

## New Family Law protocol: Jaw-Jaw or War-War?+



Winston Churchill once said 'law-Jaw is better than War-War' which is very apt when addressing the sensitive needs of families during family proceedings. Furthermore 'War-War' is becoming expensive with the ever rising cost of living and fewer law firms offering the aid of the publicly funded legal services.

Whenever people refer to wanting 'custody' of their children for example we all immediately think of the stereotypical scenario of elongated proceedings whether they be in court or in the form of unpleasant 'hit for tat' exchanges in correspondence. It is of course, not certain that such stereotypes will change, however solicitors and their clients are, in light of the new protocol being forced to explore new approaches. Nonetheless the decline in access to public funds seems inevitable and the unattractive prospect of incurring costs when pursuing cases privately with law firms, could lead to a rise in the highly risky business of going it alone without the guidance of legal representation.

Without doubt, it is best whenever possible to avoid contested court proceedings. They can escalate hostility and be very costly, both emotionally and financially. It is however, often impossible for parties to resolve such issues on their own. The aid of a 'Mediator' one who is not only detached from the parties and emotionally uninvolved, but who has legal expertise, is that they can work with parties in seeking to help them consider all the options available and possible ways of reaching agreement, whilst aiming to avoid pressure being put on either one of them.

Most clients express great satisfaction and raised self-esteem with the mediation process, and relief at having been able to reach agreement between themselves, without having an 'Order' imposed by the court.

In addition to mediation there are benefits to be found with 'family focussed charities' of which there are many that provide support to families and individuals facing family conflicts.

*For some years I have had the pleasure of working with a charity, Families Need Fathers (FNF), providing pro bono advice on family law related issues within Beds, Herts and North London. FNF is the UK's leading charity for the promotion of shared parenting and during my time volunteering for the charity I have been overwhelmed by the support offered by members and its volunteers however, at the same time disheartened by the lack of public and corporate awareness of FNF and charities like them.*

At a time when the adoption of 'law Jaw' is being encouraged by government and access to the publicly funded family legal system possibly on the decrease, I would appeal to those in the public and private sector to help raise the awareness of family charities like FNF, who are an invaluable resource to those persons who are without representation and who often receive adverse publicity when the reality is that their aim is to achieve the best outcome for families.

Mediation will not be appropriate and or successful in all cases and neither can family focussed charities always ensure resolution. It is therefore difficult to predict whether the changes made by the Government will help or hinder those who find themselves caught up in the turmoil of family proceedings. What is almost certainly inevitable however, with so few lawyers offering publicly funded assistance in light of predicted reforms and cuts to legal aid will be the likely rise of the 'lay lawyer'. The freedom to be your own advocate is of course one of the many privileges of our human rights but, I fear could, when lacking the necessary expertise become a hindrance to many in their pursuit for a fair trial. The new family protocol and legal aid reforms are without doubt an attempt by the Government to reduce the deficit incurred to the 'public purse'. I question however, whether recent changes have simply

opened the floodgates to a potential rise in further litigation being pursued by those who may suffer the consequences of a limited and prejudiced access to family justice in light of the Governments failure to uphold the rule law; The expense of such litigation to the public purse being equal to, if not greater than existing family litigation and more importantly giving rise to further ~~War-War~~.

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