

Getting round the table to resolve conflict

Collaborative family law can make the process of divorce less traumatic

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AS bewildering as it is traumatic, the unexpected arrival of a divorce writ can be the first involvement in a long and distressing process. It is not however, the only way.

Though covering all usual legal services, Bonar Mackenzie has set apart its Hill Street practice by establishing a speciality in collaborative family law – an alternative way of resolving family conflict.

Enthusiastic about this approach is Lisa Girdwood, a senior court partner who has taken the firm forward in a changing market-place. “The strategic change was to establish a specialist team in family law,” says Lisa. “That did allow me to develop the firm’s policy, bringing in senior people and growing the family law team.”

With that shift in speciality, so there have been some changes at the firm. Debt recovery expert David Flint is moving on, to continue a successful career in that field.

Moving in, and key among those recruited, has been Fiona Mundy – a solicitor advocate, a general civil litigator and experienced family lawyer. As a solicitor advocate, she can offer representation to clients in all courts but she also recognises the benefits of other forms of dispute resolution. “Collaboration can shorten the process, and is ideally less traumatic,” says Fiona. “This, though, is not reconciliation, nor is it marriage guidance. Both parties need to be sure they want to start this journey. What makes the collaborative process most agreeable is that we never start from a position of establishing entitlement. It is all about co-operation and compromise, and arriving at a fair outcome.”

Originally conceived in the litigious environment of west-coast America, the movement has grown and spread throughout Europe. At Bonar Mackenzie too, the team continues to develop. Sheila Barker was recruited by the firm three years ago and



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will be promoted to partner next month. Aside from her accreditation as a mediator, and now as an experienced collaborative lawyer, Sheila’s reputation in the field of international child abduction is a coup for the firm.

The team, which has now expanded to include two other solicitors, Jackie Polson and Jenny Maciver, is immersed in resolving crises for couples. Sheila Barker and Fiona Mundy are also both directors of Family Mediation Lothian, a charity which helps separating parents and their children.

“Litigation can destroy families,” Sheila says. “Lawyers are not involved to make things more painful, but the process can do just that. As a litigator, you can become wedded to your client’s ‘position’ rather than focusing on wider interests, in particular those of the children of the family.”

Relatively speaking, awareness of the alternatives of mediation and collaboration in family law still has some ground to make up. Lisa Girdwood believes that Bonar Mackenzie can help bridge differences between couples by providing these newer

and less formal ways of family dispute resolution.

“The aims of collaboration and mediation are similar, they emphasise fairness, eliminate confrontation and put couples in control, allowing them to decide and not the courts.”

All these aspects are laudable, but what distinguishes collabo-

ration is that the couple and their solicitors agree at the outset not to go to court. The implications of that agreement are far-reaching. By taking the availability of court action out of the equation, there is a commitment from everyone to reach a fair understanding and conclusion. “This is a developed technique,”

says Lisa. “It brings about resolution quickly and efficiently, without the rancour of court action. Couples who go down the traditional route often only go on to talk about money and entitlement rather than the interests they continue to share – for example the care of their children. That can be a hurtful

process, and they can carry those scars into future relationships.”

In stark contrast, Fiona Mundy relates a case when traditional representation had broken down. “The language passing between solicitors offered an appalling impression. I thought actual physical confrontation was more likely than any compromise. Fortunately, both the husband and the wife decided they’d had enough and instructed new solicitors. Using a more constructive process, within a short time they were able to reach a solution. So great was the turnaround that when the pair divorced, they left court, shook hands and walked away together with their children.”

Collaborative family law cannot directly address the wounds of relationship breakdown. It does, however, seem that the modern, careful language can leave couples better equipped to pick up their lives once again and enter into future relationships without the scars so often inflicted in the past. The Bonar Mackenzie collaborative family law team are not surgeons, but they can apply a hand in the healing.

THREE DEGREES OF SEPARATION

IN the carefully worded world of collaborative family law, there is seldom an irrevocable position. Language is important, so it is important to understand the legal options for a couple contemplating separation.

Time was that only court action was available, which clients would recognise as the conventional approach following failed negotiation.

Short of not raising legal proceedings in the first place, mediation is probably the best-known alternative. Here, an independent

mediator, sometimes a specially trained solicitor neutral to both parties, helps reach an agreement. Couples are advised to retain their own solicitors, but they take something of a back seat during the process.

Though it has been an option in other countries for nearly a decade, collaborative family law is the newest and one of the least confrontational ways to resolve separation and divorce. Not quite the robust cross-table haggling familiar to movie fans, this is however

its real-life equivalent. Crucially different from mediation, both parties and their solicitors will actually get around the table and discuss, in a relaxed environment, how to resolve their differences, and redefine their relationship. The needs of both sides are taken into account, which is vitally important where children are concerned. Collaboration means that a couple can often relate to each other in an amicable way, and both can play a co-operative part in the future of their children.

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