

- PNA as one document, written advice in tandem
- Point the document into a more limited number of focal points
- The value of schedules
- Beware of templates – review every line, every time
- Collaborate with the other lawyer(s) where possible
- If in doubt, broad and clear is better than specific and arguable
- Might not be able to fix all problems / cover all eventualities
- Future amendments and additions – template cover sheet
- Keep a clear record. Label everything, date everything
- Include reference to other advice and assistance received?

Fairness

a. Procedural Fairness

i. Appreciation of the implications/disclosure

BN v MA [2013] EWHC 4250

parties will have needed to make mutual disclosure per Mostyn J.

CMX v EJX [2022] EWFC 136 – neither lack of independent legal advice or full disclosure fatal per Moor J.

TRNS v TRNK [2023] EWFC 133 – citing Radmacher ‘important ... that each party should have all the information that is material

to their decision’ and failure to pursue lines of enquiry does not absolve other party from duty to provide FFD’ per Cohen J.

HD v WB [2023] EWFC 2 – W should not be prejudiced by H not having pursued lines of enquiry. Legal advice ‘desirable but not essential’. H had ample opportunity to take advice. Lack of legal advice not vitiating, or ‘fatal’ per Peel J.

BI v EN [2024] EWFC 200

- The parties understood and acknowledged by their actions and attitudes that they elected the *séparation de biens* regime to apply to their marriage. They had all of the information that was material to their respective decisions; were fully aware of the implications of the agreement; and understood and so intended that the agreement should govern the financial consequences of the marriage coming to an end.

ii. Undue pressure (falling short of duress)

Pierburg [2022] EWHC 2701 – Was driving force not supplicant cowed into submission, no undue pressure.

MN v AN [2023] EWHC 613 – Pre-nup as condition of marriage not undue pressure and cooling-off period post ‘mother of all arguments’.

HD v WB [2023] EWFC 2 – PNA signed on day of wedding. No rule re: 28 days but best practice.

b. Substantive Fairness

Needs

Cases where the court has been willing to depart from a nuptial agreement that does not meet needs include **Luckwell v Limata** [2014] EWHC 502 (Fam) and **AH v NH** [2024] EWFC 125 (Peel J) in which **Cummings v Fawn** [2023] EWHC 830 is considered. In Cummings no real predicament of need allowed, instead ‘bookends’ against backdrop of **CMX v EJX** [2022] EWFC 136 and **Brack** [2018] EWCA Civ 2862.

Challenging Nuptial Agreements

Procedure: Applications and strategies

Notice to Show Cause

Crossley application to limit disclosure and issues, truncate procedure

Court’s discretion to conduct e.g. FDR see **FN v AC** [2019] EWHC 3806 no inflexible rule

Maintenance Pending Suit?

Offers

NCDR

Key Contact



Sophie Hill
Barrister
Coram Chambers

Sophie.Hill@coramchambers.co.uk