

# All out of love and hiding the money

## Matrimonial Survey 2010

Allegations that Scot Young, a property tycoon and 'fixer' to billionaires, had hidden assets of £400m hit the news in 2009.

Mr Young, since declared bankrupt by the court at the application of HM Revenue and Customs, was given a suspended six month jail sentence for failing to disclose his financial situation in the matrimonial proceedings and was accused by his wife of hiding millions in offshore accounts.

Further, high profile, big value, divorces continue to make headlines, for instance, the divorce of Formula One boss Bernie Ecclestone, and his wife of nearly 25 years. More

recently media coverage of two of the worlds sporting super stars, Tiger Woods and Ashley Cole, who both look set to divorce in 2010 emphasises the potential for considerable sums of money to be at stake when relationships breakdown.

This year's annual matrimonial survey by leading business and financial advisers Grant Thornton looks at the divorce arena in detail as well as the key issues at the front of the minds of solicitors in this field.



## The Divorce Debate

As the global economy remains fragile, it comes as no surprise that the top three concerns faced by the family solicitors we surveyed relate to the availability of assets, the ability of divorcing parties to fund their legal fees and a lack of clarity from the Courts resulting in difficulties in advising clients on clean break or maintenance settlements. There was a clear distinction between London and the rest of the country with 25% of respondents from the capital recording the lack of clarity from the Courts as an issue with only 13% of respondents from outside.

Last year our results showed 65% of respondents predicting that there would be a fall in lump sum financial agreements and an increase in maintenance based settlements. However, this years results show that 45% of solicitors had seen an equal mix of clean break and maintenance settlements, 40% had seen more clean breaks and only 15% had seen more maintenance based settlements.

Given the new Government's intention to conduct a comprehensive review of family law we were keen to identify the areas where family solicitors wanted to see a change in legislation, see figure 1:



## Areas where solicitors would like to see a change in legislation

Figure 1

- 24% of respondents have called for pre and post nuptial agreements to be made legally binding.
- 23% would like to see protection for cohabiting couples reviewed.
- 21% are of the opinion that divorces should be possible without the need to prove unreasonable behaviour, adultery, separation or desertion.
- 20% would like clearer guidance on division of inheritance brought in to marriage.
- 12% identified other areas.



The survey canvassed the opinions of 90 of the UK's leading family lawyers based on their client work in the 2009 calendar year.

## Parties and reasons for divorce

ONS data shows marriage rates at their lowest levels for over 100 years and divorce rates falling to a 29 year low.

“The continued fall in divorce rates is not surprising given that marriage levels are at such a low. We expect that the recession, whilst adding pressure to marriages, may be influencing couples to delay divorce proceedings until the economy and house prices show improvement. This year our results show that there has been an increase in the number of husbands petitioning for divorce with 13% of respondents saying that more husbands had petitioned for divorce than wives (9% in 2008 and 2007).”

Hannah Reid (Associate Director, Forensic and Investigation Services)

An area that we wanted to focus on this year was the length of marriages ending in divorce. Our results seem to fly in the face of the old cliché of a seven year itch. Our findings show that marriages of 11 to 20 years duration accounted for 70% of divorces (see figure 2). Further, for 99% of respondents the majority of their clients were going through their first divorce.

### Financial Settlements

Falling stock markets and a decline in house prices saw the average value of total family assets distributed between the divorcing parties drop last year. However, our research shows that 11% of solicitors we surveyed continue to deal with family pots in excess of £4m (11% in 2008).

### Concealment of assets (see figure 3)

For the fourth year running, this study has shown men seeking divorce are more likely to conceal assets than their partners. 83% of solicitors surveyed said that they believed that it was the husband that concealed assets in divorce proceedings (91% in 2008) compared with only 2% of women (0% in 2008).

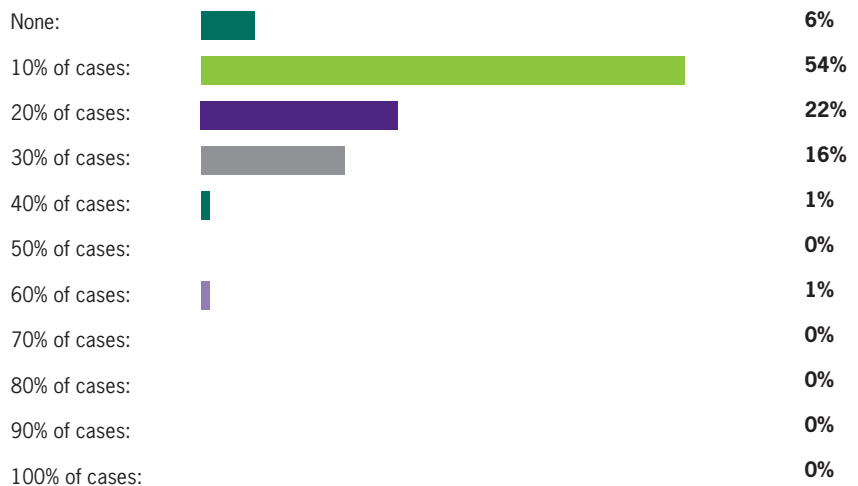
## Duration of marriages resulting in divorce

Figure 2



## Number of cases revealing significant concealed/missing assets or income

Figure 3



“Although our research suggests that concealed assets and income only arise in a small number of cases in these challenging economic times every penny counts. As individuals are now getting married later in life, they are likely to be in a more financially secure position at the start of their relationship. Concealing certain income, property and other assets from the ‘pot of wealth’ to be split on divorce may be seen as a way to protect their previously acquired wealth when divorcing. In addition, the number of high profile, big money divorce cases is likely to have scared wealthy individuals into trying to hide assets.”

Sally Longworth (Partner, Forensic and Investigation Services)

## Alternative Dispute Resolution (ADR) (see figures 4 and 5)

The new Government has published its Coalition programme which proposes that a comprehensive review of family law will be undertaken in order to increase the use of mediation when couples break up. 74% of the respondents to our survey did not think that mediation should be made compulsory.

Our research shows that 30% of solicitors surveyed felt that the Jackson Report 2010\* would act to increase the amount of ADR in family cases. It remains unclear as to the extent that Lord Justice Jackson's recommendations will be implemented given that he was commissioned by the Master of the Rolls and not the Ministry of Justice.

In respect of collaborative law, uptake by family solicitors remains consistent with the previous year with 62% (63% the previous year) of those surveyed either already being trained or intending to undergo training. However, 60% of those surveyed had not dealt with any collaborative cases during the last year.

Our survey this year looked to canvass opinion on a number of new areas surrounding collaborative law, such as, whether parties are more likely to consider the collaborative approach if there are children of the marriage. Our results showed that 68% of respondents believed this to be the case.

Of those solicitors dealing with collaborative cases over the last year:

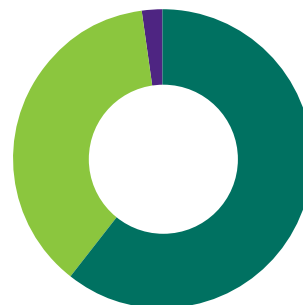
- 59% have seen the process end in an agreement between the parties;
- 6% have seen their cases proceed to litigation; and
- 35% have seen both outcomes.

\*Review of Civil Litigation Costs: Final Report, published 14 January 2010.

## Number of cases dealt with by the collaborative process

Figure 4

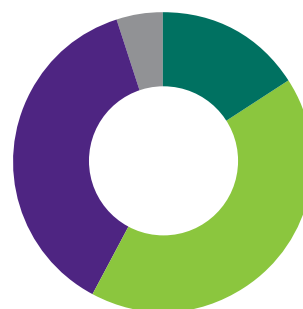
- 0 cases: **60%**
- 1 - 5 cases: **37%**
- 6+ cases: **2%**



## Reasons given for collaborative cases ending in litigation

Figure 5

- Lack of disclosure by one of the parties: **16%**
- Parties found the process unsuitable once started: **42%**
- Unrealistic requirements of the parties: **37%**
- Insufficient understanding of the process by the parties: **5%**



54% of respondents thought that a successful collaborative approach would be cheaper for the client and 80% thought the process would be quicker than litigation. The biggest issue facing the collaborative process was felt by 54% of the solicitors to be a limited number of clients for which the process was suitable.



### International

EU Justice Ministers met in January 2010 to discuss the need for 'enhanced co-operation' to determine which state's law should apply when married citizens of two EU member states wish to divorce. The newsletter from the Strasbourg plenary session on 14 -17 June 2010 reported:

**“Divorce between international couples is set to become the very first issue on which only a limited group of EU countries will legislate, thereby taking the lead over the rest of the EU. Parliament is being asked to authorise 14 Member States to go ahead with plans to allow international couples to choose which national law applies to their divorce.”**

Britain has not signed up to this procedure although 60% of the solicitors we surveyed thought it would be beneficial to support it. Further the number of solicitors dealing with cases with an international element has risen to 92% this year compared to 85% the year before.

### Pre nups, post nups and cohabitation

The volume of pre nup work continues to grow year on year with 63% of solicitors surveyed having seen an increase in the volume of work in this area (65% the previous year) and 33% reporting that levels have stayed the same (30% the previous year).

Interestingly, and possibly as a result of the MacLeod Privy Council Judgement delivered on 17 December 2008, the number of respondents reporting an increase in post nup advisory work has risen from 32% last year to 44% this year.

In terms of cohabitation 86% of respondents think that cohabiting couples should not be given the same legal rights as married couples.



“There is clear evidence that the Courts, in appropriate circumstances, consider pre nups to be persuasive. It is hoped that the eagerly awaited Supreme Court Judgement in respect of Radmacher and Granatino will clarify the position.”

Will Davies (Partner, Forensic and Investigations Services)

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## **Our Matrimonial team**

This seventh annual survey of the UK's leading law firms specialising in family law was carried out by Grant Thornton's Forensic and Investigation Services practice. We are regularly called upon to provide advisory or expert witness services to assist solicitors, their client and the Court in investigating and understanding the financial aspects of ancillary relief cases.

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