



Viewpoint

- Would You Like a Robot to Draft Your Will?
- How Legally Binding Are Pre-Nuptial Agreements?
- Buying or Selling a House? Meet Your Local Solicitor

Welcome to
the Summer
2019 Edition
of Viewpoint



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Whilst the forecast for Brexit continues to look gloomy and no doubt, further rough winds will shake the darling buds of May, summer beckons, heralding longer days and shorter nights to lighten the step and lift the spirit.

One direct result of the prolonged Brexit debates has been to delay a bill, which sought to close a legal loophole that means a Will is automatically revoked by marriage. We will keep you updated on this important area of legal reform.

Family law has been in the legal spotlight, with the Justice Secretary's announcement in April, that divorce was set to become easier and quicker in the future, (from a legal perspective at least). Our website has more detail on this.

Whereas singer, Adele's announcement that she is separating from her investment banker husband, means that if there is no pre-nuptial agreement in place, it is possible that half of Adele's £140 million fortune will go to her ex-husband on divorce. You will find our detailed analysis of pre-nuptial agreements on page 2.

I am delighted to report that our family team continues to go from strength-to-strength as we welcome Associate, Melita Bown and Solicitor, Katie Hanson to our Bristol office.

Meanwhile, thank you to those who took part in our survey on digital Wills, which featured in our autumn edition. The survey was picked up on by several publications, including *The Daily Telegraph*.

We have captured the key points from the survey findings in this edition.

Would You Like a Robot to Draft Your Will?

Technology is changing the way in which we work and live and, increasingly, the use of artificial intelligence (AI) is impacting the way in which legal services are delivered.

In our recent survey on whether robots should draft Wills, seven out of ten of you said that you did not want robots to replace solicitors; the results of which were featured in *The Daily Telegraph*.

It was clear from the survey that many of you were understandably cautious about the use of AI, with more than 70 per cent of you saying that you would not trust a Will drafted by a robot, and nearly 90 per cent of you saying that you would not want a Will drafted using AI alone without any human input.

Most People Value Human Contact

One respondent commented that they wanted "*less technology and more face to face dealings*", whilst another said "*human advice and input is essential*".

However many of you said that you would be happy for some AI to be used; as one of you put it: "*Happy for AI involvement but professional, human contact and discussion needed for overview and estate planning.*"

Our survey found in general terms, that whilst individuals might not be ready to have a Will drafted using AI, you gave a cautious welcome to other types of technology. For example, 52% of you said you would like to have a digital Will, which is accessible online. At present, a valid Will must be in writing (ie in hard copy) and strict formalities must be followed in relation to the Will's execution.

However it was clear that many of you felt that formalities were still important with fewer than 5% of you agreeing that it should be possible to make a Will using a text message. Not so in Australia, where a recent case (*Re Nichol*) allowed an unsent text message to be accepted as a valid Will.

Back to Our Survey

Many of you thought that creating a Will by email was a good idea, with 48% of you saying so. However, the possibility of fraud was a concern in relation to online Wills and nearly 60% of you said you would be more concerned about fraud with a digital Will.

How May the Law Change in This Area?

Most of the law relating to Wills dates back to the *Wills Act 1837* and the Law Commission has stated that the law needs to be modernized to take account of the changes in society, technology and medical understanding that have taken place since the Victorian era.

The Law Commission is currently reviewing the law relating to Wills and looking at whether the formalities surrounding Wills should be relaxed. A public consultation was launched in July 2017 and ran until November 2017. The report has not yet been released but we will keep you updated on any key developments in this area.



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How Legally Binding Are Pre-Nuptial Agreements?

You could be forgiven for thinking that if two adults make an agreement before getting married, about what would happen if they divorce in the future, they should be held to that agreement. But you would be wrong to do so.

The Court of Appeal has recently found in the case of *Brack v Brack* that three pre-nuptial agreements signed by Mr and Mrs Brack before their marriage were unfair. As a result, the case has been sent back to the High Court to reconsider what share of Mr Brack's £11million wealth should be awarded to his wife.

What Did the Agreements Say?

Mr and Mrs Brack were a Swedish couple who had been married for 18 years and had two children. Mr Brack was a racing car driver and was wealthy, but Mrs Brack was not.

The pre-nuptial agreements that the couple made before their marriage provided that each party would keep their own assets if they divorced. The couple had also agreed that no financial maintenance would be paid to Mrs Brack and that Swedish law would apply in the event of any disagreements about their property on divorce.

The effect of these three agreements were that Mrs Brack would keep £500,000 on divorce whilst her husband would be left with over £10m.

What Did the First Court Say?

Despite the agreements, Mrs Brack made an application for the court to consider her financial entitlement after the divorce. The judge questioned the fairness of the agreements stating “*I do not believe it to be fair, after a marriage of this length and with these contributions...for the wife to be left with almost nothing*”. However, he found that Mrs Brack had understood that she would be bound by the terms of the agreements she had signed with her husband and so the judge made an order, which was limited to meeting Mrs Brack's financial needs.

What Did the Second Court Say?

Unsatisfied, Mrs Brack took her case to the English Court of Appeal arguing that there was no valid reason why the court could not make further financial provision for her and that the judge was wrong to restrict her award to her strict financial needs.

The Court of Appeal heard her case in November 2018 and ultimately agreed with Mrs Brack's arguments. It made it clear that the existence of a valid prenuptial agreement should not necessarily lead to the first court limiting an award to her strict financial needs. The existence of an agreement is only one of the factors that the court should consider when exercising its discretion, and the first court was wrong to have not taken into account all the factors in the case.

Mrs Brack's case will now be returned to the original judge to consider what further provision should be made for her from her husband's fortune. However, the Court of Appeal judge still urged the parties to try and reach an agreement outside court.

What Does This Mean for Couples Considering a Pre-Nup?

This case emphasises the need for pre-nuptial agreements to be properly drafted, with thorough consideration being given to whether the terms of the agreement are fair for both parties, whatever the length of the marriage. This is particularly important for international couples when agreeing which country should deal with any future divorce, and legal advice should be taken well in advance of the marriage.

The case also demonstrates that even if there is a valid pre-nuptial agreement in place, the court still has ultimate discretion to make alternative orders which can override the agreement by taking into account all the relevant factors in a case. A note of caution though should be sounded, as a court will usually only interfere with a pre-nuptial agreement if this is required to meet a party's overall financial needs.

Will the Law Change in This Area?

The story may not end with *Brack v Brack* though, as the power of the courts to override the enforceability of pre-nuptial agreements is currently under the spotlight.

Baroness Deech's *Divorce (Financial Provision) Bill* went through the committee stage in the House of Lords recently, which includes a provision that pre-nuptial agreements should be treated by the courts as binding, provided that certain conditions are met. Those conditions do not require the court to find that the terms of the agreement are fair. The bill, if passed, would take the court's power away to interfere with a pre-nuptial agreement and provide more certainty for couples entering into these sorts of agreements.

Would That Be a Good Thing?

For couples wanting certainty about the future, being able to rely upon the enforceability of a pre-nuptial agreement has obvious attractions. However, a practical problem with these types of agreements is that time does not stand still, so what may seem fair before a couple marry may appear less so, many years later, often after children have been born and raised. Particularly if one of the couple has given up work or reduced their working hours to help care for the couple's children.

How We Can Help

As things stand, the court has the power to override the terms of a pre-nuptial agreement, so it is vital to receive specialist advice if you are drawing up a pre-nuptial agreement so that you avoid unnecessary pitfalls and create the best agreement for you. With the prospect of possible change in the law on the horizon, it is particularly vital to seek specialist advice.



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Buying or Selling a House? Meet Your Local Solicitor

Asia Qureshi is a Solicitor in our Residential Conveyancing team, based in the Birmingham office. She answers our questions below.



Everyone has an opinion on property, but what misconceptions do people have about conveyancing?

Many people feel that the conveyancing process is simple and can be done cheaply. Buying a house is one of the biggest investments most people make, so the legal process should not be rushed.

When the process is rushed it is likely that attention to important details will be missed which could end up delaying things in the long run and costing the client substantially more in legal costs.

I always try to give clients a realistic timescale. This way I can complete all necessary checks comfortably without letting the client down by giving them an unrealistic speedy timescale.

What advice would you give someone searching for a conveyancing solicitor?

Always choose a conveyancing solicitor based on the strong reputation of the firm.

A personal recommendation is ideal.

How best can someone prepare before coming to see a solicitor to buy or sell a house?

When selling a house make sure you have as much information as possible about the property, including details such as joint ownership, or landlord/managing agents details if leasehold. Is there a mortgage on the property? Having these details can help speed up the initial stage of the transaction. However, it is not a problem if you do not have this information as the conveyancing solicitor can obtain it.

When buying a house, ensure that the property is inspected properly and a survey is carried out. A lot of people don't appreciate that a conveyancing solicitor does not physically inspect the property and can only work from the information provided by the seller, the client, and the client's survey report about the physical state of the property.

What part of the work do you most enjoy?

The joy of giving a client the news they have been waiting for for weeks, either to say "the keys are ready for you to collect" or "sale proceeds have been transferred to your account".

Tell us something about yourself and why people should contact you?

I have been a conveyancing solicitor since 2004 and have experience of all sorts of transactions. All of my clients get a very personal service, lots of whom are repeat clients. I have been working with some clients for over 12 years.

What common pitfalls do people make when buying or selling a house?

Accepting unrealistic deadlines set by the other side which can lead to unnecessary extra costs and pressure on all parties involved.

How is the market performing?

Based on my personal workload, I would say the market is still performing well. I deal with properties based all over the country. Although some of the very high value properties are taking longer to sell.

If you weren't working in law, what would you do?

I have been doing this job for so long which I very much enjoy. However, if I had to make a change, I would like to run a café.



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Find Out More About Our Services

Please contact Michelle Rose if you would like to receive a copy of the below:

- *Lasting Powers of Attorney* - losing mental capacity could happen to anyone, at any time
- *A Guide for Attorneys* - learn more about your duties as an attorney
- *Family Matters* - guidance on matrimonial and family issues
- *Five Good Reasons to Review Your Will*
- *Ten Good Reasons Why You Should Choose VVW to Prepare Your Will*
- *Private Wealth Planning for You and Your Family*

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