Grant Thornton

For richer, for poorer? What's yours is mine, and what's mine is out of sight.

Matrimonial survey 2011

The Supreme Court ruling in Radmacher v Granatino was one of the key decisions in 2010 – going as far as is possible in case law to clarify the position with regard to the enforceability of pre-nuptial agreements.

Whilst the ruling determined that pre-nuptial agreements should be given 'decisive weight,' Courts can continue to make judgements at their discretion after considering the facts of the case and where there is good reason to suggest that to hold one or both parties to the agreement would not be fair. Our survey shows that pre-marital work continues to increase.

On a happy note, it seems Sir Paul McCartney still believes that all you need is love after his bitter divorce from Heather Mills – he is set to re-marry later this year, again without a pre-nuptial agreement.

Cases reported previously such as that of Scot Young continue to make headlines, with Mrs Young now accusing Mr Young's high profile and celebrity friends of assisting him to conceal his wealth. Our survey shows increased concerns that clients may not achieve a fair settlement due to undisclosed assets following the Imerman ruling.

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

The survey canvassed the opinions of 101 of the UK's leading family lawyers based on their client work in the 2010 calendar year.

The divorce debate

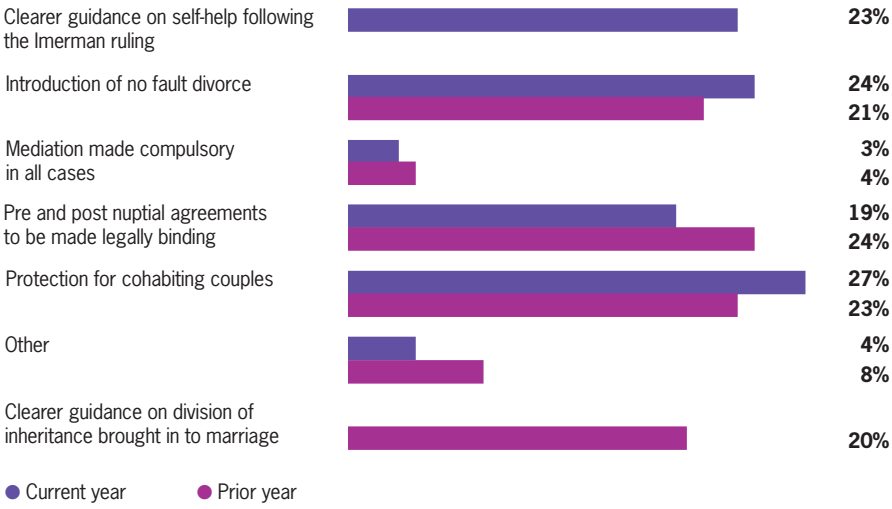
With the economy still struggling, financial constraints remain at the forefront of the concerns of family solicitors.

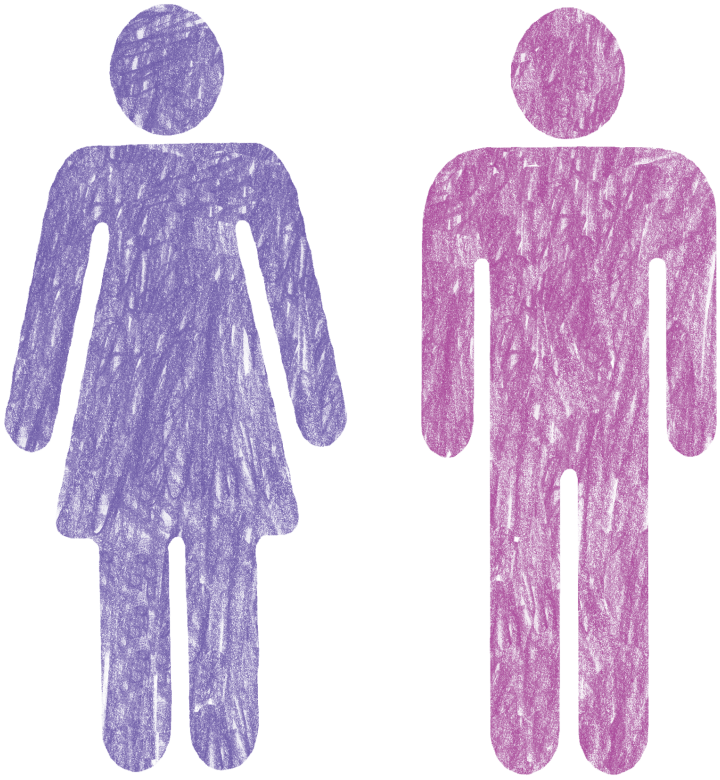
The three top issues according to our survey are the economic downturn and the availability/liquidity of assets available to fund settlements, the ability to fund legal fees and cuts in legal aid funding. Cuts in legal aid funding was offered as a new option for this survey given the cuts arising all across the public sector, and in particular to family legal aid.

As with previous years, we asked survey respondents to select the top three areas in which they would like to see a change in legislation. We have set out the results opposite (figure 1).

Interestingly, the top two choices this year are both campaigns that are being supported by Resolution, although it remains to be seen whether this support will result in change. Last year's most popular choice of making pre and post nuptial agreements binding is not in the top three this year, having been replaced by respondents wanting clearer guidance following the Imerman ruling.

Figure 1: Please select the top three areas in which you would like to see a change in legislation:





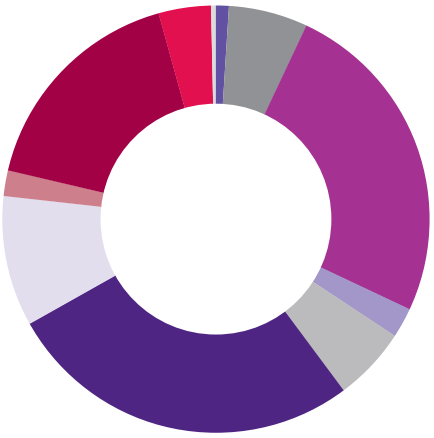
Reasons for divorce

We also asked respondents about the most common reasons for divorce (see figure 2), which is perhaps the true starting point behind these statistics. Ever since our first survey in 2003, extra-marital affairs have always been cited as the top reason behind divorce. That is, until this year, when it has been replaced by parties who say that they simply grew apart or fell out of love.

Indeed, the number of respondents giving extra-marital affairs as their answer is now at its lowest level since we commenced our survey eight years ago.

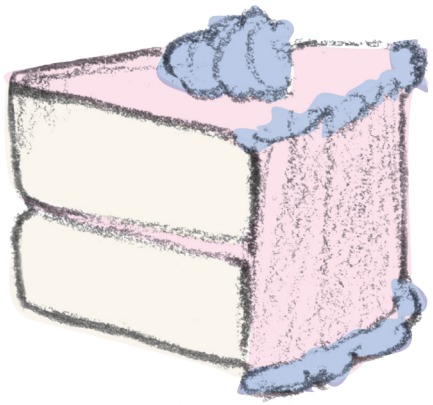
Figure 2: Please select the three most common reasons for a marriage breakdown leading to one or both parties seeking a divorce

Business problems	1%
Emotional / physical abuse	6%
Extra marital affair	25%
Family strains	2%
Financial / money worries	5%
Growing apart / falling out of love	27%
Mid-life crisis	10%
Stress	2%
Unreasonable behaviour	17%
Work-holism	4%
Other	1%



"The movement in the reasons for divorce is interesting and certainly difficult to explain. We are seeing an increasing number of 'celebrities' putting up with alleged affairs in their marriage or relationship – with Abbey Clancy staying with Peter Crouch, and Cheryl Cole looking all set to go back to Ashley. It may be that this is starting to have an effect on the behaviour of couples affected by extra-marital affairs, with more marriages than before surviving a bout of infidelity."

Louisa Plumb, Associate Director, Forensic and Investigation Services



Divorce and the state of the economy

Given the financial difficulties still facing most parts of the economy, we asked what the impact of the recession has been on financial settlements.

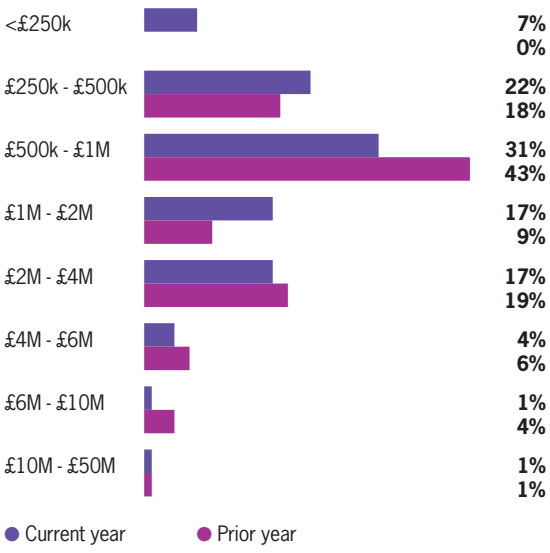
Overwhelmingly, 82% of respondents thought that people had delayed divorce proceedings due to the recession, with a majority of respondents (54%) stating that the lack of value and/or liquidity of personal assets was the greatest contributor to this delay.

However, some respondents did state that their clients had taken advantage of the economy and divorced during the recession in order to benefit from lower income and asset values leading to a lower settlement. Figure 3 shows that there have been fewer cases with the highest asset values in the current year.

In spite of growing financial pressures, only 5% of respondents cited financial/money worries as the most common reason for marriage breakdown, with no change from the level of responses recorded in 2010. However, when asked about specific recession related divorces, financial worries leading to a strain on the relationship was the most common reason given for parties deciding to divorce.

The overall feeling of respondents was that they had seen an increase in maintenance based settlements, with 27% stating these had been the most common settlements dealt with in the year (compared to only 15% in 2009). 41% of respondents cited more maintenance based settlements being as a result of the lack of liquidity in personal and business assets.

Figure 3: What is the average value of total family assets distributed between the divorcing parties?



"Whilst the economy has officially been out of recession for over a year, there are still clear indicators that financial concerns are one of the driving factors in both the timing of divorces and the settlements that have been awarded. With cuts in public spending and the economy continuing to falter, it would be unsurprising to see a continuation of this trend as asset values and income levels remain unpredictable."

Geoff Mesher, Partner, Forensic and Investigation Services

Concealment of assets

Once again we asked questions regarding the concealment of assets, particularly this time in the light of the Imerman decision in August 2010.

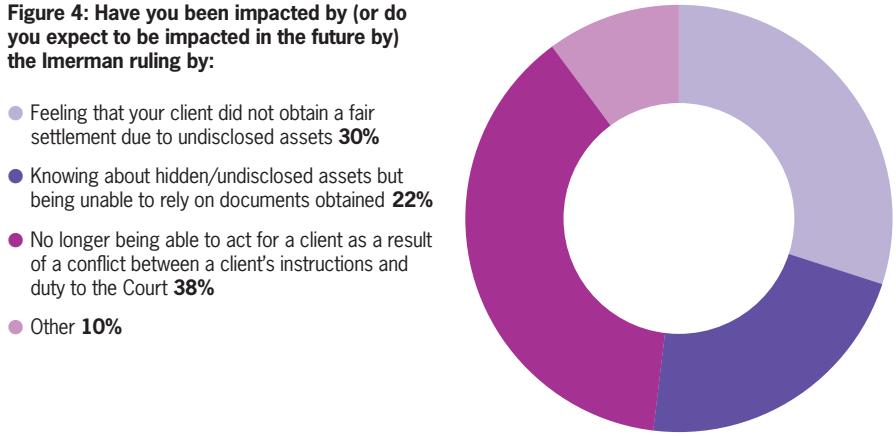
Consistent with last year's survey, the most common answer (40%) was that concealed assets were identified in only 10% of cases, albeit that 54% of respondents gave this answer in 2010. 94% of respondents stated that in three out of ten cases or less, hidden assets were revealed (89% in 2010).

Overall there was a feeling of uncertainty as to the effect of Imerman on financial proceedings, with 48% of respondents expecting no or an occasional impact on their work, and 52% expecting a significant or moderate impact.

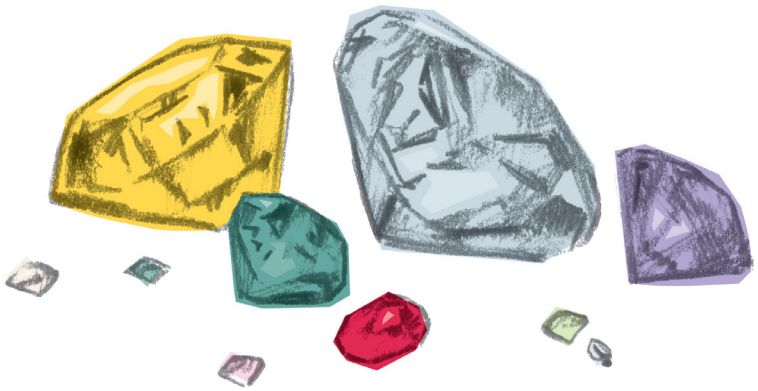
Nearly one third of respondents expressed concern that a client has not/will not obtain a fair settlement due to undisclosed assets, and the majority (61%) are concerned that Imerman makes it more likely that assets will continue to be undisclosed, affecting the accuracy of Form Es. Other responses indicated that people were unsure as to the effect of Imerman, rather than expecting that there would not be one (see figure 4).

In addition, there were concerns regarding the concealment of assets with 48% of respondents stating that people were either definitely or probably likely to conceal assets as a result of Imerman, and a further 35% stating that this may be the case.

Figure 4: Have you been impacted by (or do you expect to be impacted in the future by) the Imerman ruling by:



"Last year's survey touched on the impact of the economy on the concealment of assets and the feeling that a world where every penny counts has made the risk of concealment ever more real. Rulings such as the one in Imerman could exacerbate the impact of financial difficulties and have the effect of making it increasingly difficult to ensure a fair settlement, and this will not just apply to the high profile and big money cases." **Will Davies,** Partner, Forensic and Investigation Services



Mediation and collaborative law

The use of methods of resolving divorce cases other than Court has been of particular relevance following the implementation of the Family Procedure Rules and the requirement for a compulsory mediation assessment meeting before filing a financial application with the Court. As a consequence we have used our survey this year to try to gain reaction to the new requirements and to review the previously mixed reactions to collaborative law.

There were concerns about the requirement to attend a compulsory mediation assessment meeting; placing undue pressure on the weaker party to mediate which would be to their disadvantage (38% of respondents). In particular, concerns were that mediation should be about agreement between the parties making it the most appropriate option and not a compulsion through a statutory requirement. This concern ranked significantly above the next most popular, being the cost implications of attending such a meeting (18% of respondents).

In a further question, 67% of respondents thought that some parties may take advantage of the potential delays arising from the requirement for mediation assessment meetings by moving or concealing assets, which as we have touched on previously may now be an even greater concern following Imerman.

The Justice Minister, Jonathan Djanogly, has already hailed the new rules saying at a recent meeting with mediators in Manchester that they were allowing couples to separate more cheaply, quickly and less stressfully, and this is supported by our survey for successfully mediated cases (59%, 75% and 73% respectively).

Figure 5a: How many cases have you dealt with which have used mediation to facilitate settlement?

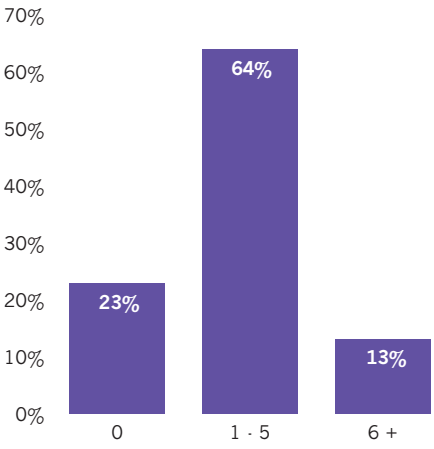
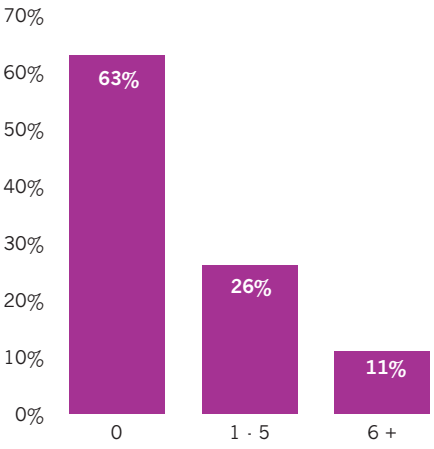


Figure 5b: How many cases have you dealt with collaboratively?



Collaborative law

The response to questions on collaborative law continues to be mixed. Whilst 82% of respondents stated that they supported the process (86% in 2010), only 44% of solicitors surveyed are collaboratively trained, and 63% have yet to deal with a case collaboratively. Although the collaborative process was overwhelmingly considered to be cheaper, quicker and less stressful for clients, it seems that the main barrier continues to be the limited number of clients for whom the process will be suitable (52% of respondents thought this to be the case).

"Although the benefits of a case dealt with successfully using collaborative law or mediation are evident, it is interesting to note that the use of mediation still significantly out-ranks that of collaborative law (see figure 5). It will be interesting to see what effect the introduction of the new mediation requirements has on both the use of mediation and collaborative law in the next few years."

Chris Clements
Partner & Mediator, Forensic and Investigation Services

Cohabitation and pre-marital agreements

Cohabitation

When Mr Justice Coleridge recently called for an independent commission into the state of family law he commented 'when the last major reform was introduced there was no such thing as cohabitation outside marriage'. With marriage rates falling and cohabitation on the increase, this is likely to become an increasingly contentious area as social norms move away from the traditional family unit.

Whilst only 8% of respondents thought that a lack of protection for cohabiting couples was one of the top three issues facing family law (13% in 2010), protection for cohabiting couples was the top area in which respondents would like to see a change in legislation, with 27% giving this answer, up from 23% last year.

It seems clear from our survey that the general consensus is that protection should not however, give cohabitees equal legal rights to married couples, with 52% of respondents stating it should not. We gave respondents the option to qualify their answers and the main points raised were that cohabitees should be given some rights but that these should be strictly governed with clear guidelines of when and to what the rules were applicable.

The Supreme Court ruling in the case of Kernott v Jones which is expected this October may shed further light on this area of law, and also the likelihood of any change in the law in the near or distant future.

Resolution are already campaigning for a change to the law to protect cohabitees.

> "Although the increase in pre-nuptial work recorded in the survey is not particularly unexpected, it seems likely that the impact of increasingly complex family relationships as people embark on second or even third marriages will make this an area of still increasing importance. Post nups are likely to increase at a similar pace. The scenario is further complicated in the event of family run businesses comprising a substantial part of pre-marital assets, as individuals seek to protect both their previous endeavours and secure assets for children from previous marriages."
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> **Sally Longworth,** Partner, Forensic and Investigation Services

Pre-marital agreements

With the Radmacher v Granatino ruling being one of 2010's most significant rulings, we have again asked the question about the levels of advisory work being performed by our survey respondents. It is perhaps unsurprising that 58% of respondents reported that their level of pre-nuptial advisory work has increased (in relation to cases they dealt with in 2010), although we might expect to see a bigger rise in 2011 when the Radmacher decision has had a full year to impact the decisions of potential clients. Indeed, 89% of respondents stated that they expected or had already seen a rise in such work.

However, pre-nuptial agreements are still not in the top three areas where respondents' time has been concentrated in advisory work.

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Our matrimonial team
This eighth 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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