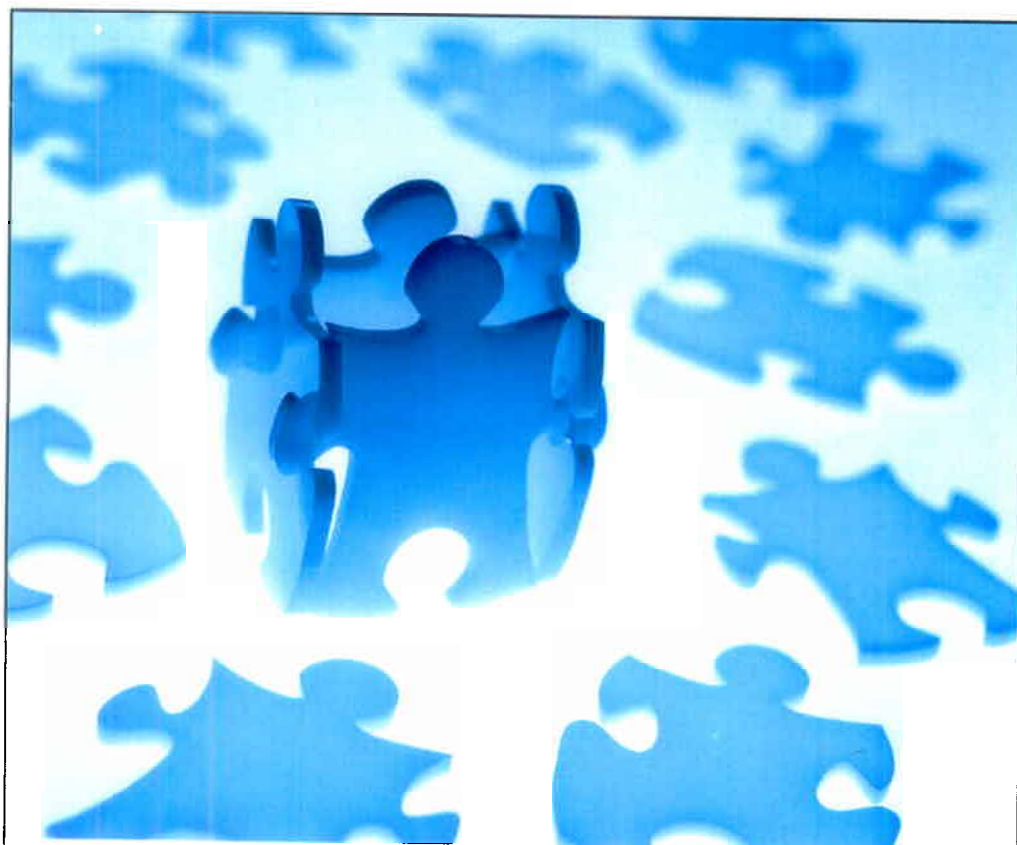


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Home stretch

The impact of property prices on consent orders

Under the microscope

The Human Fertilisation and Embryology Bill

Separate but equal?

Compensation culture in divorce proceedings

Is adoption the answer?

The choices available to step-parents

Levelling the playing field

Financial provision in *Vaughan v Vaughan*

Team building

The bright future of collaborative law

Hostile parents

The role of parenting plans



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Conversation peace

*Can collaborative law become the norm for family lawyers?
Maggie Rae and James Stewart outline the key advantages*



Maggie Rae is a partner at Clintons and James Stewart is a partner at Manches

'There is increasing evidence to show that the growth of the collaborative culture is influencing the way family law is practised, even in non-collaborative cases.'

'Our present methods are out of date, expensive, uncivilised and inefficient. I wish I was at the Bar now. I would force every client to consider and engage in this new process before embarking on the old-fashioned trial-by-battle approach.'

With these words Coleridge J launched the Central London Collaborative Forum (CLCF) in October 2007. This endorsement, from such a well-respected Family Division judge, was both welcome and timely as the practice of collaborative law continues to expand and develop in this country.

The success of collaborative law

Collaborative law practice is relatively new here, having originated in the United States. Readers may by now be familiar with the process. It enables separating spouses and partners to work together, with the assistance, support and help of their legal advisers, to reach agreement about the matters they need to resolve when they separate. Such matters can include, amongst others, the division of their assets and arrangements for their children.

What distinguishes collaborative family law from other systems or processes of negotiation is the requirement that all parties commit to the process. In practical terms this is demonstrated by all participants – that is both partners and their lawyers – signing a participation agreement. This provides, amongst other things, that if either of the parties wishes to ask the court to resolve outstanding issues that cannot be negotiated between them, then both the parties must employ new solicitors.

The practice of collaborative law, however, entails far more than simply signing up to a participation agreement and sitting around a table. It uses many

other skills not normally found in family lawyers' training. Some of these skills are used in mediation but, for many lawyers, they will be completely new.

In England and Wales solicitors must, therefore, complete specialist training in order to practice collaborative law. Suzanne Kingston, a leading UK collaborative lawyer, wrote an article for this journal in June 2007 (*FLJ67* p18) that set out the collaborative process in detail and provided a very useful guide to the process. At that stage she was able to report that Resolution, which has overseen the introduction of collaborative practice and which runs the training courses, had trained 816 collaborative lawyers. A further 350 people were waiting to be trained. The position in January 2008 was that 984 lawyers had now been trained and there were seven courses planned for 2008, which will enable a further 196 lawyers to be trained. There is continuing great demand for training and all the courses so far have been fully subscribed.

Its popularity is not surprising considering the welcome given to collaborative law by both clients and family lawyers who share the view that there must be a better way to resolve the issues arising on separation than those previously on offer.

The increasing numbers of trained collaborative lawyers is very good news. If the collaborative process is to expand in the way many clients and practitioners hope, then it will be necessary to have an adequate supply of trained lawyers so that clients have a proper choice of whom to instruct.

Pods

Another notable feature of collaborative practice is the development of local groups, known as Pods. These enable

collaborative lawyers to come together to exchange ideas, enhance their skills and develop their practice. Pods now exist throughout the country covering local areas and, in some cases, groups of clients with specific needs, eg gay clients.

The CLCF was set up to serve one such particular group of clients – those who are involved in family disputes involving complicated asset structures and/or an international element. The members of the CLCF felt that the advantages of the collaborative approach for complex, difficult and high-profile cases were not sufficiently well understood. Our experience suggests that collaborative law is highly suitable for such cases and it was this realisation that led to the formation of the CLCF to focus specifically on the needs of these clients.

All members of the CLCF are fellows of the International Academy of Matrimonial Lawyers (IAML), an organisation of 500 of the world's leading family practitioners. IAML members believe that their expertise in dealing with complex family disputes enables them to use the collaborative process as an effective tool to achieve a dignified resolution of the practical problems that present in such cases. All members of the CLCF are also members of Resolution and subscribe to its code of practice, which encourages practitioners to adopt a conciliatory manner wherever possible.

Confidentiality

A dignified and confidential divorce is often a key objective for the high-profile clients the CLCF is concerned with and the involvement of the media can present particular difficulties for clients wishing to retain their privacy. It is in the nature of things that the media pick up on bad news more readily than good and that has never been truer than in the case of divorce, particularly so-called 'celebrity divorce'. In recent months the newspapers have been full of stories and pictures about a variety of acrimonious break-ups involving high-profile celebrities. Sir Paul McCartney's divorce from Heather Mills is perhaps the most extreme example of this. However, the amount of publicity this break-up and others have received obscures the fact that throughout the country family lawyers and separating couples are successfully working to reduce the acrimony which accompanies separation and divorce.

A multi-disciplinary approach

Whilst family proceedings are normally confidential, with court hearings taking place in private, there is no doubt that where there is acrimony the media often get to hear of it, frequently through the ill-advised comments of the couple's friends and family. The whole ethos of the collaborative process works to prevent this as far as possible. The couple resolve their differences face to face at meetings with their advisers. In this way there is much less likelihood of the issues between them flaring up to such an extent that the press are informed. Additionally the collaborative process lays great store on the involvement, where necessary, of other professionals such as family counsellors who can help couples overcome the emotional tensions that so often lead directly or indirectly to the press becoming involved.

For these clients, as for others, speed and flexibility can be of paramount importance. The collaborative process can also be of very great use where assets are complex and other specialists need to be involved. For example, accountants, tax advisers and independent financial advisers (IFAs) can be asked to help, to advise jointly and to attend meetings with the clients and their lawyers. Jurisdictional issues such as the application of foreign law or the enforcement or registration of orders overseas can also be dealt with through the use of jointly instructed advisers.

Another helpful development is Resolution's recent launch of an accreditation scheme for IFAs. To qualify, IFAs must have a minimum level of qualification and experience and must attend a course and take an exam. Interestingly, they also receive training in the collaborative process as part of the accreditation scheme. Details of accredited IFAs can be obtained directly from Resolution.

Additionally, where the family's finances are complex, the collaborative model can be very useful in providing a solution that might not be possible through the court process. For example, in one recent case the couple had jointly established and run a business together. They wished to continue to do so as the business had thrived under their joint management. One of the partners was the financial brains behind the business whilst the other was the 'rainmaker'. Through the collaborative process it was

possible to construct a solution which enabled both husband and wife to continue to run their business together for the benefit of all concerned.

International issues

Many divorce cases need the expertise and advice of lawyers from other jurisdictions as international issues become increasingly common. IAML members are elected on the recommendation of their peers. To be elected to the IAML they must not only be experienced family lawyers but must also have international expertise and experience. Members are able to exchange views and share experience, meeting at the twice-yearly international conferences that the IAML holds. This provides an excellent opportunity for enhancing practitioners' knowledge of and expertise in the international aspects of family law and also for getting to know practitioners in other countries so that when international advice is needed it can easily and quickly be obtained from a reputable and experienced lawyer in another country.

Conclusion

So while the collaborative approach may not be suitable for all individuals, it is clear that it can suit all types of divorce – ranging from families with limited means to the cases involving very large sums that are all too frequently reported in the media. A number of 'big money' cases have already been successfully concluded on a collaborative basis. Two CLCF members recently concluded a collaborative case involving an international couple with assets of over £35m, making it possibly the highest-value collaborative case in the UK so far.

Closer to home there is increasing evidence to show that the growth of the collaborative culture is influencing the way family law is practised in favour of round-table negotiation, even in non-collaborative cases. With international cases becoming part of the divorce lawyers' regular diet, the involvement of IAML members in the collaborative process may help change the prevailing culture across continents. With this ambitious aim finding support from Coleridge J at the launch of the CLCF, surely it can't be too long before collaborative practice becomes the norm for couples divorcing anywhere in the world ■