



When taking a new partner, finance can be part of romance: from left, Charles and Camilla, Jude Law and fiancée Sienna Miller, Charles Saatchi and Nigella Lawson.

PA/Reuters/Matrix

With this pre-nuptial, I thee wed ...

Many couples are playing it safe the second time round, says Andrew Don

IT IS NOT unusual for people whose first marriage ended acrimoniously to have a touch of the collywobblers second time around. Walking down the aisle again is probably way off the agenda for divorced people whose spouses took them for every penny.

But Cupid is not rational and it can be all too easy to repeat past financial mistakes when the love bug strikes. Ten per cent of break-ups in 2003 were between couples who had both divorced before, according to the latest figures from the Office of National Statistics.

So what can you do to ensure your new partner will not fleece you if your marriage founders again?

Peter Jones, managing director at national advisory firm DTE Risk & Financial Management, advises getting a solicitor to draw up a pre-nuptial agreement: 'This will help to make sure that during your lifetime your wishes are respected.'

The case of *M v M* (Prenuptial agreement) [2001] set out the following principles for drafting a pre-nuptial:

- Both parties must disclose their financial positions and receive independent legal advice
- the agreement must be signed 21 days or more before the marriage ceremony
- there must be provision made for the review of the terms agreed after a period.

Helen Marriott, family law partner with north west law firm Brabners Chaffe Street, says it is not just the likes of actress Catherine Zeta-Jones who have pre-nuptial agreements. They are also catching on among ordinary couples.

'We've seen a dramatic rise in demand for

pre-nuptials,' she says. 'In particular, they are popular for second marriages, partly because people tend to be a bit more wary but also because by that time they are generally better off and have more to lose.'

People often want agreements in place because there is a big disparity in wealth. 'Maybe one partner earns a lot more than the other, or one owns a house and the other doesn't, or one of them has inherited money,' Marriott says.

Mike Hamlin, partner at law firm Slater Heelis Collier Littler, based in Sale, Greater Manchester, says the perception of pre-nuptial agreements in the UK is often that they are unromantic and a waste of time because they are not legally binding. But case law would suggest that a pre-nuptial is one of the factors courts will consider.

'If the marriage is a short one, then there is a likelihood that more weight to the pre-nuptial will be given,' he says. 'A large percentage of these agreements are drawn up for individuals who have experienced financially painful divorces and are looking to be better prepared a second time around.'

Lisa Lustigman, a family solicitor at City of London-based Withers, says that if children are planned, it is important this is considered in the pre-nuptial agreement because a child can change the parameters upon which the agreement was entered into.

However, as Hamlin says, if there are children born within the marriage or the marriage is a long one, the agreement's relevance will be limited or reduced.

Lustigman also points out that it is possible for a prospective spouse to exert duress before signing an agreement and circum-

stances can, and do, change: 'This is why judges can depart from the terms of such an agreement if they see fit, but this is less common than it was.'

Hamlin says that although such agreements may be criticised as going against the traditional values of marriage, in his view they simply address issues and protect the interests of both parties: 'Should the marriage end, there would be no need for bitter legal disputes over the dividing of assets.'

Assets acquired before the marriage that are disclosed have an increased chance of being protected should the subsequent marriage end in divorce. This is because they are not automatically taken into consideration unless there are not sufficient assets within the marriage to satisfy specific factors, contained in section 24 of the Matrimonial Causes Act 1973, that a court will weigh up.

Hamlin also advises against holding assets in joint names but instead suggests those buying property in their joint names register the property as 'tenants in common', specifying each party's entitlement.

However, not all solicitors are in favour. Marilyn Stowe, head of the family unit at Leeds-based Grahame Stowe Bateson, believes deciding to make pre-nuptial agreements is 'a bit like having the divorce before the honeymoon' and thinks they can encourage marital breakdown.

If part of the agreement includes an instalment arrangement of so much cash per year of marriage, then a husband is going to be sorely tempted to throw in the towel at the first sign of fading passion. 'It will certainly be cheaper,' she adds.

'People tend to be a bit more wary over second marriages'