

# Family judges campaign to take the bitterness and costs out of divorce

► Couples would be urged to avoid litigation

► Incentives would be offered to reach a deal

Frances Gibb Legal Editor

Britain's top family judges and lawyers began a campaign yesterday to take divorce out of the courts and make couples resolve their issues without bitter and costly legal battles.

Lawyers from the "magic circle" of divorce firms, as well as senior family judges, have backed a scheme being used in the United States and Canada that encourages couples not to litigate when they separate.

Under the so-called "collaborative law", they must commit themselves instead to resolving all the issues arising from the breakdown of a marriage through co-operative negotiation.

A total of 148,000 couples were divorced in Britain last year. Most divorces are now uncontested and therefore do not go to court for that reason.

But an estimated 60 per cent, or about 88,000, involve disputes over money, property or children, which will go to court, even if the couple agree between themselves. Of these, at least 20,000 will be contested and fought over.

Court proceedings can often last months, if not years, and may involve increasingly acrimonious exchanges where relationships deteriorate even further, often to the detriment of children.

Unlike mediation, another out-of-court method of resolving disputes, the "collaborative law" approach sees couples still represented by lawyers. The parties meet on agreed premises to thrash out a deal and, if the process fails, they must change their lawyers

— an incentive to the lawyers to agree a solution.

Sir Paul McCartney's divorce from Heather Mills is the most recent and high-profile example of an acrimonious break-up that may end in court.

Although some divorces will never be suitable for an out-of-court approach, the new collaborative system is gaining ground. The concept of collaborative law was first used in Britain in 2003, but still remains uncommon.

For the first time last night the top divorce firms in London, who have acted in all the big headline and celebrity divorces in recent years threw their backing behind the scheme, alongside leading family judges such as Mr Justice Coleridge.

Among the leading firms and lawyers signed up are Maggie Rae, of Clintons; Douglas Alexiou, of Alexiou Fisher Philipps; and William Masse, of Farrers. Other firms include Kingsley Napley, Addleshaw Goddard, Collyer Bristow and Charles Russell.

## Path to settlement

Key features of collaborative law:

- A way of resolving divorce and reaching agreement out of court
- Couples and their lawyers commit by written agreement to a series of four-way meetings, complete disclosure of assets and income and the aim of reaching agreement on all disputed issues
- If they fail, both lawyers must resign
- Lawyers charge normal hourly rates and if experts are needed, the parties agree their costs. Costs are far less than litigation
- The outcome is a written agreement prepared by the lawyers covering all aspects of the divorce

Jane Simpson, a leading family lawyer and chairman of Manches, the London law firm, said: "This will hopefully serve to rebut the notion that family lawyers, who have historically acted in high-profile and high net worth cases are wedded to an adversarial approach which can all too often damage families."

The aim, she said, was to show that the collaborative approach could be used in complex, big money, international cases that were the "bread and butter of our work".

The new approach to divorce comes from North America where it was developed in the early 1990s by a group of family lawyers disillusioned with the traditional system of litigation as a way of resolving divorce.

The success rate is 95 per cent and the cases are dealt with in weeks, rather than months or years, with four sessions on average with lawyers. In the Canadian town of Medicine Hat, the scheme is so popular that divorce cases rarely make it to the courts.

Ms Simpson said: "The requirement to change lawyers if a couple decides to litigate is a powerful tool to encourage both clients and their lawyers to remain at the negotiating table."

She said that the recent case of the Charmans, in which Beverley Charman was awarded a record £48 million in the biggest court-determined divorce award in legal history, would probably not have been suitable for the collaborative model. But many others would.

Julian Hawkhead, family lawyer with Grahame Stowe Bateson, the Yorkshire law firm, said: "This system cuts down on the volume of correspondence and minimises misunderstanding. But it is not an easy option: in some ways it is far more difficult to talk face to face in a constructive way, while trying to avoid recrimination and blame."