

The background of the top half of the page is a black and white photograph of the Barr Ellison Solicitors building. The building is a multi-story stone structure with a prominent white balcony on the second floor, featuring a decorative balustrade. The name 'BARR ELLISON SOLICITORS' is inscribed in gold lettering above the ground-floor entrance, which is supported by several white columns. A black metal fence runs along the front of the building. A parking sign is visible on the left side of the building.

BARR ELLISON SOLICITORS

## USING A NUPTIAL AGREEMENT TO PROTECT A PERSONAL INJURY AWARD

A pre nuptial agreement is a formal deed or agreement entered into before a marriage by a couple to set out in the event of a divorce how they wish their assets and income to be dealt with.

A post nuptial agreement is the same thing achieving the same outcome. The term 'post nuptial' simply means it is drawn up once a couple have been married, not before.

It can be very important to enter into such an agreement when a large amount of money has come to one person as a result of a personal injury award as part of the calculation of that award will have been to address the needs of the injured party, in the medium and sometimes long term. Setting out in a written agreement how that award should be treated on divorce can, as far

as possible, ensure that resource remains available to the person who received it.

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If however the couple are not in agreement, they can take their claims to a Judge and here the existence of a pre or post nuptial settlement can

restrict how the Judge might deal with any assets which are covered by the agreement.

A pre or post nuptial agreement is not wholly watertight. It does not always work to bind the Judge to follow what has been set out in the agreement. However it is worthwhile having an agreement in place for the following reasons.

1. There is the expectation that, if the provision in the pre or post nuptial agreement is fair and has been regularly reviewed by the couple and recorded as fair, that the court will allow the terms of the agreement to stand even if, had there not been an agreement, the court would have made a different order.

2. The cases seem to show that even where the courts have moved away from all of the provisions of a pre or post nuptial agreement, their award to the person seeking to back out from the terms of the agreement is usually lower than would otherwise have been the case. The existence of the pre or post nuptial agreement often reduces the provision that is made.

3. The existence of a pre or post nuptial agreement can discourage litigation overall. If the couple have agreed the provision that they each feel is fair, then there is no reason for either of them to want to litigate and seek something different. The court is only involved to set aside all or some part of an agreement if one party asks it to, it does not come in of its own accord to challenge the terms agreed.

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A pre or post nuptial agreement has to be drawn up by lawyers and each person has to have independent legal advice, to understand what their claims might have been so they are fully aware if they are accepting less than they might otherwise receive, if there were a divorce.

There are additional rules in respect of a pre nuptial agreement to prevent one person entering into it under inappropriate pressure, very close to the wedding. It is important to speak to a solicitor in good time (at least 3 months in advance and ideally more) about drawing up a pre nuptial agreement as it will carry far less weight if it is completed very close to the wedding.

In reported cases where there has been a substantial personal injury award, the courts have shown that they are still prepared to take the capital awarded as part of the pot available for distribution so it is particularly important to record any agreement between a couple that it will remain with one person to address their needs, in a pre or post nuptial agreement.