

Is a post-nuptial agreement legally binding?

If parties decide to later divorce/enter dissolution proceedings, post-nuptial agreements are not legally binding, so a Court is not bound by the terms of the agreement.

However, post-nuptial agreements can be persuasive for a Court if certain conditions are met. The key consideration for a Court is that the court should give effect to a nuptial agreement that is freely entered into by each party, with a full appreciation of its implications unless, in the circumstances prevailing, it would not be fair to hold the parties to the agreement.

Post-nuptial agreements: What factors do the courts consider?

Factors that may help an agreement be more persuasive for the Courts: If both parties have received independent legal advice before entering the agreement If both parties have taken part in full financial disclosure before entering the agreement – essentially allowing both parties to say that they have had as much information as possible to make the decision as to whether to enter into the agreement If the terms of the agreement are fair Neither party was pressured or forced to enter into the agreement Both parties intend to be legally bound by the terms of the agreement.

Another important consideration that must be taken in account is whether there are any children. Children under the age of 18 are a top priority for a Court in ensuring that any financial agreement put in place does not prejudice the children in any way. Consideration must also be had when entering into the agreement even if there are no children at that time but allowing for a review clause to review the terms of the agreement if this position changes.

The parties' circumstances at the time any agreement is being considered by the Court are taken into account so if either parties' position has changed considerably since entering into the agreement, this may affect whether the Court will uphold the terms, or if they feel it is now a potentially unfair agreement.

Do I need a post-nuptial agreement?

It is not necessary to have an agreement in place; however, it can help provide clarity for the parties should they later decide to go their separate ways. Should I get a post-nuptial agreement?

If there are certain assets that you want to try and safeguard, or you have children from a previous relationship that you would like to protect, then entering into an agreement of this nature may be particularly useful.

If you would like any further information regarding the above or would like to book an appointment, please do not hesitate to contact the Family Law Department on 01384371622 or email post@wjclaw.co.uk and we will be more than happy to assist you.