A NEW WAVE IN DISPUTE RESOLUTION?

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Family law seems to progress in leaps and lulls: leaps when everyone is on board and the collective energy truly changes the shape of how we practice. At other times, progress can feel like more of a gentle float downstream.

We leapt forward when collaborative taught us about the power of multi-disciplinary working – it even created the private FDR. There was another quiet-ish revolution at the time when Resolution's Parenting After Parting emerged in the "Prague Spring" of child-centred practice in 2007/8 … Ed Balls was also leading the charities & Agony Aunts/ Uncles in an alliance towards his Children's Summit in December 2008, in an initiative that ultimately failed to capture as much as Denise Ingamells, Duncan Fisher and other leaders would have wanted, but the legacy of which is very much about us.

We are surely now in another period of revolution: a confluence of forces of nature such as Helen Adams, an inspirational President and senior judiciary with hopes to change what lies upstream from the court, increasing stridency from our Judiciary that we find better ways and the 'stick' of a changed approach on transparency, all on stage against a backdrop of changed expectations with the arrival of no fault divorce and impatience at the current lack of diversity in our offerings.

The launch of arbitration (finances in 2012 and children in 2016) the Divorce Surgery and then the Certainty Project and the repackaging into Hybrid Mediation were early runners in this era. Alongside there has been a stronger insistence led by our friends at Exeter university on child inclusive approaches, with Amicable and JK v MK [2020] EWFC 2 jolting our sense of what was possible.

Recent to join includes:

- Withers' 'divorce without taking sides'
- Simpson Millar's 'separating together'
- Family Law Partner's Agreeable
- Mediation space

There is even my own firm's recent branding of its joined up offering into "settle" [please forgive me for other initiatives not called to mind or that are even now fledging to take up a strong place].

A success would be that we properly harness the energy of this wave and carry the aim to improve the practice of family law as far up the beach as we can. What might help that to become

reality rather than seeing the early promise sink into the sand as perhaps was permitted back in 2008 and in other waves before and since?

Well first is surely the mindset of plenty.

The second that we are drawn into that "we are better than" thinking between our firms we will share less well and fail to encourage each other to reach further. Perhaps since 2008, we are in worse shape there with the relentless stream of award and quality tables. It will be easy for us to lose our way. Collaborative reached further than it might have done in changing minds because of the centrality of its pods and community thinking. At its best (and indeed where it did its best, for example in Bristol, Brighton, Cambridge, Hampshire, Berks, Herts and elsewhere it was where there was strong leadership authentically engaged with the hope of "better for all". If we have found something of authentic benefit to the separating population, where there are better solutions to be found more cheaply & quickly, through a process that is easier on all involved, then it is something to share and we should be aiming to take the cohort of our colleague-professionals with us. It was so positive that TL4, hosted a well-attended seminar to bring this movement together when all gave freely of their hopes and insights. But of course, though very welcome, one seminar does not a revolution make.

Secondly, (and more importantly) we will be guided by a resolute focus on what benefits the client and promotes the well-being of children.

Solicitors who are in practice primarily for their bottom line are in a business with, surely, a limited lifespan – eventually word will seep out to the population of potential new cases which will dry up and go to practices that are focused on the well-being of the family (with business well-being as a by-product of that focus rather than client satisfaction being a happy by-product of the pursuit of profit).

Thirdly, surely is likely to be multi-disciplinary working.

One of the basic tenets of collaborative was the norm of working with therapists and financial professionals as equals. Failing to adopt that norm, so many of us failed to harness the potential the model could have provided us, whilst those who operated in a truly collaborative in the way that it was intended saw its efficacy in the outcomes being negotiated and many have not looked back as they have stepped away from what has remained in the mainstream. They found that co-working added quality and generally reduced costs.

Lawyers benefit from a constant reminder that:

- not only do we not know it all,
- but that we are only likely to be working at our best when we are working as equals with the other disciplines that our clients need to onboard to solve the conundrums their circumstances deposit on our desks.

Fourthly and as highlighted by for example the Certainty Project, we are likely to embrace complex process models.

These are procedures that link together processes in parallel or sequence. For example they use legal input in parallel to mediation which might be underpinned by counselling support. Often they will have the safety net of arbitration in place so that clients can be offered the guarantee of closure, even if agreement is not ultimately possible.

Fifthly (as we reach out for integrating therapy into our mediation, bringing in technical domestic abuse/ insolvency skills or legal advice into that process and underpinning it all with arbitration – or whatever we are doing), is the idea of boundaried practice:

We must hold to the essentials of the model in which we are working. Yes high skills and experience may permit us to reach out for harder cases, but the second that we are practicing outside the territory for which the model is designed we are in territory that risks damage and loss for clients. We are hoping we can squeak home with an outcome rather than pursuing a process that has a clear beginning, middle and end point. We engage the risk of the cobbled together deal because carrying on is too painful or the descent into court process that could and should have been avoided.

It is an exciting time but we must bring our best selves to surf these opportunities to ensure that they are not wated.