# Win a meal for 2 at Wilde's!

Wright Hassall LLP is committed to giving outstanding service to all our clients. To help us improve our services we are conducting a survey to increase our understanding of how our clients buy personal legal services. We would be very grateful if you could take a couple of minutes to complete the enclosed simple survey and return it to us in the pre-paid envelope supplied. As an added incentive, all completed surveys returned by 26/10/2009 will be entered in a free prize draw for a meal for two at Wilde's Wine Bar in Leamington.

Good luck!

# Wright Future for the over 50s

Wright Hassall has launched a specialist department catering for the over 50s.

The new department, 'Wright Future', has been more than six months in the planning and is being headed up by solicitor Claire McGinnity.

Legal services provided by the team include powers of attorney, court of protection matters for people suffering from debilitating conditions, long-term care planning, management of clients' financial affairs and estate planning.

Claire, who is a member of Solicitors for the Elderly, said: "Bringing all our expertise together will further strengthen the level of service we provide and will enable us to meet the needs and concerns of older people and those who provide for their care."

"Managing day-to-day financial affairs can be very stressful and we can help to ease this burden. If unexpected changes happen, we can respond quickly and work with clients and their families to find a solution.

"We can visit people in their homes, or in hospital if clients need assistance urgently and I know our older clients appreciate that we understand their individual requirements."

"Our Wright Future team has considerable experience of the matters that affect our older clients and many of them will benefit from the services we can offer."

Working with Claire in the new team is solicitor Michael Wall, taxation assistant Gill Warren and secretary Sarah Spencer (pictured left with Senior Partner Nick Abell).

For more information on Wright Future's services contact Claire McGinnity:

claire.mcginnity@wrighthassall.co.uk

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# Long term care update and protecting the family home.

Long term care has been brought into the spotlight recently with the publication of the Green Paper: Shaping the Future of Care Together. The Government wants to build the first National Care Service (NCS) (an equivalent to the NHS) in England. The principle is that for persons eligible, basic care and support costs will be paid for, regardless of their resources. Accommodation costs do not fall within this because it is expected that people should pay for their own food and lodging.

### Proposed System

The options for funding long term care are up for debate and there are 3 proposals:-

1. Partnership – the responsibility for care funding is shared between the Government and the individual. Everyone who qualifies for care and support would be entitled to have a set proportion, either a quarter or a third of their care costs met by the Government. The actual share will depend upon the individual's financial means. Any balance would be funded from the individual's own resources using their savings, income and property with the least well off having all their basic care costs provided by the state.

2. Insurance – everyone would be entitled to have a share of their care and support costs met, just as in the partnership model but this system would go further to help people cover the additional costs of their care and support through voluntary insurance. The insurance could be provided by the private insurance market or the state could create its own insurance scheme. People could pay the insurance in different ways; before or after retirement, or after their death as a deferred payment. People could expect to pay around £20,000 to £25,000 to be protected under a scheme of this sort.

3. Comprehensive – everyone over retirement age who had the resources to do so would be required to pay into a state insurance scheme. Couples would pay a lower rate. Everyone with eligible needs would qualify for additional care and support for free when they needed it. The size of an individual's contribution would vary according to what savings or assets they had, so that the system is more affordable for the less well off. As above, the premium could be paid by instalments or a lump sum during lifetime or after death by way of a deferred payment.

The consultation period runs until November 2009 so changes are unlikely to take place in the short term and if there is a change in Government administration, this issue may be put on the back-burner for some time.

### Current System

The average weekly cost in England of a nursing home bed is £644 and a residential care bed £464. The Local Authority undertakes a means test to determine an individual's contribution to the funding of their care. Where they have capital in excess of £23,000, an individual must fully fund their fees. With capital between £14,000 and £23,000, an individual will need to make some contribution depending upon their level of capital and income. Where capital falls below £14,000 then the care fees are fully funded by the state.

### Protecting the Family Home

There are a number of assets which are disregarded for the purposes of the means test, one being the value of the family home where the spouse continues to live there. However, where one spouse dies and the surviving spouse requires residential care, the whole value of the home could be utilized to pay the care fees. As the principal asset of most couples, this is a major concern. However, there is something that can be done to protect the family home. You can make Wills which pass one half share of the home to a trust on the first spouse's death. If the surviving spouse needs to move into residential care, the half share of the home belonging to the trust is protected from financial assessment by the Local Authority when it undertakes its means test. In order to make the trust work, the family home must be owned in joint names as tenants in common. Many married couples own their property as joint tenants but a simple procedure can be used to change this to a tenancy in common.

Of course where an individual has a primary need for healthcare (as opposed to social care) within the meaning of the National Framework for NHS Continuing Care introduced in October 2007, their residential care home fees are paid in full by the NHS (or healthcare and personal care is provided free at home). This is regardless of what capital the individual owns.

For further information about long term care funding or planning your estates so as to minimize exposure to care fees, please contact Claire McGinnity or a member of her team.

claire.mcginnity@wrighthassall.co.uk

# Slips, trips and broke

Many of us are enjoying longer lives, with predictions i almost a quarter of the European population will be aged o twenty years. However, as we get older we become less mo some, the combination of weakening health and growing in result in broken bones.

It is estimated that 10% of people aged 65 or older w fracture. Before age 75 the most common fracture is a fra above the wrist, known as Colles fracture. After age 75, h occur most frequently. Both are generally caused by traum fall, and whilst the Colles fracture can be treated conserva casting or by surgery, hip fractures often require hip repla

Where a fall results from someone else's fault a succes attract an award of general damages to compensate for th pain, suffering and loss of amenity for the injury. A claim

# Family asset protection using trusts in wills

Trusts have been used for many decades as a means of protecting family assets. But did you know that they can be formed under a will as well as by a lifetime deed? Here are four ideas showing how family assets can be protected using trusts in a will.

1. Unmarried couples: only married couples or civil partners are able to transfer their Inheritance Tax ("IHT") exemption (known as the Nil Rate Band ("NRB")) which is currently £325,000, following the change in law in October 2007. Unmarried couples still need to use what is known as a NRB discretionary trust which is set up as part of a will. In this way both partners' NRBs can be used, thus saving £130,000 in IHT (40% of £325,000).

2. Business owners: anyone who owns a trading business, whether as a sole trader, a limited company or in a partnership, can take advantage of Business Property Relief (normally 100% of the value of the business) thus effectively exempting the business from IHT. However, H M Revenue & Customs ("HMRC") will not agree such relief where the value of the business passes under a will to the surviving spouse, as gifts to spouses are exempt from IHT and so no tax is payable. However, if the surviving spouse subsequently sells the business, as often happens, the sale proceeds will be subject to IHT. Yet, by transferring the business into a discretionary trust under a will, HMRC has to decide if BPR still applies. If the business is subsequently sold, the trust holds the sale proceeds which can then be lent to the surviving spouse, interest free, thus keeping value outside the surviving spouse's estate. If, for any reason, relief is not granted (which might apply if the business had been converted into an investment company), then within two years of date of death the trust can be terminated in favour of the surviving spouse and spouse exemption obtained. The same principle applies to farmers owning agricultural land which can benefit from the similar 100% Agricultural Property Relief.

Charles McKenzie demonstrates how you can protect your families assets.

3. Residential care home fees: residential care home fees are effectively a 100% tax on what an individual owns, unless the individual's capital is below a low limit. Capital is defined as the market value of his assets, which is what local authorities take into account, when assessing whether or not an individual qualifies for funding to help with care home fees. However, if he merely has a life interest under a trust in the property, the value of the property will be excluded from the assessment. If a couple own a house jointly, then on the first death the house passes to the survivor whose capital will now include the whole value of that house. If the first spouse to die leaves his half share in the house in trust for the survivor for life, then that half share will not be counted as part of the survivor's capital and will be protected from care home fees. The survivor's half share in the house will still form part of his capital but the value of that share may well be less than 50% of the whole.

4. Children from a previous marriage: the only way of ensuring that the children of a previous marriage inherit the assets of parent who has remarried and left his estate to his second spouse, is by leaving under his will his assets (including his share of the matrimonial home) in trust for his second spouse's life. When she dies those assets can then be passed to his children under the terms of the trust.

For more information about how to protect family assets using trusts in wills, please contact Charles McKenzie:
charles.mckenzie@wrighthassall.co.uk

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# en hips - the true cost of a fractured bone.

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for a Colles fracture which heals well with no long term problems would attract an award of £4,750 whereas a much larger award of up to £33,000 could be given where a claimant suffered long term health problems.

Special damages may also be awarded to compensate for immediate and future costs arising from the claimant's care needs as assessed by an occupational therapist, physiotherapist or nurse. These may include the cost of care provided by relatives or care professionals as well as costs associated with aids and equipment the claimant needs to carry out tasks. In addition the claimant's property may require modification for wheelchair use or they may need to move to more suitable accommodation. Consequently the cost of a fall can be extremely high both on the claimant's health and purse.

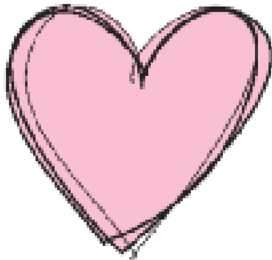
Long term care costs are calculated on an annual basis and multiplied by the number of years they are required. However, the award is given now rather than when the care is delivered and a discounted sum is therefore awarded. The figure assumes investment of the monies at a return of 2.5% and therefore a claimant with a 10 year life expectancy injured at aged 75 would receive the annual award times 8.86 as opposed to 10.

The award can be protected through a 'personal injury' trust. The award held under the trust is disregarded when assessing clients' eligibility for any means-tested state benefits and/or local authority support, provided the trust is set up within 12 months of the award payment date. Such trusts are therefore highly beneficial to clients receiving benefits and those residing in local authority funded accommodation. In such cases clients will need our help to draw up the trust and will need to appoint trustees to administer the trust.

For more information about personal injury claims or how to set up a PI trust, contact Jeanette: jeanette.whyman@wrighthassall.co.uk

# Can you safeguard your wealth in case of divorce?

Pre-nuptial or pre-marital agreements are entered into prior to marriage to clarify the way in which it is intended that a husband and wife will hold their assets when they are married and, more importantly, how they will be dealt with if the couple should divorce. Unlike the United States and most of Europe, pre-nups have never been legally binding in this country. As such, many couples may not have considered them a worthwhile investment before marrying; choosing instead to apply to the court for a financial order after the marriage has broken down. However, the judicial landscape is changing and the decisions in several recent cases all but legalise pre-nups in this country.



### Crossley v Crossley (2007)

Stuart Crossley, a property tycoon worth an estimated £45m and his wife, Susan, herself worth £18m following three previous divorces, signed a detailed pre-nup just weeks before their wedding in January 2006. They each agreed not to seek a share of the other's assets should the marriage fail. However, on separation 14 months later, Mrs Crossley issued financial proceedings alleging that her husband had failed to disclose the full extent of his wealth when the agreement was negotiated and on those grounds the pre-nup was invalid.

Unfortunately for Mrs Crossley, the Court of Appeal confirmed the persuasive nature of the pre-nup and stated that it should be considered a "factor of magnetic importance" rather than simply a peripheral aspect of the case and final settlement was reached.

### MacLeod v MacLeod (2008)

Prior to their marriage in 1994, Mr & Mrs MacLeod entered into a pre-nup which provided that each would retain what they brought into the marriage, they would split any jointly owned properties and that Mrs MacLeod, 22 years her husband's junior, would receive a lump sum payment.

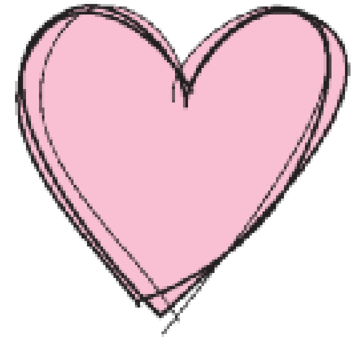
After several years of marriage they entered into a further agreement confirming the pre-nup but making some additions. A short time after entering into this post-nup, they separated. Mrs MacLeod questioned the validity of the pre-nup, alleging that she had not had appropriate legal advice and that her husband had not disclosed all of his assets at the time of entering into it. The judge did not accept this but did order that she should have a larger lump sum. Mr MacLeod appealed to the Isle of Man Court of Appeal and lost. He then appealed the matter further to the Privy Council, whose decisions are binding on England and Wales. They acknowledged that "in the right case" an agreement between the parties which is only one of the factors in the process can be "the most compelling factor" and that MacLeod was an example of "the right case". Baroness Hale, who gave her judgement on the MacLeod case, said that pre-nups should be legally binding but added that this was a matter for the Government to consider. She also put greater weight on post-nups saying that they are usually fairer because one party cannot refuse to marry the other if they do not get what they want, as can happen with pre-nups.

### Radmacher v Granatino (2009)

This position was reinforced yet further when the high profile case of Katrin Radmacher, a German Heiress worth £100million, was dealt with by the Court of Appeal. Ms Radmacher and Nicolas Granatino married in 1998 having signed a pre-nup in Germany, the terms of which provided that neither party was to benefit financially if the marriage broke down.

The couple separated in 2006, the marriage having begun to struggle following Mr Granatino's decision to give up his £120,000 a year banking job whilst continuing to live the "champagne lifestyle". The couple divorced in 2007 and Ms Radmacher was ordered to pay a lump sum of £5.85 million to her husband. Ms Radmacher has however now managed to successfully overturn that earlier ruling and the proposed payout has been reduced by the Court of Appeal to approximately £1million as a lump sum in lieu of maintenance. Mr Granatino is also entitled to £2.5 million to purchase a house but this will eventually revert to Ms Radmacher who is also to pay a lump sum to discharge the majority of his £800,000 debts.

Whilst Mr Granatino is expected to now take his case to the House of Lords in the hope of overturning this decision, his prospects do not seem good, the Court of Appeal having made it



clear that it is "increasingly unrealistic" for courts to disregard pre-nups.

### Best practice

It is vital that each party obtains independent legal advice, provides full disclosure of all their assets and thereafter enters into the agreement freely and without duress.

### Who should have one?

There is little point in a couple with children and few assets beyond the family home entering into a pre-nup as in the event of a divorce, the Court's first concern will be to ensure that there is proper housing and resources for the children.

Pre-nups are therefore likely to be useful in the following situations:

- Wealthy couples with no children;
- Couples marrying for the second time who wish to protect assets to ensure an inheritance for the children of their first marriage;
- Couples where there is a disparity of wealth, perhaps where one party has inherited assets;
- Where one and/or the other party has strong links to another jurisdiction where such agreements are recognised.

### The future

Whilst we still have no definitive answer to the pre-nup question, it appears to be the case that judges, who remain keen to cut the time and expense of divorce proceedings, are increasingly likely to hold couples to what they agreed before they married. Such agreements seem unromantic and may be hard to broach with a loved one before the 'big day', in which case the post-nuptial agreement may become far more popular. Either way, it is certainly a more pragmatic approach to take which will hopefully mean that, in the event of the marriage failing, the parties will make savings in terms of the time, cost and stress of litigation.

For more information contact Lisa-Marie Darby
lisa-marie.darby@wrighthassall.co.uk



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T 01926 886688 F 01926 885588 E email@wrighthassall.co.uk W www.wrighthassall.co.uk