



When love breaks down, whether for ordinary people (left) or celebrities like Heather Mills (right), and Thierry Henry (bottom) it is crucial to know the law

Pictures: GETTY/REUTERS



'If divorce is inevitable, avoid trying to hide your assets or painting a less than frank financial picture'

Divorce is heartbreaking but here is how to avoid the financial woes

If your marriage is over, make sure you know where you stand legally, writes **Anna Wagstaff**

► Agenda

THIS year has seen countless high-profile, big-money divorces hitting the headlines. The McCartneys' split, the Court of Appeal's decision in the case of insurance magnate John Charman and footballer Thierry Henry's divorce proceedings have seen enormous sums of money in dispute.

In July, the Law Commission recommended that cohabiting couples should also be entitled to apply for financial relief upon separation, although not all would be eligible.

COHABITEES' CHARTER

Save for those with children, the Law Commission proposed that a couple must have lived together for a minimum period (somewhere between two and five years) before they could make a claim.

The proposed scheme would not include ongoing maintenance payments and methods used to assess claims would be entirely different to divorce.

Unlike married couples, cohabitants could "opt out" of the scheme altogether with a written agreement to that effect.

The recommendations will require legislation. The ball is in the government's court, and giving legal rights to cohabiting couples has always been a political hot potato. Yet it is possible that, in the future, a wealthy partner could be vulnerable to hefty financial claims without ever having walked down the aisle.

Shying away from matrimony and living

with a partner instead may no longer mean your assets are safe. If you've built up a tidy nest egg, is living alone forever the only way to protect it?

PRE-NUPTIAL AGREEMENTS

For those contemplating marriage, pre-nuptial agreements (while not legally binding) can offer some protection.

Provided it can be shown that the agreement is fair, each party has had independent legal advice and provided full disclosure of assets, the court is likely to give it considerable weight.

If you remain wary of marriage but still want to live with someone, then signing a cohabitation agreement will also offer you some protection.

It will enable you and your partner to record your intentions relating to property and finances generally.

Any declaration on how a property is to be held should also be recorded in a deed of trust. Again, you will each need independent legal advice and to provide full disclosure of assets.

Without such an agreement you will be reliant upon a "patchwork" of complex legal rules (property, trust and contract) which may lead to expensive litigation and result in your partner receiving an interest in your property.

ALL UP FOR GRABS

Arrangements for provision for any children would still be subject to the discretion of the court.

For those who are married, careful financial planning will not necessarily put assets beyond the reach of the courts. This year,

Charman, chief executive of Axis Capital Holdings, tried to argue that his off-shore "dynastic" trust should be excluded from the marital pot but the Court of Appeal upheld an earlier award of £48m to his former wife.

If divorce is inevitable, avoid trying to hide your assets or painting a less than frank financial picture.

If the court believes you are attempting to put assets beyond its reach, it will freeze them.

WHERE AND WHEN?

England is well known for being one of the most generous jurisdictions for the financially weaker party.

If you have more than one habitual residence or have recently moved countries, it pays to check out how the finances will be dealt with in each of the different jurisdictions. Timing will be key.

An early, informed decision can make a significant difference to the level of provision you have to make.

Jim Moore, founder of property education group Inside Track, and his wife Kim spent more than £1.5m simply arguing over whether their divorce should be heard in England or in Spain. It is difficult to see this as anything other but money wasted.

And finally, make sure you find the right lawyer. Relationship breakdown can be complex and an experienced family lawyer should be able to save you time and be more cost effective in the long run.

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