

Boom or bust for divorce?

In a year which ended in turmoil for the World Economy, the effect on relationships is still being assessed.

Back in March 2008, amid claims that it would be the biggest contested divorce settlement in British legal history, Mr Justice Bennett reached his ruling on the Mills-McCartney battle awarding Heather Mills a pay out of £24.3 million.

This was followed, in October 2008, when the 'material girl' Madonna filed for divorce from her husband of eight years, Guy Ritchie. A deal of \$75 million to Ritchie included the couple's country home in western England and a pub which they co-owned in Mayfair.

Issues on the minds of matrimonial solicitors, such as the Privy Council ruling in the MacLeod case and the application to the Courts by Brian Myerson are reflected in this, Grant Thornton's Forensic and Investigation Services' sixth annual survey of the UK's leading family lawyers¹.

Credit crunch

Will the effect of the economic hardship on relationships lead to a rise in divorces, or, will the plummeting value of property and pensions mean that fewer couples look to split whilst their assets are shrinking?

Nearly half, 48%, of respondents to our survey have predicted a fall in the number of couples filing for divorce in the English and Welsh Courts due to the economic slowdown. 23% of lawyers believe that the number of divorces will stay at the same level as the previous year.

It is not a surprise that 65% of respondents predict there will be a fall in lump sum financial agreements and an increase in maintenance based settlements given that individuals' assets will be falling in value in the current economic climate thus reducing the pot of wealth for the parties to share.

The uncertainties facing couples is highlighted by the case of Brian Myerson who, in December 2008, made an application to the Court of Appeal against an earlier ancillary relief order on the grounds that the collapse of the global economy and the value of his shares had rendered the order both unfair and unworkable.

At the time of the original order in March 2008, the assets were to be split in favour of Mr Myerson 57% / 43%. However, as a result of the collapse in the housing and equities market, at the time of the appeal, the share of the assets had swung in favour of his ex wife 86% / 14%.

The Appeal is now expected to be taken to The House of Lords after it was rejected by the Court of Appeal on a number of grounds.

"The recent ruling by the Court of Appeal in respect of the divorce of Brian Myerson, the wealthy city hedge fund manager who agreed a £9.5 million divorce settlement to his wife Ingrid only then to see his personal wealth diminish due to the financial crash last summer has led to even greater uncertainties for couples considering divorce, particularly high net worth individuals whose personal wealth has been hit so aggressively in the credit crunch"

¹ The survey canvassed the opinions of 70 of the UK's leading family lawyers.

Pre and post nuptial agreements

Pre and post nuptial agreements are becoming increasingly popular as people are looking to secure the wealth that they have accumulated prior to their marriage.

Our survey identified that more than half, 59%, of lawyers' surveyed advise on pre-nups more than other types of agreement and 52% of respondents predict that there will be an increase in pre and post nuptial agreements due to the economic slowdown.

“As more and more couples are bringing more individual wealth into a relationship they are seeking to protect their assets, ensuring that upon separation each leaves the partnership with the assets that they entered with. I can only imagine that this trend will continue to rise particularly in an economic downturn when people will feel increasingly vulnerable about their financial position.”

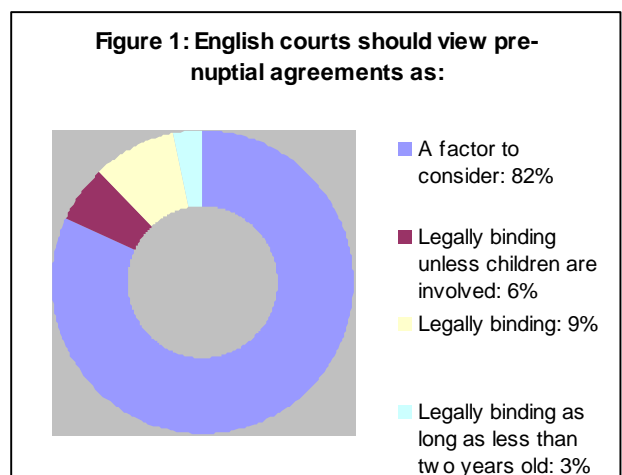
This comes despite pre-nups not being legally binding. However, the consensus among our respondents is that the legal position is becoming more defined, particularly in light of the Privy Council ruling in the MacLeod case.

The MacLeods made a pre-nup on the day of their wedding in 1994 and had amended this twice through post-nups. In 2003, Mr MacLeod filed for divorce on the grounds of adultery and had wanted to split on the basis of the agreements, which would have meant giving his estranged wife £1.89 million including his share of their home on the Isle of Man. This settlement was rejected by Mrs MacLeod who asked for £5.6 million of her husband's riches.

A Court on the Isle of Man rejected her claim but ruled that she should be given more money for accommodation and said it should be paid directly to her rather than held in trust.

The Privy Council found in favour of Mr MacLeod, upholding the agreement the couple signed in 2002 when their marriage was already falling apart. In her judgement Baroness Hale did not agree that pre-nups should be legally binding, saying this was a matter for the Government to consider.

Of our respondents, 82% of solicitors felt that pre-nups should be a factor considered by the Courts. This compares to 18% of respondents considering that they should be legally binding, down from 56% in 2007 (see Figure 1).



Cohabitation

This year's survey has shown that lawyers are increasingly concerned about the treatment of cohabiting couples in the eyes of the law, with some lawyers pushing for the Cohabitation Bill to be supported by Government and enacted². Of those surveyed, 45% called for a change in legislation.

All the solicitors we surveyed have advised on cohabitation agreements over the last year, an increase from 97% in 2007. Given the fall in marriage numbers in recent years it is unsurprising that all respondents had seen the volume of their work in this area increase or stay at similar levels to last year, up from 94% in 2007.

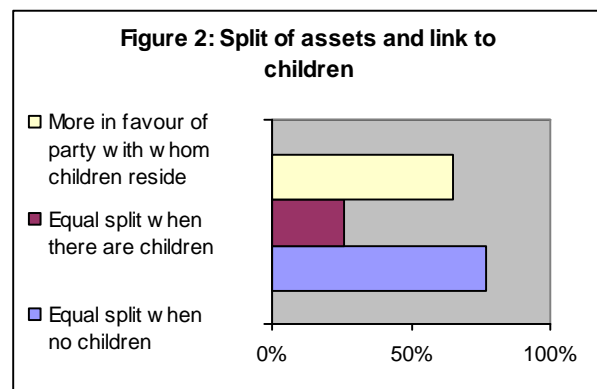
“With a rise in couples cohabiting, we are seeing a growing number of lawyers demanding clarity and guidance over the issue of cohabitation and couples' rights if they do separate. In the eyes of the Courts 'common law marriage' does not hold the same legal rights as it does for married couples, however many cohabiting couples often do not realise this until it is too late”

Financial settlements

As the recession takes hold, it is not surprising that, for the first time in several years, the average value of the total family assets for distribution in a divorce, dealt with by our respondents, has fallen from £2.85 million in 2007 (£2.25 million in 2006) to under £1.5 million this year.

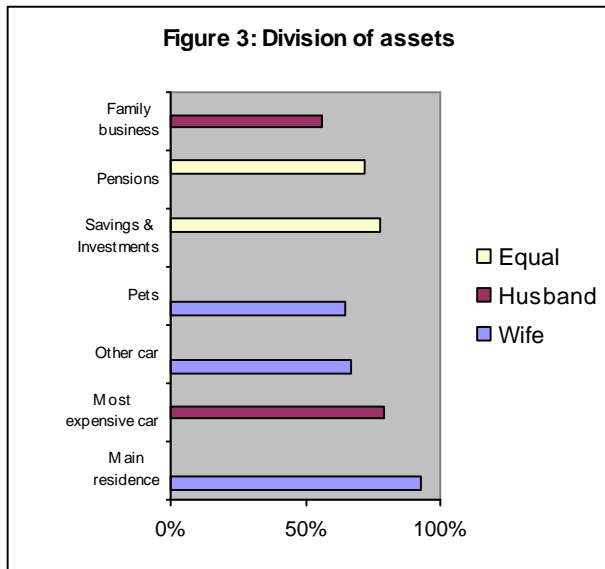
Our survey last year predicted that, if the average split between spouses was to change in 2008, it would swing in favour of men. This is not shown by the responses this year which found that 73% of solicitors had not seen a change in how assets are split and 84% did not expect any change over the coming year.

Interestingly, this year we canvassed opinion on the split of assets and the link this has to whether there were children of the marriage. Assets were more likely to be divided equally between the parties, in 77% of cases, when there were no children involved compared to 26% of cases when there were children of the marriage (see Figure 2).



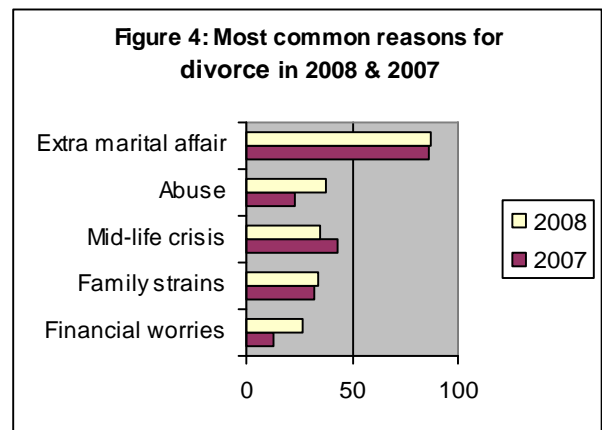
² A private Members' Bill introduced by Lord Lester of Herne Hill which is due for its second reading in The Commons on 3 July 2009

In 2008, the assets continued to be split as shown by Figure 3:



- Family strains, and
- Financial worries

Of interest, given the doom and gloom in the global economy at present, is the increase in the number of respondents citing financial worries as the most common reason for divorce.



Concealment of assets

The level of cases in which assets are concealed has continued at similar levels to previous years. 19% of respondents have had instances of cases involving concealed assets over the last twelve months, compared to 20% in 2007.

In such cases, it has been more common for the concealment to be an action of the husband (91% of the cases). This year there were no cases (2% in 2007) of the concealment resulting from the actions of a wife.

Reasons for divorce

Women continue to file for divorce in 91% of cases and in all but 3% of cases, up from 2% in 2007, the divorces are not contested.

The most common reasons for divorce in 2008, as shown by Figure 4, were stated to be:

- Extra marital affair
- Abuse
- Mid-life crisis

International

85% of respondents, had dealt with cases which had International elements. As social and economic mobility increases, it comes as no surprise that it is becoming more and more common for one or more of the divorcing parties to live abroad and for matrimonial assets to be held outside England and Wales.

The following five jurisdictions were worked in the most over the last year by the solicitors we surveyed:

- England and Wales
- France
- Scotland
- Germany, and
- Spain

The jurisdiction thought by 98% of respondents, up from 94% in 2007, to most favour the wife (in terms of financial settlement) continues to be England and Wales. Whilst Scotland continues to be cited as the most favourable jurisdiction for husbands (30% of respondents in 2008, up from 28% in 2007).

Collaboration

It has now been several years since the introduction of collaboration in matrimonial proceedings and the level of lawyers supporting it has fallen in 2008 to 81% from 89% in 2007.

However, the number of respondents trained as collaborative lawyers has increased to 50%, up 2% on 2007 and there has also been an increase in lawyers intending to undergo the necessary training (up to 13% from 11% in 2007).

Summary

It would seem that the uncertainties in the economy are beginning to impact, as would be expected, on this area of law. This has manifested itself in a number of ways:

- a fall in the value of assets that solicitors have been dealing with over the last twelve months
- predictions that there will be a fall in the number of lump sum financial agreements and an increase in maintenance based settlements
- an increase in the number of respondents citing financial worries as the most common reason for divorce.

Ambiguity surrounding the enforceability of pre-nups, continues to be an issue on the minds of the majority of the solicitors we surveyed as does protection for, and the rights of, cohabiting couples. Early indicators are that both these issues should receive some clarification from the Courts in 2009.



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This sixth 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 either advisory or expert witness services to assist solicitors, their clients and the Court in investigating and understanding the financial aspects of ancillary relief cases. For further information please contact Hannah Reid on 0121 232 5203 or at Hannah.Reid@gtuk.com

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