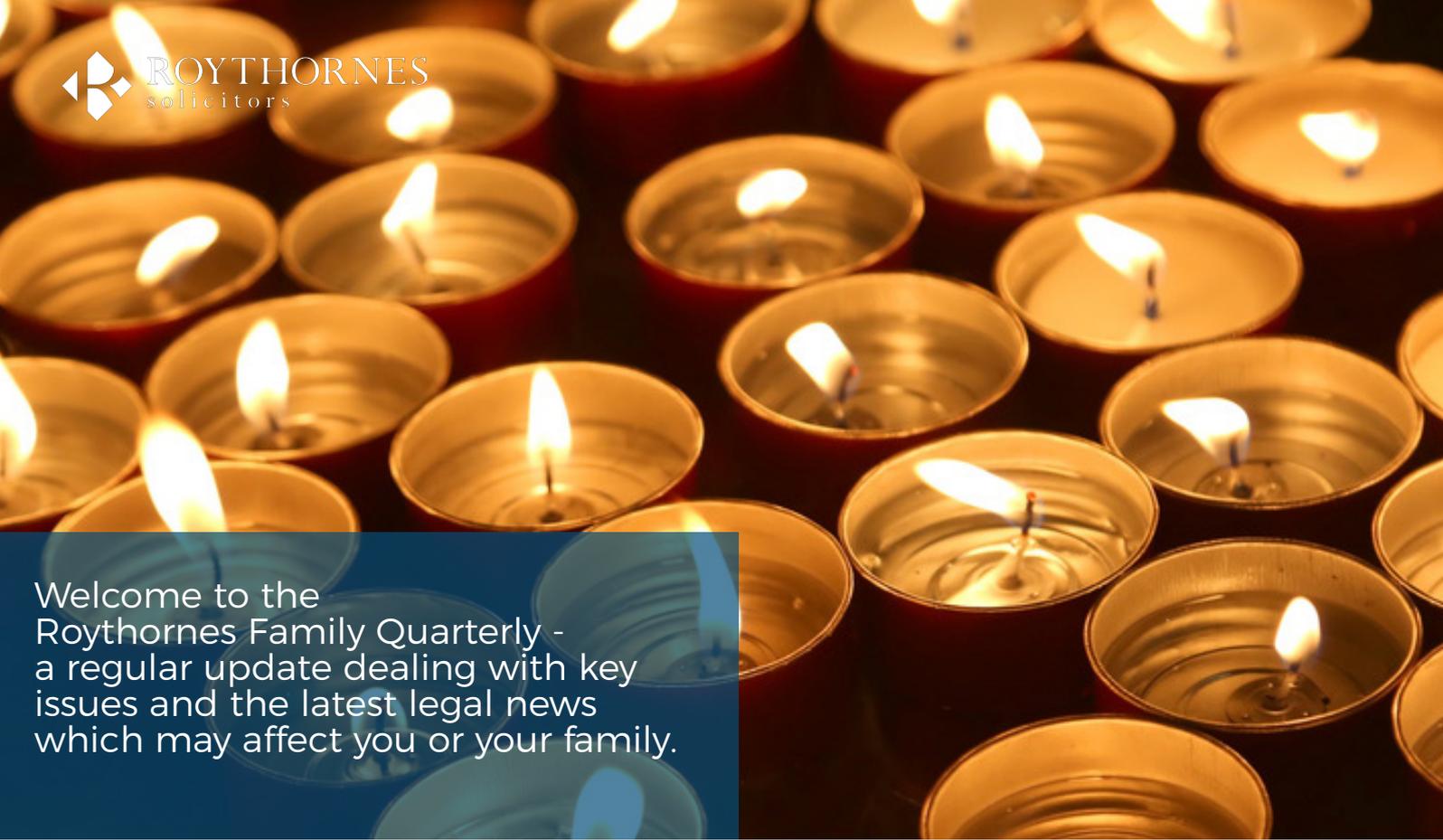


Roythornes Family Quarterly

April 2017



Big skies. Big thinking.



Welcome to the Roythornes Family Quarterly - a regular update dealing with key issues and the latest legal news which may affect you or your family.

Should a person be able to die knowing that their last wishes will be respected?



Many may see this as a straightforward question but this is in fact a very controversial issue. A deceased's estate can be challenged whether they have left a will or not. A will may be challenged by certain family members or dependants under the Inheritance (Provision for Family and Dependants) Act 1975 on the grounds that they were not left "reasonable financial provision" under the deceased's will or in accordance with the intestacy rules.

The Supreme Court has recently handed down its judgment in the highly publicised case of *Ilott v The Blue Cross and others* [2017] UKSC 17. The case involved a daughter bringing a claim against her late mother's estate. The mother, Mrs Jackson, died in 2004 and for the 26 years preceding her death, was estranged from her daughter, Mrs Illott. Mrs Jackson left her estate to a number of charities and made no provision for her daughter. Mrs Illott brought a claim against her mother's estate for "reasonable financial provision" and was awarded £50,000. Mrs Illott appealed the decision on the basis

that the amount she was to receive was too low. The Court of Appeal upheld her appeal and increased the sum to £143,000 with an option to receive a further £20,000 in one or more instalments. The charities appealed to the Supreme Court who upheld their appeal and set aside the Order of the Court of Appeal.

The Supreme Court held that the initial decision provided "reasonable financial provision" for Mrs Illott, when considering the circumstances of the case, including her estrangement. It was held that "it is not the case that once there is a qualified claimant and a demonstrated need for maintenance, the testator's wishes cease to be of any weight". Whilst in law a person can make a claim against an estate, this should not automatically defeat the deceased's wishes. The Court was critical of the current law and perhaps this reflects the uncertainty of what weight should be given to a person's wishes against their duty to support/fulfil their family and dependants.

Brexit- what does this mean for us?

The Prime Minister, Theresa May, has described Britain's exit from the EU as "an historic moment from which there can be no turning back".

As family lawyers, we are keeping a close eye on the Brexit talks now that Article 50 has been triggered, to establish how Britain's exit from the EU will impact on family law proceedings. The answer is - it is too early to tell. EU law plays a major role in our legal system, particularly in divorce and children proceedings. For example, as to whether you can divorce in England or Wales very much depends on whether a court has jurisdiction, i.e. the legal standing to determine such proceedings. As to whether a court has jurisdiction is subject to the EU regulation known as Brussels II Revised. Post-Brexit, EU law will no longer automatically apply to the UK. It is also unclear as to the treatment and enforceability of Orders made in the UK in EU member states post-Brexit. Brexit may therefore have far reaching implications in divorce proceedings.

"The formidable team led by the impressive Nick Ingrey"

Legal 500



Protecting the piggy bank - asset protection

The sad reality is that not all relationships or marriages last. Whilst no one enters into a relationship or a marriage expecting the worst to happen, it is important to plan ahead. This is a common theme among those who are marrying for a second time and those who have business assets or are likely to receive a significant inheritance. Whether you are considering moving in with a partner, contemplating marriage or a civil partnership or you are already married/in a civil partnership, it is important to know where you stand. There may be steps which you can take to protect your financial interests regardless of your relationship status.



Protecting your interests

1. If you have moved in with a partner or are contemplating doing so, you may wish to consider regulating your financial affairs by way of a [Cohabitation Agreement](#).

2. If you are contemplating marriage or have already married, then you may wish to consider regulating how your respective finances are to be dealt with in the event that you divorce by way of a [Pre-Nuptial Agreement](#) or a [Post-Nuptial Agreement](#).

3. If you are contemplating separation, then you may wish to determine how your assets are to be divided/shared by way of a [Separation Agreement](#).

Regardless of your relationship status there are always options available to you, however, you should seek advice regarding such matters at the earliest opportunity.

Key cases of note

Briers v Briers [2017] EWCA Civ 15 – highlights the importance of ensuring that the financial claims arising from the breakdown of the marriage are dealt with promptly and the consequences of failing to do so.

Owens v Owens – challenges the current divorce system and raises arguments for reform. At present, unless a party petitions for divorce on the basis of separation, a party can only petition for divorce by relying on an allegation of fault. The wife in this case sought to divorce her husband on the basis of his unreasonable behaviour, relying on 27 allegations to prove this. The wife's petition was refused on the basis that she was unable to show that her husband's behaviour was unreasonable.

Re T (A Child) [2017] EWFC 19 – in an ever changing world where technology continues to advance and social media continues to grow in influence, a judge highlighted the use of Facebook in proceedings as "a useful tool in the armoury". In the case it was used to locate a child's biological mother for the purposes of adoption proceedings. The use of social media has been a hot topic for discussion but it appears to be receiving greater recognition. This should, however, be treated with caution.

DB v PB [2016] EWHC 3431 – the judge highlighted the importance of respecting individual autonomy when considering whether to uphold a pre-nuptial agreement. It was held that it would be wrong to simply disregard a pre-nuptial agreement and provided useful guidance on the treatment of such agreements. In the case, the agreement was not upheld as it provided a manifestly unfair outcome for the wife in view of the parties' personal and financial circumstances.



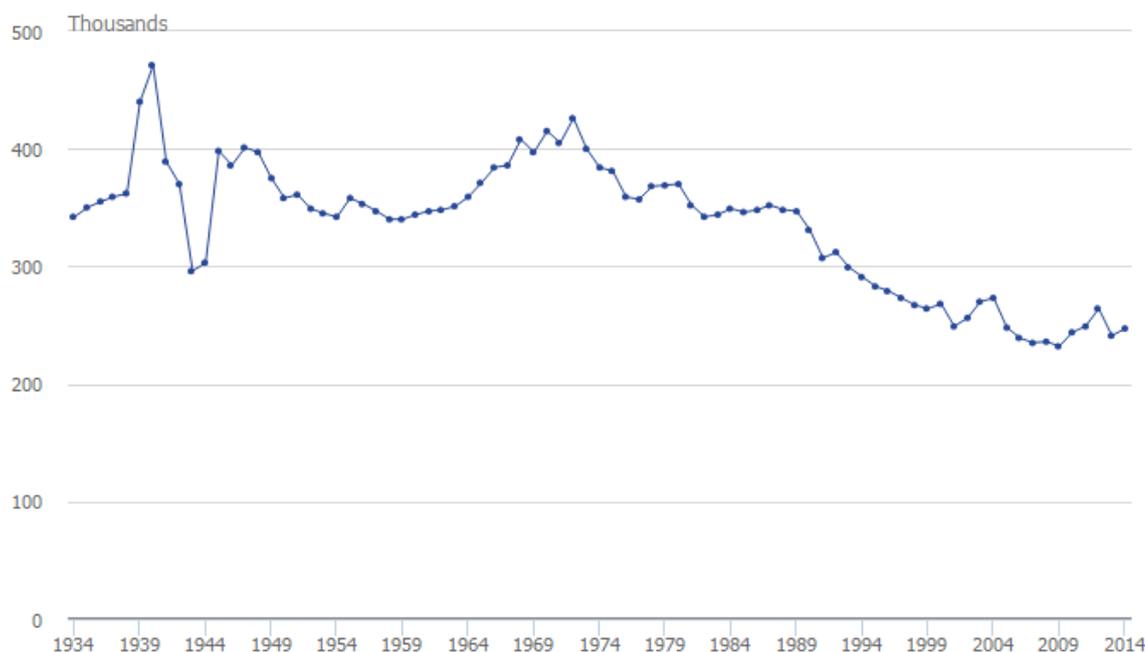
Family law in numbers

According to the Office for National Statistics' latest available figures, the marriage rate has increased by 2.7% between heterosexual couples compared with the previous year. In 2014 there were 247,372 marriages celebrated as well as 4,850 marriages between same-sex couples. It is also worth noting that same-sex couples were able to legally marry from 29 March 2014 and therefore this figure only represents part of the year. In contrast, there were 111,169 divorces and decrees of nullity in 2014 with divorces highest among men aged between 45 and 49 and women aged between 40 and 44. This represents a fall from the previous year which saw 114,720 divorces and decrees of nullity being made by the court.

In contrast, the number of applications made in respect of children has increased. CAFCASS, a non-departmental public body, accountable to the Ministry of Justice which represents children in family court cases, reports that in January 2017 alone, there has been a total of 1,119 care applications and 3,356 new private law cases representing increases of 7% and 17% respectively on January 2016 levels.

One can only speculate as to the reasons behind the trends. However, it is clear that divorce and disputes in respect of children are prominent in today's society. No person ever imagines, when marrying or having a child, that they will end up in Court arguing over the same. Unfortunately for many, there is no choice. It is important that you seek expert advice at the earliest opportunity as there may be steps which you can take to avoid becoming one of these statistics.

Number of marriages, 1934 to 2014 in England and Wales



Our family services

- Pre and post-nuptial agreements
- Matrimonial finance
- Cohabitation agreements and disputes
- Asset protection and tax mitigation
- Parental responsibility, paternity disputes and surrogacy
- Negligence claims against family lawyers
- Managing customer and supplier relations
- Separation and divorce
- Pension and property advice
- Inheritance Act claims
- Children Act proceedings and wardship
- Injunctions
- Civil partnership disputes
- Domestic violence

Your Family Team



Nick has vast experience in relation to high value financial claims arising out of the breakdown of a marriage with particular reference to farming cases - those involving the division of agricultural assets.

His client base is wide and varied, ranging from significant farmers/landowners, and successful business men/women.

Despite being predominantly based in Spalding, Nick has clients from Leicestershire down to East Sussex. The majority of his clients are reputation-based referrals.



John is an Associate in our Family department.

He joined the firm as a Paralegal in 2005, after completing his law degree and post-graduate training in Nottingham. He qualified into the Family department in July 2008, and was promoted to Associate in July 2015.

In addition to his own varied caseload advising on divorce proceedings/financial proceedings, children issues, cohabitee disputes, pre-nuptial agreements and injunction proceedings, John also assists Nick Ingrey with more complex and high-value cases.



Victoria is an Associate in our Family department.

She has over ten years experience in family law and specialises in matrimonial matters, including divorce/financial remedy proceedings and pre- and post-nuptial agreements. She also advises clients in cohabitation disputes and Children Act matters. Victoria has specialist experience in dealing with complex cases, including those involving businesses, farms, pensions and family trusts, and has represented trustees in financial remedy proceedings.



Joel is a Solicitor in our Family department.

He joined Roythornes in August 2011 as a Paralegal after graduating from the University of Warwick reading Law with European Legal Studies.

Joel's specialisms include divorce and dissolution proceedings, financial proceedings and child disputes. He has been involved in a wide range of work, managing his own caseload and assisting other members of the team on more complex matters. Joel is also predominantly based in our Spalding office but advises clients from all areas of the country.

When you are affected by the breakdown of a family relationship through divorce or separation, a member of our Family team can be retained to act as your trusted advisor.