

# Stepping forward in family law – a promised land

**Do you remember when you first fell in love? I think you do. Surely that weightlessness of spirit, that perfect rhythm, remains a constant memory for you which no mass of experience can efface.**

Isn't it like that when you realise the significance of something new and meaningful in your professional life?

For me it was the truth of a judge's words in a recent judgement where I had appeared as advocate.

Straight out of the playbook of the President of the Family Division, a really experienced judge told us that the case should never have featured in a court. The two parents, both of whom loved their children, should never have resorted to litigation. There is always a better way. The parents should have found a much kinder way of resolving matters than by going to court over a period of twelve months to reach a court-imposed answer.

The very process of court-involvement is necessarily destructive of good parenting. It ruptures rather than soothes. It chafes. It disturbs and destabilises.

And that cannot possibly promote the healthy cooperative parenting that parents should aim at.

Of course I know the truth of this – Resolution has been telling its members for 40 years and more that amicable solutions are always best.

What most worried me about this judgement was that as a lawyer I had been complicit in perpetuating a system that shouldn't exist. The name partner of my firm founded the original organisation; it is branded on those of us who are lucky enough to work there.

Framed against the question "is a court application really the best way to resolve this financial or other question – is it really in the children's interests for these matters to be decided through a court process?" the answer in most cases surely has to be a resounding "no".

Of course I'm not talking here about welfare cases. Of course I'm not talking here about a person's criminal behaviour. There are Court solutions that are well-suited to an inquisitorial role, and the state has a crucial part in protection.

I'm talking about swathes of family cases that are begun every day of the week up and down the country. The cases that so many of us do around child arrangements and fair division of money on the separation of our clients.

Viewed through the prism of "how can the interests of the children best be promoted", or "how can a relationship be left in peace with dignity", it becomes very clear that a court approach is not the best solution.

It is all too easy to perpetuate myths. Habits become engrained. The common practice of issuing an application early on in a case in order to start the clock ticking on obtaining settlement is

completely understandable. It concentrates minds. It consumes our clients' money. Because we are working with the systems at our fingertips, we readily do this.

Surely the most basic question that needs to be addressed is whether you should be there in the first place.

If you start from the premise that courts should not be too readily open to non-welfare cases, and remember that there are mediation information sessions before most applications are allowed, wouldn't you be at a better starting point?

I absolutely get that Magna Carta provided for ready access to courts by a country's citizens.

But we've had hundreds of years of experience of marital and relationship conflict since then. Twitter didn't exist in 1215. Today the experience of one person's relationship dispute can be communicated to 7 billion people in 140 letters taking one minute to dictate or type.

There is a mass of academic study, and more importantly lived experience, to evidence failed systems that help perpetuate dysfunctional ways of resolving things.

The family law profession is full of heroes who know all this and communicate it regularly. From the harbingers of mediation, to John Cornwell who started what is now Resolution, James Pirrie who brought Collaborative Law to the UK, Suzanne Kingston who helped pioneer arbitration, Nigel Shepherd who campaigned for a blameless new divorce law, to Helen Adam who is helping take children cases away from court, to David Hodson QC who helped with most of these things, and judges who work so hard at the coalface and to the thousands and thousands of barristers and solicitors who do this work.

We all know that there is a better way for family disputes to be dealt with which will not involve court solutions. We will prevail in finding it. There is no real point in not being positive and constructive in our search for solutions.

We have to be brave. We have to create a system which does not allow routine use of court systems which end up spoiling parenting. We need to think on a different plane. For example, should divorces be available from post offices rather than courts, an apparently Scandinavian model.

Yes of course there can be gatekeeping to allow applications to Court which are truly necessary. Urgent maintenance applications and actions to stop financial cheating are obvious examples.

The football team that I support is managed by someone who understands the value of teamwork and positivity. "Wir glauben" is his inspirational motto – "we believe". He and that team never give up. Ever. If we believe, there is nothing that will stop us. ■

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