



**Grant Thornton**

An instinct for growth™

# Matrimonial Survey 2017



# Introduction

Just as we went to press, news of a significant development broke, which merits being the lead item in our retrospective summary of what has been happening in divorce circles in 2017. That was the announcement, on 1 December, of the Financial Remedies Court to be piloted in 2018. This will further separate financial proceedings from the divorce process, and provide access to specialist judges, recognising the complexity of some financial disputes. Whilst it has not been possible to consider the potential impact of this change in this report, it is something we will explore in future surveys.

Our annual matrimonial survey looks at key issues in the forefront of the minds of family lawyers, including detailed issues surrounding divorce in practice and in principle. Our survey explores the top three issues facing matrimonial law, where lawyers would like to see changes in legislation and the impact of economic uncertainty surrounding Brexit.

One of the most controversial judgements of recent months was in the case of Tini Owens. Mrs Owens' divorce was refused because, in line with the current law, the factors set out in her petition were not sufficient grounds for divorce. She has now been given permission to take her case to the Supreme Court. The case has further invigorated the debate about no-fault divorce and we consider this issue in our report.

Britain's largest divorce settlement was reported in May 2017 with an unnamed wife receiving £453 million. The settlement acknowledged the fundamental principle of equality regarding the role of the employed husband and the wife as homemaker, in the division of assets. While the size of that settlement is off the scale for most cases, our survey identifies some interesting findings on the level of assets in divorce cases.

Other hot topics covered in our survey include the concealment or non-disclosure of assets and information, and some interesting issues in some of the detail behind divorce cases dealt with by those surveyed.

# The divorce debate

## Key issues

Our survey sought to rate the top three issues facing matrimonial law. The top three issues, covering nearly half of all responses, are:

- 1 Increased litigants in person due to lack of public funding (19%)
- 2 The overburdening of family courts and delays resulting from court closures (18%)
- 3 Courts not being fit for purpose (11%)

We have set out details of responses in Figure 1.

These answers continued the themes of general dissatisfaction with the family court system, which is a recurring theme from last year. In 2016 we also considered if this dissatisfaction would lead to increased use of Alternative Dispute Resolution, so we look at how this has developed later in this report.

Lawyers have previously been vocal regarding the issues that the increase in litigants in person cause in their work. These comments have notably decreased this year, though it is clear that it continues to be a matter of concern for family law practitioners. Perhaps after several years of dealing with

increasing numbers of litigants in person, lawyers are more accustomed to dealing with the difficulties that brings.

One previously top three 'key' issue, which was less commonly cited this year, is the lack of legal aid for most family law cases, which dropped to the sixth most popular answer with 8% of responses (2016: 10%). Recent comments of Mr Justice Bodey, a senior family court judge, regarding the impact of legal aid cuts and the increase in litigants in person; the findings of the Bach Commission, calling for improved legal aid funding; and a review of the impact of legal aid cuts announced by the Justice Secretary may serve to bring this issue back to the fore.

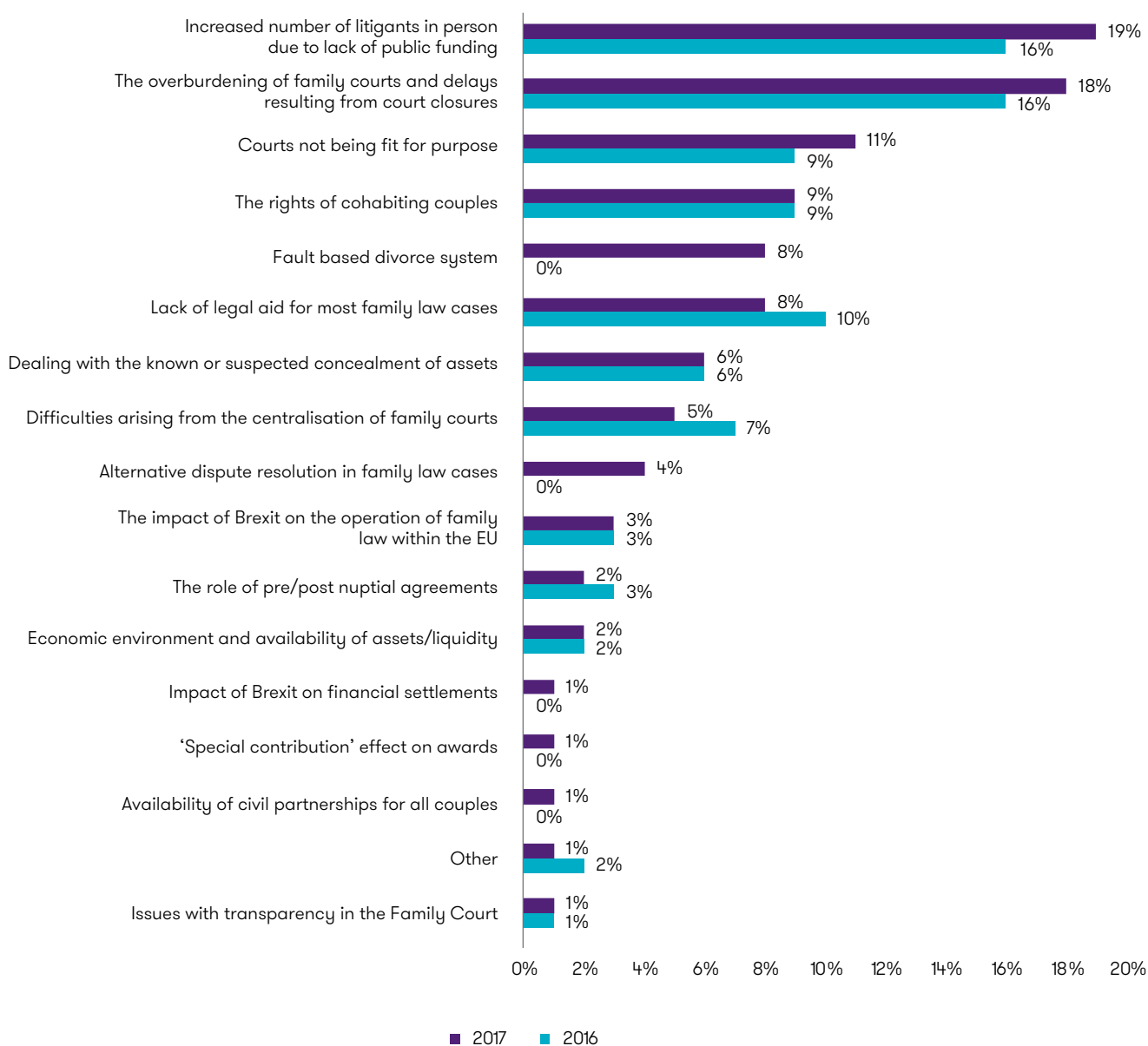
Other responses to this question include the continuation of a fault based divorce system, which attracted 8% of responses and was the fifth most popular answer. Given the calls from many in the legal community for a change in the law, and a current campaign for change supported by the Times newspaper, this response is unsurprising.



# The divorce debate

**Figure 1**

What are the top three issues facing family law at the moment?



2016 figures represent comparative figures for all answer options given in 2017 only

## A change in legislation?

We asked our respondents about where they would like to see changes in legislation. There has been little change from 2016, with the top three issues remaining:

### Introduction of no fault divorce

2017: 24% | 2016: 27%

### Protection for cohabiting couples

2017: 23% | 2016: 22%

### The reintroduction of Calderbank offers generally in financial proceedings

2017: 17% | 2016: 20%

The ongoing case of Tini Owens, who was refused a divorce from her husband, has added further weight to the argument for change to fault-based divorce. Lawyers and the judiciary alike have criticised the existence of the current system and the lack of reform in this area. Sir James Munby, President of the Family Division of the High Court, went as far as to say that the current divorce law was based on 'hypocrisy and lack of intellectual honesty'.

A paper published by the House of Commons in April 2017 on no-fault divorce stated that the Government has indicated that any proposals for legislative change around fault-based divorce would have to be considered as part of its more general consideration of reforms that may be needed to the family justice system. It seems that this is likely to lead to further delay in reform where overarching reforms are sought rather than considering no-fault divorce in isolation.

## Cohabitation

In what will be seen by many as a step in the right direction, the Cohabitation Rights Bill (whose first reading was in July 2017) is designed to provide 'certain protections' for cohabitants and their children. The bill would also give cohabitants the right to opt-out of the provisions of the bill if desired.

It will be illuminating to see whether the Government's desire to consider the family justice system as a whole also means delay for this Bill. The impact of both the Brexit timetable and a hung Parliament on its Bill's progress will be interesting to see.

# Divorce statistics

## Why?

The three most common reasons for the breakdown of marriages have not changed in the last four years. They are (figures for 2017):

- growing apart/falling out of love (25%)
- extra-marital affairs (21%)
- unreasonable or controlling behaviour (20%).

## When?

Those surveyed said that the majority of divorces are from marriages that lasted between 11 and 20 years (71%), followed by 6 to 10 years (13%), although there was a large drop here compared to 2016 (23%). Notably, the third most common length of marriage was cited as 41 to 50 years (9%), overtaking marriages of 21 to 30 years, and being significantly more popular an answer than in any prior year.

## Who?

The most common age of clients of those surveyed was 40 to 49 (69%). However, there was an increase in the 50 to 59 category (20%, compared to 15% in 2016 and 2015). Nearly one third said they had seen an increase in the average age of clients, with 64% saying they had seen no change.

## How much?

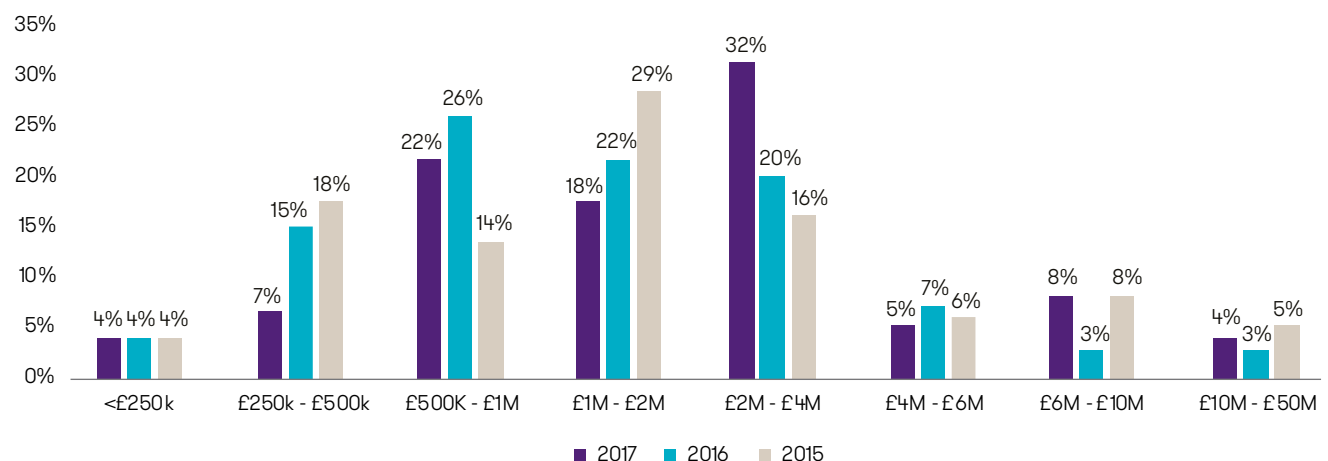
For the first time since we introduced this question in 2010, our survey found that the average value of total assets in cases was £2 million to £4 million (32% of respondents). This represents a substantial increase from the previous year, which saw an average value of assets of £500,000 to £1 million. The full results are shown in Figure 2.

“This increase in average estate value experienced by lawyer respondents may suggest that smaller estates are being resolved in other ways, such as by direct discussion between divorcing couples, or by mediation, or perhaps this just reflects the increase in litigants in person.”

**Nick Andrews, UK Head of Disputes and Head of Matrimonial Services**

Figure 2

What is the average value of total family assets distributed between the divorcing parties in the cases your practice has seen?



# Divorce, the economy and Brexit

Since 2010, we have seen the state of the economy having a significant impact on both asset values and decisions to divorce. In 2013, we reported that lawyers thought that the recession had led people to delay divorce proceedings in each of the previous three years, with reasons given including lack of liquidity in personal/business assets and the ability to fund divorce proceedings.

In 2014, with the first signs of economic recovery, we reported that the majority of lawyers had started to see an increase in the numbers of divorces, a response which continued in 2015 and 2016.

June 2016 saw the result of the EU Referendum, and the decision that the UK would leave the EU. When we asked about the impact of Brexit last year, the general view was that it was too early to tell if the resulting economic uncertainty would lead to people delaying divorce. In the months following the vote, the economy remained relatively stable and so we were keen to understand what impact, if any, Brexit would have on divorce.

We asked whether lawyers expected uncertainties resulting from Brexit to have an impact, and their answers were:

66%

For most people Brexit will have limited impact on their case



16%

Parties with jurisdiction issues are keen to finalise proceedings before the UK leaves

12%

Uncertainty about the economic impact means that parties will delay until the post Brexit position is clearer



6%

Uncertainty about the economic impact when the UK leaves the EU will result in people pressing ahead with their divorce

It is clear that whilst there is a variety of opinions on this issue, at present, the impact of Brexit on the majority of clients is limited and will not be a prime consideration in their divorce proceedings. It will be interesting to see if this remains the case as we get closer to the time when the UK actually leaves the EU.

# Concealment and non-disclosure

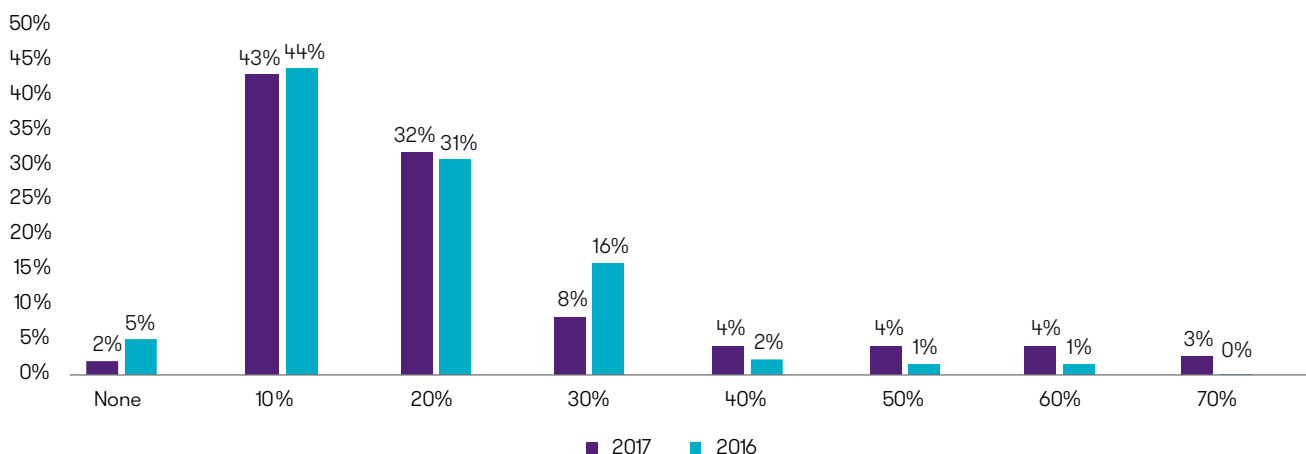
Since the significant Supreme Court judgements in the cases of Sharland and Gohil, there have been a number of judgements regarding cases of concealment or non-disclosure.

From our survey, 43% of respondents said that some 10% of their cases revealed significant concealed or non-disclosed assets, which was largely consistent with previous years. Full details are shown in Figure 3.

Notably, there was an increase in lawyers reporting concealment or non-disclosure in 40% to 70% of their cases. For the first time, some of those surveyed identified that 70% of their cases included these issues. 18% of lawyers stated that such cases had increased compared to their work in the previous year.

**Figure 3**

**What percentage of your cases, to the nearest 10%, reveal significant concealed/missing assets or non-disclosure of information?**



We also asked whether lawyers had seen a change in awareness following the publicity surrounding certain cases, especially the case of Sharland. The response was that while the majority stated that awareness had not changed (62%), nearly a third (32%) of those surveyed said that they thought that more people were aware of the cases and the application to their own divorce.

In line with these responses, 31% of those surveyed said they had seen an increase in people seeking to revisit their financial settlement following rulings in the Sharland, Gohil and Roorcroft cases.

“Identifying concealed assets and unravelling complex asset structures is prominent in a number of matrimonial cases, particularly where there is a lack of transparency in financial affairs.”

**Kristina Kicks, Associate Director specialising in asset tracing and recovery**



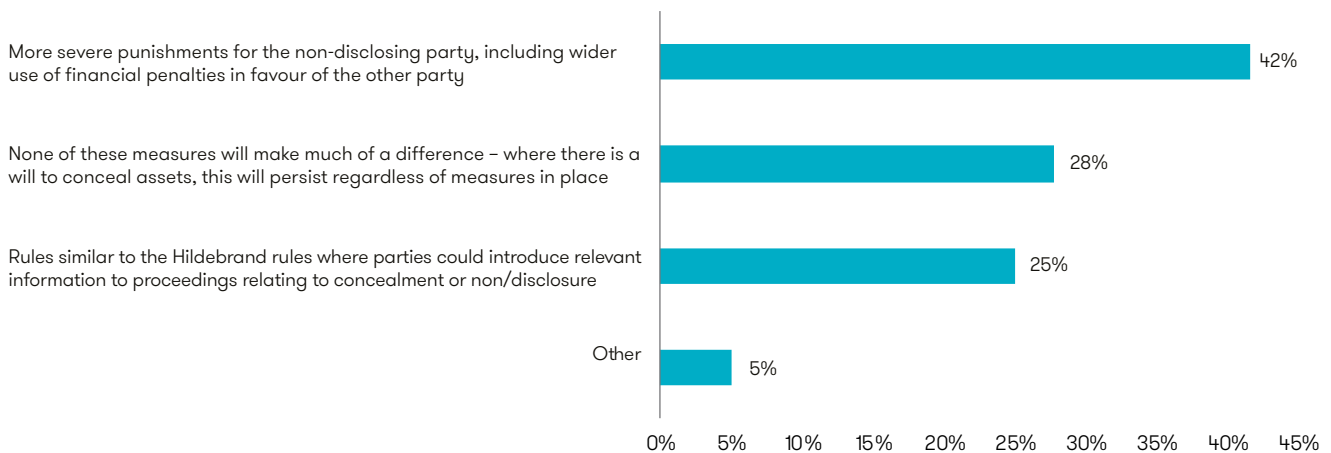
## Guidance, action and reducing concealment

Those surveyed were largely in agreement that there is now sufficient guidance from the Court regarding how it will deal with cases of non-disclosure (88%). However, 55% of lawyers thought that despite the framework provided by recent rulings, those ruling were likely to result in arguments around the Court's attempt to distinguish between accidental or intentional non-disclosure, and thus which party is responsible for proving that it is material in the context of the case.

We were also keen to understand the usual course of action in cases where there is a suspicion of these issues. The most popular answer was that lawyers would undertake their own investigations (70%), with 42% making the distinction that work was likely to be undertaken only in bigger money cases where there are sufficient assets to make the costs proportionate. 15% of those surveyed considered that the cost of doing much investigation was prohibitive in most cases.

Finally, we asked what measures would have the most impact on reducing the level of concealment or non-disclosure in family cases. We have set out the results in Figure 4 below.

Figure 4



# Other matters – a round-up

## Alternative Dispute Resolution (ADR)

With the current issues surrounding the Court process identified by those surveyed, we also asked questions around alternatives that are available to divorcing parties.

### We asked:

*Which form of ADR would you like to see becoming more prominent?*

The top four answers were: private FDR (26%), arbitration (25%), mediation (21%), and Collaborative Law (20%). Other options attracted less than 5% of responses.

It is interesting to note that this year's top two answers are still those which involve a judge (or similar) determining the outcome of the case, as opposed to the options of mediation and Collaboration, which are processes where the parties have more involvement in the final decision.

It is evident from written responses that some clients are using options which allow them to have more say over the choice of judge/arbitrator, perceiving that it is more likely to lead to an acceptable outcome to the parties. In addition, the speed of resolving cases in this manner as opposed to traditional court proceedings is a significant attraction to clients.

### *Have you seen a change in the types of ADR used in family law cases over the last year?*

52% of those surveyed said no, 48% said yes. When we asked for their reasoning, we heard that for those who said yes, most cited increased use of private FDR and arbitration, which mirrors responses to the previous question.

For those who said no, it seems to be the case that there is a lack of interest from some clients and lawyers in using ADR.

There was a notable split between those surveyed operating in London and outside of London, with 75% of those surveyed in London stating that they have seen an increase in ADR.

## Pre-nuptial agreements

Following the support from Supreme Court Justice Lord Wilson for binding pre-nuptial agreements, we again asked lawyers' their views on whether pre-nuptial agreements should have statutory force. They answered:

- 54%: they should have statutory force
- 45%: they should be taken into account, but at the Judge's discretion
- 1%: they should not be taken into account

This is a significant reversal from last year, when a majority (51%) thought such agreements should be taken into account but only at the Judge's discretion. Those lawyers who consider that pre-nuptial agreements should have statutory force generally agree that there should be sufficient safeguards in place to ensure that such agreements were entered into with all relevant knowledge and following legal advice.

Our survey found that 47% of respondents thought that it was quite likely that there would be legislative change regarding pre-nuptial agreements in due course, although a significant minority (35%) thought that such changes are unlikely. One argument put forward was that reform will be low on the agenda, due to issues such as Brexit being the Government's current main priorities.

As highlighted previously in this report, in respect of reform regarding no-fault divorce, the Government stated that change would need to be part of wider reforms. In January 2017, the Government confirmed this was also the case for the Law Commission's recommendations on qualifying pre-nuptial agreements.

# Our matrimonial team

This annual survey of the UK's leading lawyers specialising in family law was carried out by our 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 in family matters to assist with the recovery of assets, and cost effective research focusing on identifying non-disclosed and concealed assets to meet the needs of lawyers and their clients.

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

## About Grant Thornton

We are one of the world's leading organisations of independent advisory, tax and audit firms. We help dynamic organisations unlock their potential for growth by providing meaningful, forward looking advice.

Our underlying purpose is to play a proactive part in building a vibrant economy, based on trust and integrity in markets, dynamic businesses, and communities where businesses and people thrive. We work with banks, regulators and government to rebuild trust through corporate renewal reviews, advice on corporate governance, and remediation in financial services. We work with dynamic organisations to help them grow. We work with the public sector to build a business environment that supports growth, including national and local public services.

In the UK, we are led by more than 185 partners and employ 4,500 of the profession's brightest minds. We provide assurance, tax and specialist advisory services to over 40,000 privately held businesses, public interest entities and individuals nationwide.

## Global strength

Our firms around the world unlock their clients' potential for growth by providing meaningful, forward looking advice. Proactive teams, led by dedicated partners in these firms, use insights, experience and instinct to understand complex issues for privately owned, publicly listed and public sector clients and help them to find solutions. More than 42,000 Grant Thornton people, across over 130 countries, are focused on making a difference to clients, colleagues and the communities in which we live and work.

We coordinate, co-operate and communicate based on a shared global strategy. This approach ultimately leads to greater consistency and better quality for our clients.

## Contact us

Should you require any further information on our Matrimonial Services please contact:



**Nick Andrews**

Partner

**T** +44 (0)207 865 2174

**E** [nick.d.andrews@uk.gt.com](mailto:nick.d.andrews@uk.gt.com)



**Fred Brown**

Director

**T** +44 (0)117 305 7626

**E** [fred.brown@uk.gt.com](mailto:fred.brown@uk.gt.com)



**Julie Gill**

Associate Director

**T** +44 (0)161 953 6391

**E** [julie.gill@uk.gt.com](mailto:julie.gill@uk.gt.com)



**Louisa Plumb**

Associate Director

**T** +44 (0)161 953 6355

**E** [louisa.plumb@uk.gt.com](mailto:louisa.plumb@uk.gt.com)

[The survey canvassed opinions of 80 of the UK's leading family lawyers based on their experiences.]