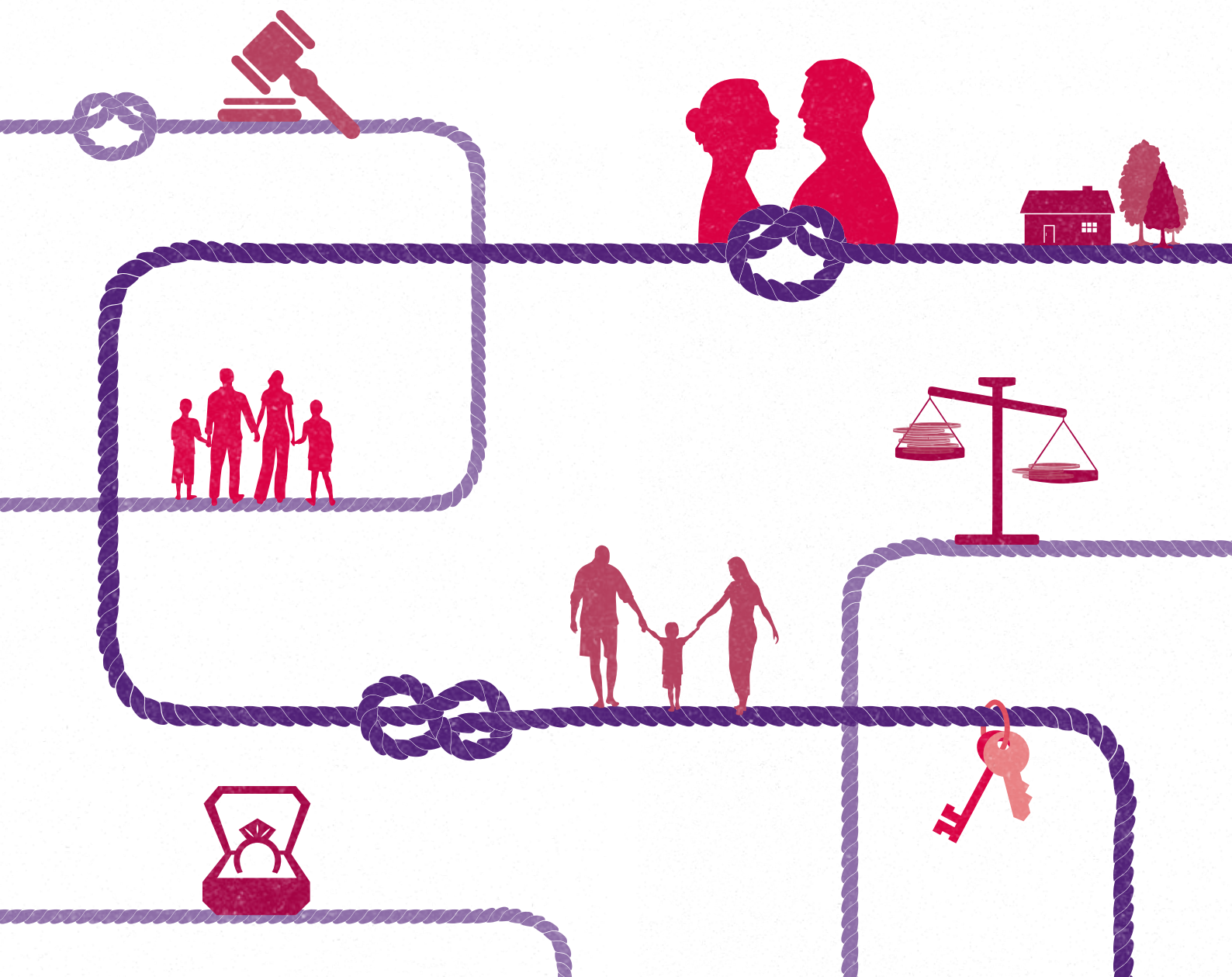




Grant Thornton

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Matrimonial Survey The long (term) arm of the law 2015



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Introduction

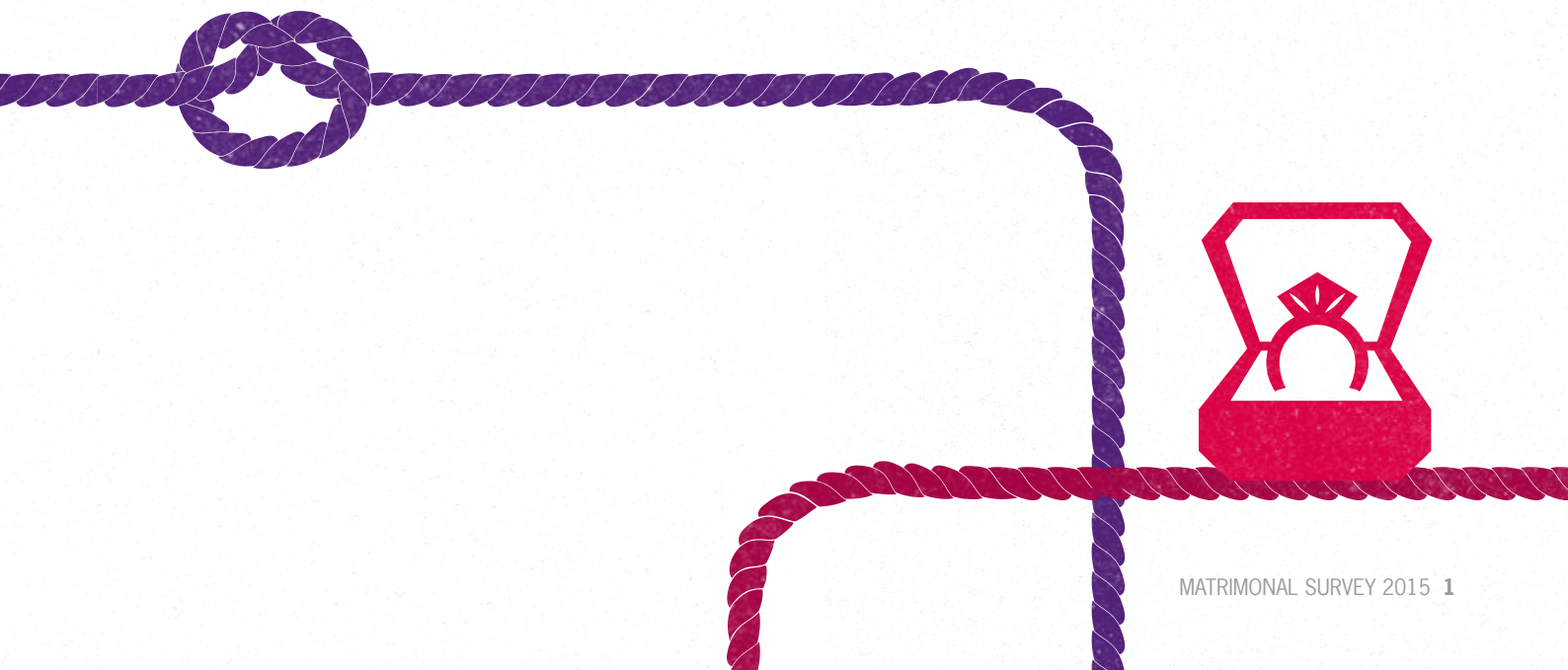
This annual matrimonial survey by leading business advisors, Grant Thornton, looks at key issues in the forefront of the minds of family lawyers, including detailed issues surrounding divorce in practice and in principle.

The highest profile ruling of recent months relates to the cases of Sharland and Gohil, where the Supreme Court ruled that Mrs Sharland and Mrs Gohil can have their cases re-opened following confirmation that their former husbands deliberately misrepresented their wealth during financial proceedings.

Other high profile cases continue to be reported, with a suspended sentence for Mr Prest and a custodial sentence for Mr Cherwayko, both for failing to pay amounts awarded to their former wives.

Further cases such as *Wright v Wright* (as regards a challenge to joint life maintenance orders) have led to changes in expectations about potential awards in divorce cases, with divorcees no longer able to expect to be supported for life, even from the most wealthy of marriages.

One of the key financial changes affecting divorce is the reform to pensions legislation giving rise to greater flexibility, and we have also focused on this in our survey this year.



The divorce debate

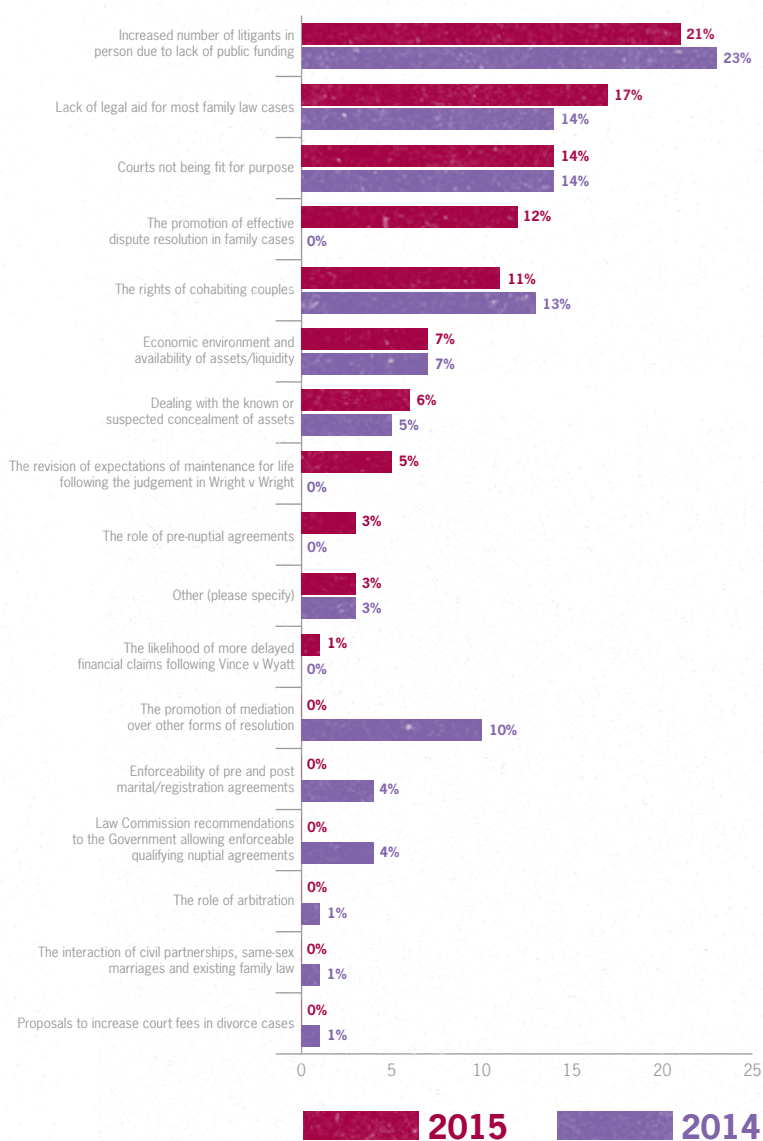
Key issues

The key issues facing family law is a regular question in our survey. Despite the changing family law environment, there are recurring major themes that are consistent year on year. 2015 is no exception. The key issue remains the increased number of litigants in person (21%), followed by the associated lack of legal aid for most family law cases (17%) and Courts not being fit for purpose (14%).

The three key issues account for around 50% of total responses: we have summarised all of the responses to this question in Figure 1. Our findings are consistent with Resolution's¹ recent report that two thirds of all family cases involve at least one side which does not have legal representation.

There was a clear distinction in the results to this question in London and the South East, where respondents cited Courts not being fit for purpose as their key issue, with 32% of responses.

Figure 1



¹ A national association of family lawyers and other professionals involved in family work

Potential changes in legislation

As with previous years, we asked respondents the top three areas in which they would like to see a change in legislation. There was much consistency with the prior year, albeit the second and third most popular answers were reversed, as shown below:

- *Introduction of no fault divorce*
(25%, 2014: 25%)
- *The reintroduction of Calderbank offers generally in financial proceedings*
(20%, 2014: 20%)
- *Protection for cohabiting couples*
(19%, 2014: 24%)

As previously, no-fault divorce appears to be high on many solicitors' agendas and Resolution's 2015 manifesto included 'divorce without blame' as one of the six key issues. Resolution has now invited its members to participate in research which is hoped to inform debate on how the current law operates and whether or how it could be reformed, and it will be interesting to see if this adds weight to the argument for change.

In London and the South East, respondents said that their top area for change was a re-introduction of Calderbank offers (a without prejudice settlement offer, save as to costs) generally in financial proceedings (24%). We have seen that in response to the recent ruling in *Joy v Joy-Maranchio*, there have been calls for Calderbank offers to be re-introduced. In Wales and the South West, the extension of legal aid in family proceedings for all dispute resolution options was the top answer with 28%.



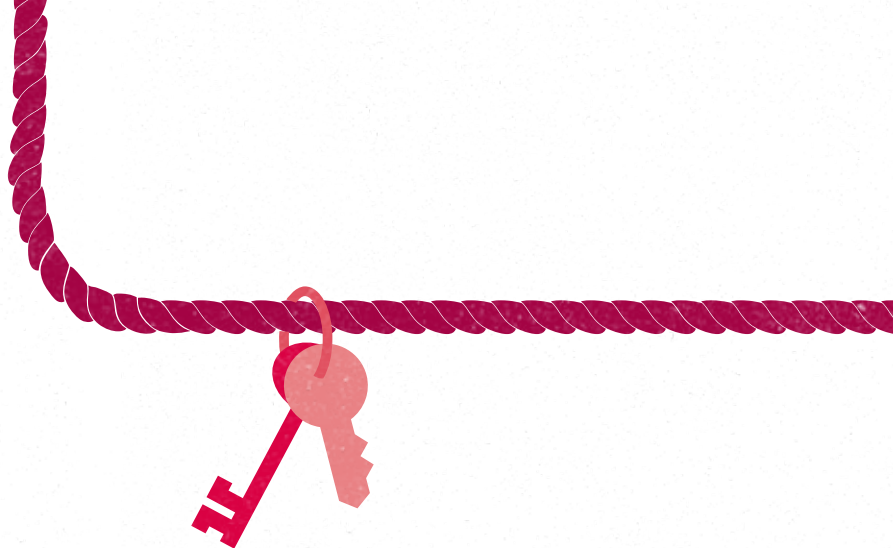
Misrepresentations made during financial proceedings

The key talking point in family law at present is the recent 'landmark' ruling made in the Supreme Court in the cases of Sharland and Gohil. The ruling, which means that Mrs Sharland and Mrs Gohil have won the right to have their cases re-opened as a result of their husbands' misrepresentation, does not necessarily mean that a different financial award will result.

As forensic accountants and experts in matrimonial proceedings, this ruling has the potential to have an impact on our work. Most expert witnesses will currently state that they have relied upon the representations made to them. Therefore, in the event of misrepresentations or concealment of information or assets which come to light after the provision of expert evidence, subject to circumstances in a particular case, the expert would be entitled to revisit their opinions and to consider whether new information would make a difference to the conclusions drawn.

However, the cases of Sharland and Gohil raise the question of the lengths to which experts should go to verify information or explanations provided in these cases. Whilst experts should apply a professional scepticism to explanations provided, particularly where explanations may be at odds with other information available, it is difficult to consider a situation, before a hearing, where an expert would seek to disregard the explanations of one party without firm evidence that those explanations cannot be true. Of course, if there is an adverse finding of fact by the Court which impacts on the expert's conclusions, the Court can ask the expert to reconsider his/her assessment on quantum in the light of the Court's findings.





Albeit that this ruling was after our survey data had been collated, respondents to our survey had not up to that point considered that concealment or misrepresentation of assets was a top three issue in family law. In response to that question, only 6% of respondents stated that this was one of their key issues, with six other issues being listed as more significant.

Future impact

Some commentators have concluded that the ruling in these cases means that there will be a rush of spouses seeking to have financial orders re-visited. It is too early to assess the impact that the ruling might have in this regard and on the work experts undertake in such cases. In the event of suspected concealment of assets, forensic accountants can perform asset tracing, and this may generate sufficient evidence for a party to appeal to the Court for further disclosure, an option which might otherwise not be available. It will be interesting to see whether next year's survey identifies an increase in respondents seeking to revisit previous financial awards.

Nick Andrews,
Partner at Grant Thornton,
commented

"These rulings underline the significance of full and frank financial disclosure to the expert's valuation"

"It remains to be seen whether many awards will be revisited on the basis of material historical information only coming to light post-award. This may also have an impact on the assessment of the value of assets brought into the marriage, which in some cases will be the subject of a pre-nuptial agreement."



Pensions



2015 has seen considerable reform to pension legislation, including the ability to take benefits in full from the age of 55 with minimal restriction. This increased flexibility has the potential to have a significant impact on how pensions are dealt with in the context of divorce. To that end, we asked respondents questions specifically relating to pensions.

We asked whether consideration of a pension in reaching a financial settlement would be affected by the changes in pension rules. Perhaps not unexpectedly, 77% of respondents thought pensions would become more important, with the remaining 23% saying that they thought things would not be much different.

We also asked how solicitors expected pensions to be treated in reaching a financial settlement. The top answer with 60% was that respondents thought that pensions would be treated as a more liquid asset only in cases where one or more of the parties was over 55. A further 18% said that pensions would be treated as a more liquid asset in all cases.

The last year has seen dramatic changes in the world of pensions, arguably the most significant changes in a generation when it comes to the division of pension assets. For higher earners, pension sharing was often a tax effective way of dividing the assets with the ability to rebuild pension funds through the support of tax relief given by HMRC. However, the recently announced restrictions in the annual allowance and further reduction in the lifetime allowance to £1 million, both of which take effect from April 2016, are likely to make it harder to rebuild substantial pension funds following a pension sharing order.

Traditionally, there has often been an aim for equalisation of income when sharing pension

benefits following divorce, albeit often conflicting with the desire to equalise capital. However, whilst this is likely to remain important in many cases, such as where defined benefit schemes are involved or for those who require security of income, the new pension freedoms have in some cases reduced the relevance of this approach. Pension funds can now be accessed without restriction from age 55, and this is likely to result in them being regarded as more liquid assets in the context of divorce for those over age 55.

There are complications with this, however, as it should be noted that only a proportion of the pension fund can be taken out tax-free, typically up to 25% of the value, the majority being subject to income tax at 20%, 40% or 45%, as applicable. Further, it is not a requirement of pension schemes to cater for this new flexibility and in some cases it may be necessary to transfer pension benefits to an alternative scheme in the first instance.

“It is therefore important that specialist pension advice should be sought early on to ensure all of these aspects have been considered in arriving at a financial settlement”.

Alasdair Wild,
Associate Director, Grant Thornton
Wealth Advisory, commented

The statistics

WHO?

We asked respondents what was the most common age of their clients. Whilst the most popular answer remains clients aged **40 to 49 (74%)**, there appears to be a rising trend of older divorcees, with **15%** of respondents saying that the next most common age was **50 – 59**, an increase of **7%** from 2014. **50 – 59** was also well ahead of the **8%** of respondents saying **30 – 39**. A greater number of solicitors reported that they had seen an increase in the average age of people getting divorced (**47%** of responses, compared to **40%** in 2014).

WHY?

The most common reason cited for marriage breakdown remains consistent with recent years, with growing apart or falling out of love (**23%**) being top. However, the gap narrowed with the extra-marital affair, which attracted **22%** of responses. There was also an increase in respondents citing unreasonable behaviour with an increase to **20%** from **14%** in the previous year. Overall, the top three answers continue to account for around **two thirds** of total responses.

WHEN?

11 to 20 years continues to be the most common length of marriage ending in divorce with **61%** of responses (**70%** in **2014**). A decrease in respondents citing **11 to 20** years has been matched by an increase in **6 to 10** years being the most popular with **28%** of responses in 2015 (**22%** in **2014**). London and the South East was the only region to report divorces from marriages of **21 to 30** years as more frequent than those from **6 to 10** years.

HOW MUCH?

For the first time since we asked the question in its current form in 2010, there has been an increase in the average value of assets distributed between divorcing parties. In respect of cases in which they have been instructed, **29%** of respondents said that the average value was **£1 million to £2 million (19% in 2014)**, whereas the most popular answer in each of the previous five years was **£500,000 to £1 million**. Unsurprisingly, London was the only area where the average value was higher, at **£2 million to £4 million (29%)**, and where **24%** of respondents reported average asset values of **£10 million to £50 million**.



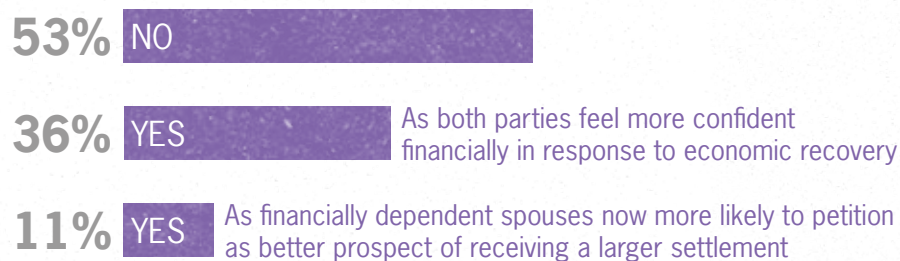
Summary of other key issues

The economy

Since 2008, the economy has been a significant factor which appears to have affected divorce, through lack of either asset value or liquidity, and we reported in previous years that the recession had led to people delaying their divorce. Last year, we asked about solicitors' expectations of divorce numbers, following early signs of economic recovery, when 38% said they had seen an increase. In 2015, 44% said that they have seen an increase as the economic recovery has taken hold. It may be the case that the recovery effect is still to be fully apparent and it will be interesting to see whether these trends are reflected in future years.

In terms of regional variation in responses, the Midlands was the region to report the biggest number of solicitors reporting an increase in divorces related to economic recovery with 67% of responses.

We also asked whether respondents had seen a change in the types of people petitioning for divorce as a result of continued economic recovery. The results are shown below.



The results indicate that there has been a shift between the expectations that were present in 2014 and the actual cases currently being worked on by our respondents. As in 2014, 50% of respondents expected to see an increase in the future associated with economic recovery.

Maintenance Orders

Following the Wright case, where the judge refused to adjust an order where maintenance was to reduce over time and cease on the husband's retirement, we asked respondents about their expectations following that case. 54% of respondents thought that there would definitely (21%) or probably (33%) be an increase in applications to vary maintenance orders in light of the Wright case, countered with 29% of solicitors who thought that it was unlikely to have an effect. One effect of this, albeit not fully substantiated, is that appellants have sought to bring cases in London rather than in regional Courts, as there is a perception that there are proportionately more life maintenance orders awarded in London.





Our matrimonial services

This annual survey of the UK's leading lawyers 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 lawyers, their clients and the Court in investigating and understanding the financial aspects of family cases. Our partners and directors frequently act as either Single Joint Experts, sole-party appointed experts or 'shadow experts' advising one party.

We advise on a full range of resolution methods, including traditional litigation as well as alternative dispute resolution methods such as collaboration and mediation. We have a team of specialists that has the experience to provide relevant and cost effective advice to lawyers and lay clients. We also have a team that specialises in asset tracing.

Within this context, we advise clients in a wide range of sectors, both in respect of their individual and corporate arrangements. We are able to draw on this experience when valuing businesses and advising on liquidity, taxation and personal financial planning as an individual or between married couples. We can also advise on corporate arrangements and restructuring, including issues arising from assets held abroad.

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The survey canvassed opinions of 77 of the UK's leading family lawyers based on their client work.



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