

## Baroness Deech calls for pre-nuptial agreements to be legally binding

One of Britain's leading lawyers is calling for pre-nuptial agreements to become legally binding.

Baroness Deech, who is Professor of Law at Gresham College and chairman of the Bar Standards Board which regulates barristers, believes our divorce laws need to be reformed to reflect the changes in our society.

She believes that in particular, the law relating to pre-nuptial agreements, or pre-nups as they are known, needs to be clarified.

At the moment, courts will take them into account if they are considered to be fair and properly drawn up but they are not necessarily binding. This is in contrast to many other countries where the contracts are enforceable.

The Law Commission is carrying out a review to examine the enforceability of pre-nups. In a statement it said: "There is a view that the fact that

pre-nuptial agreements are not currently binding may deter people from marrying or entering into civil partnerships in some cases."

However, the Commission is not expected to publish its report until 2012.

In the meantime, there has been an increasing tendency for courts to give more weight to pre-nups, as in the case earlier this year of German heiress Katrin Radmacher and her former husband, Nicolas Granatino. Before they married they drew up a pre-nup saying that he would not make a claim on her money if they ended up divorcing.

Mr Granatino challenged the agreement when the couple divorced but the Court of Appeal ruled that it should be upheld with only a few modifications. In giving his judgment after the hearing, Lord Justice Thorpe said it was becoming "increasingly unrealistic" for courts to disregard pre-nups.

The Court of Appeal ruling will influence future divorce settlements with the presumption being that pre-nups should be enforced unless there are compelling reasons to doubt their validity. Such doubts might arise if one party signed without getting proper legal advice or if someone failed to disclose all their assets when the contract was being drawn up.

However, Baroness Deech believes it is for Parliament not the courts to clarify the situation.

We shall keep clients informed of developments. In the meantime, couples who draw up pre-nups can be more confident than ever before that their wishes will be followed in the event of a divorce.

Please contact **Claire Webb** (023 9226 5251) or **Claire Duffy** (023 9249 2472) if you would like more information about pre-nups or any aspect of matrimonial and family law.

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