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The Review

CHANGING FAMILY LAW FOR CHANGING FAMILIES

All together now: the Nottingham DR conference

The Henry Brown lecture: The search for humanity
Plenary debate: The state of the DR nation
Full workshop coverage
Sharland and *Gohil*: analysis and implications
Calderbank debate suggests revival unlikely

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significance given Mr Justice Cobb's comments earlier in the day on the importance of child-inclusive mediation. We moved on to consider how parents might choose to share important information regarding their children and how they should behave towards one another in front of their children.

Much of this involved developing the skills required to plan ahead and address issues before they become problems, but also concerned the importance of making a review plan, building in the time and space for parents to sit down together on a regular basis and talk about their children. Both parents then have the chance to review their parenting plan, which can evolve as a working tool to meet the family's needs as they develop over time.

Questions and answers

Maura then opened the floor up to questions, fielding a number of points which ranged from how best, in mediation, to tell it like it is, and at what stage to invite parents to listen to their children.

In response to the first, it was considered helpful to remember that individuals deal with problems in individual ways and that personalities will not necessarily change as a result of engagement with DR.

In response to the second, it was suggested that parents should be invited to listen to their children early on, when starting to consider the specific needs of the children in question. It was acknowledged that, although some discussion of when parents should listen to their children may crop up naturally, listening to the "voice of the child" can require very careful planning.

One delegate shared with the group their experience of mediation as a transformative process for achieving real change, citing the example of a child who resumed contact with their estranged father after a break of three years. This came about as a result of opening up mediation to a discussion of broader issues concerning the family and came as a timely reminder of the need to be curious in our DR practice and to allow space for conversation.

Onwards and upwards

As will already be clear, many themes arose from this session but, to use Maura's words, the workshop was about getting parents to "give themselves the space to think things through" and to provide "structure with very soft edges". The focus of our discussions was, at times, very detailed, and, at others, very wide-ranging. This served to provide an over-arching structure for the creation of a parenting plan, together with the means to develop it. While not all parting parents will finally need a written plan, the process of simply working through elements like those discussed in this workshop can highlight the importance of the exercise.

Those of us who attended Maura's workshop will have left it with an enriched toolbox of resources and the knowledge that, even if there is no parent glue, as DR practitioners, we may have access to some binding alternatives.

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Collaborative conundrums

Euan Mackinnon *Resolution*

This wide-ranging workshop addressed a number of areas where problems can arise in collaborative practice, and produced a wealth of insights and practical advice

Jo O'Sullivan, a collaborative practitioner and mediator in Brighton and Hove, opened her workshop – Carry on and collaborate – with a brief introduction to systems theory. What she brought out was the complexity of the communication process in the collaborative setting.

Where information once went back and forward relatively straightforwardly between solicitor and client, the altered dynamic of the four-way creates many more opportunities for problems to arise.

This relaxed and insightful workshop examined a number of such problems that can arise in the collaborative cauldron.

Minds made up

A classic example here is the email that arrives from your collaborative colleague shortly before a meeting setting out financial expectations and saying the client won't budge on that.

Leaving aside the negotiation problems this position will cause, there's an issue of communication here too. If, clearly, the client and their solicitor have had a pre-meeting, this can shift the dynamic. There is nothing necessarily wrong with a pre-meet, but they can sometimes give the impression of decisions taken in advance.

As the group discussed their experiences of this kind of problem, a dilemma emerged. As one delegate pointed out, we like to say decisions came out of the meeting, but some clients don't like things being sprung on them in meetings – they like to have a chance to mull things over. So while "won't budge" is wrong, it may be that setting out things in writing isn't so bad an idea.

Jo pointed out some tactics for dealing with this: first, if you want to set your client's thoughts out to the others in advance, don't use the words "offers" or "positions" – talk about "starting points", "options" and "possible solutions". And do it by email – as soon as words hit headed notepaper they acquire an unhelpful rigidity in the negotiation context.

Similarly, sticking with the communications theme, it may be time to hit the phone and say "We're not saying yes, we're not saying no, but let's get into the room and talk."

What Jo was stressing throughout was the importance of building quality teams – where trust and even friendship between the lawyers are important. While pointing out that the option may not always be there for assistants, Jo said partners should decline to collaborate with practitioners who seem to import litigation-style tactics into the process, or who do not seem to do enough work with their client to prepare them for the different way of thinking required.

Finally – and interestingly in a conference where so much seemed to be about breaking down process option barriers – Jo pointed out that if you can't work collaboratively in the full sense, you could still work in a round-table way but do it in a collaborative spirit.

The reluctant signer

Moving on to another common stone in the collaborative shoe: "Let's see how we go – we're not signing the Participation Agreement just yet." This divided opinion. Some felt that if one client was worried about the disclosure they were going to get, it might be worth giving it a go, but others felt that either the trust is there or it is not.

This issue raised an interesting geographical point. Perhaps in London, it was suggested, there would be more chance of the process continuing in this situation because the chances would be higher that the two solicitors had not worked together before, so they may have to take a gamble on the trust issue.

High conflict, different competence

A situation that many delegates recognised was where there was imbalance between the two solicitors, perhaps most often where one is a trained mediator and the other not.

Many said that this can create odd dynamics. There did not appear to be any easy answers for dealing with this situation in practice, but it did lead to a fairly clear conclusion: while it is by no means essential to have mediation training in order to be a good collaborative lawyer, it makes things much easier.

Delegates said mediation experience can help you swap roles and (almost) forget whose client is whose.

An angry client

We then moved on to the unpleasant position of the relationship breaking down with one's own client, who then threatens to walk away. The key advice here from a number of delegates and Jo herself was to get some distance. This is known as a "go to the balcony" strategy.

In keeping with the communication theme, the key here is to ask what the client is really trying to achieve by their bad behaviour. And remind yourself that if it's got this bad in a collaborative setting, how much worse it would have been for the client if they were in litigation.

No momentum

Finally, we looked at the position where clients are in no hurry – in one case having eight-month breaks between meetings. Delegates all found it difficult to imagine this not affecting the process as it works best on momentum, and it's risky for the clients too, as it leaves them exposed to *events*.

But it can be difficult for the lawyers to drive things on, especially if both clients are happy with the timing: in yet another fascinating insight into the collaborative process to arise in this workshop, we were warned by one delegate: "Never work harder than your clients – it's about getting them to talk."

A big thank you to Jo for facilitating such a wide-ranging and eye-opening discussion.

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