

# Delays to ‘Divorce Day’?

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In previous years, the first Monday of January has been infamously known as ‘Divorce Day’, when divorce lawyers supposedly see a spike in separation enquiries. However, 2024 may be bucking the trend, as research shows that cost-of-living pressures are delaying divorce. Citywealth examines the financial impacts of divorce and speaks to industry experts to understand what individuals can do to protect themselves as effectively as possible in this area.



New research from Legal & General Retail (L&G) has revealed that 272,000 people (13% of the survey pool) have delayed their divorce due to cost-of-living pressures. The report found that, whilst money played a role in many people’s decision to delay separating, this was particularly the case with divorces that have happened since 2020. Additionally, L&G found that, in 40% of divorces, people felt the divorce was not equal financially and fell in the favour of one party. Despite this, only 7% of respondents will consult a financial advisor as part of the divorce process.

Responding to the research, Partner at Dawson Cornwell and Adviser at the charity Dad’s House Family Law Clinic **Simon Bruce** said: “Millions of people in the UK cannot possibly afford legal advice in a divorce. Legal advice is typically a luxury for the more affluent. Because of this, the majority of people that find themselves in the unfortunate situation of

separation have no idea about their rights, and are therefore much less likely to be able to discern what may be fair in the eyes of the court... It is also not a surprise that people do not get financial orders including clean break settlements. Many of my pro bono clients have no money to give, and therefore do not see the point of obtaining a financial consent order, which dismisses the financial claims of both parties. Even if they were to want one, these orders will for the most part only be drafted by solicitors, as they are technical documents which are out of their reach.”

“In the majority of these cases, the absence of a clean break settlement is irrelevant as it is incredibly rare that, following a divorce between people with no money, one of them goes on to win the lottery, or inherit a fortune, or found a successful business. However, these cases do come around every now and again. Advice and understanding at the point of divorce can help prevent the shock of an ex-partner trying to obtain a windfall years after the event. We are doing some of these cases now, and they are always intrusive and interesting. And it’s obviously a good idea to prevent a difficult part of someone’s life from later being dredged through the courts – especially at a time when these cases are being opened up to all journalists from 29 January 2024, following the launch of the reporting pilot for Financial Remedies Court proceedings.”

**Russell Bywater**, Partner and Head of Matrimonial at Dawson Cornwell, also responded: “Macro economic factors such as the cost of living crisis can certainly make a spouse think twice about separating. Divorce can be economically challenging at the best of times. That being said, harsher economic conditions can put pressure on relationships that already have underlying issues and tip them over the edge into breakdown... It is very rare that a spouse can upscale their financial circumstances on divorce, but this certainly doesn’t stop some parties from trying. However, it is a social truth that marriage can generate economic relationship disadvantage to one of the parties who has sacrificed their economic independence which, on divorce, needs ameliorating by maintaining an ongoing economic nexus, at least for a period of adjustment.”

## **Financial literacy and international complexities**

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Whilst UHNW individuals are less likely to be impacted by cost-of-living pressures in this way, it is still imperative that planning and processes are put in place to mitigate the financial impact of a divorce.

**Jenny Judd**, Executive Director of the U.S. Family Office of London & Capital, highlights the importance of keeping one’s financial literacy up to scratch. She said: “The financial world can be full of jargon, but it is important that you now get to grips with the basics. Investing is an important part of securing your financial future and understanding how it works is very useful. Everyone is familiar with cash, it’s flexible and can be easily accessed through a personal bank account, however, if the rate of return is lower than inflation the value of your capital will be eroded in real terms. Investment portfolios designed to grow over the longer

term will typically include a blend of stocks and bonds and can be tailored to your personal risk profile. We suggest working with professionals who will take the time to explain the terminology, so you feel empowered to make the right decisions. You shouldn't feel intimidated by your advisers."

Additionally, Judd touched on the international element that affects many UHNW couples. On considering the impact of internationality, she said: "The complexities and planning of a divorce are increased when you have assets in more than one jurisdiction. It is important that a joined-up approach is taken, working with a team of professionals and ensuring the many potential tax pitfalls when managing worldwide assets are taken into consideration. You will need to consider currency and tax in more detail and ensure the right people are managing your assets so your goals can be achieved without the stress of an unexpected tax bill."

## The importance of prenups

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It is clear that divorce can be make-or-break when it comes to one's finances, no matter how much you have in the bank. Citywealth spoke to industry professionals to uncover what can be done to mitigate financial risk in this area.

Prenuptial agreements, better known colloquially as 'prenups', have been the bread and butter of financial planning for those UHNW individuals looking to tie the knot. We asked the professionals how necessary they are, what protections they can afford, and what the most common mistakes people make are when getting one drafted.

**Jessica Reid**, Partner at Dawson Cornwell, emphasised the importance of and protection afforded by such an agreement: "Prenups are essential wedding preparation for those embarking on a second marriage with pre-acquired assets to protect, or those with significant pre-acquired and or inherited assets or future likely and known inherited assets to protect. They are absolutely necessary for high net worth and ultra-high net worth individuals. They afford protection in a number of ways – the law has developed such that if the pre-nuptial agreement (PNA) is properly entered into, and the result meets need and is fair in the circumstances of the case, it WILL be upheld. The parties entering into it are presumed to be bound by it, and that is a high hurdle for one to later try and wriggle out of. My firm's successful case of *MN v AN* [2023] EWHC 613 (Fam) acting for a husband who held his wife to the terms of their PNA, reiterates the weight that pre-nuptial agreements have on the parties, and makes clear that without such a PNA having been entered into, the wife's award would have been far more generous – so pre-nuptial agreements ensure you can limit a future settlement on divorce from what otherwise may have been awarded. They are clear ways of documenting exacting what someone had at the time of entering into the marriage."

“The most common mistake people make when getting one drafted is not leaving enough time pre the wedding to ensure it is signed, sealed and delivered – they must be signed at least 28 days before the wedding, and that is rarely the case – client’s usually contact you around then and expect it to take a day or two to do! If there are matrimonial property regimes being entered into where the marriage takes place, as is common for our Italian and Spanish clients, then further time for international considerations of the inter-play between English and European law must be taken into account. The other mistake is being unrealistic as to the cost of producing a bespoke negotiated agreement – they are not cheap, for the reason if done properly, full weight will be applied to it and it saves tens or hundreds of thousands of pounds down the line litigating a divorce settlement. They should include a detailed consideration of what one’s future career/earning prospects might be like, and what any future inherited assets might include, as well as proper consideration to how any children’s needs will be met, including the payment of school fees, use of trust funds etc.”

**Jake Mitchell**, Associate Solicitor at [Stowe Family Law](#), echoed the importance of a prenup to protect pre-matrimonial wealth, but noted that they may not necessarily protect what is accrued during the marriage. On common mistakes, he said: “The most common mistake I see is that they can be drafted almost too well! If a prenup is drafted and it leaves the economically weaker party without enough to stand on their own two feet at the end of the marriage, there is a high likelihood the court will pay it scant regard. You should include provision for future events – such as the birth of a child – and an agreement that once a certain time has elapsed (say 5/10 years) then a meeting will be held about a redraft. Consider entering into a second, very similar, agreement after the marriage too (known as a post-nup) – whilst it is not the most romantic thing to discuss on your honeymoon, it can avoid the later accusation that a person was placed under duress to sign; why would they sign again after the vows are made?”

## **Post-divorce: what now?**

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And what are the options and services available that divorced parties may want to consider once the divorce papers have been signed? Mitchell said: “We often see that parties benefit from a divorce coach – these are specialists in helping you plan the next steps in your life now that your family is so different. Depending on the temperature of the separation, co-parents may also wish to engage in a session or two of mediation to agree a co-parenting agreement with the aim of keeping child arrangements disputes out of the court.”

Reid added: “I would usually signpost them to the relevant people who can help post-divorce, meaning:- counsellors, family therapists, IFA’s, wealth advisers, pension experts (to deal with implementation of a pension sharing order) etc. The best solutions are to involve these third parties early on in the process, it is too late if it is after the papers are signed – as they have no input at that end to shape the outcome! I often think once the finances are resolved, the

tension is removed somewhat when it comes to co-parenting and the arrangements for children. I would always advise a client to have a great support network of friends and advisers, and to have focus and interests outside of work and their family life too.”

## **Clarity on co-habitation**

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Whether financial pressures will continue to delay, or even lower, the rate of divorce remains to be seen. With no-fault divorce coming up to its second year of implementation and uncertainty being the new certainty, we asked what our contributors foresee to be the next big change in divorce law. Co-habitation seemed to be the clear answer.

Reid said: “The law is ripe for reform for cohabitants, a growing number of people living together, raising families together but having little to no legal protection. There still needs to be a distinction with those choosing to marry, but the law needs some essential reform and the public need better educating on how best to protect themselves when cohabiting, including the better use of declarations of trust when purchasing properties together and or recording those later discussions about their interests in a property later down the line.”

Mitchell said: “To be blunt, there is no specific ‘cohabitation law’ but the world has changed and the government are being lobbied to produce protections for non-married couples. There is not, and has never been as far back as I have studied, a common-law man and wife. But there is a move to consider whether unmarried couples should share one another’s assets if they split up. I can foresee a rise in ‘cohabitation agreements’ similar to pre-nups.”

*Thank you to all of the professionals who contributed to this article.*