

Mediation and the Family Procedure Rules - Challenges and opportunities

The Family Procedure Rules which came into force on 6 April 2011 make it clear that mediation is to be the first port of call for separating couples. The new rules require anyone making an application in family proceedings to have considered mediation and in most cases to have attended an information and assessment meeting with a mediator before making an application to the court.

The focus on mediation is to be applauded. An agreement reached through discussion and negotiation facilitated by a skilled mediator will undoubtedly save costs, time and produce a solution that is more likely to be workable than one imposed by the court. But mediation can be challenging. This is not only because people coming to mediation will be coming to terms with the breakdown of their relationship but also because the issues that they face are complex.

Agreeing the division of assets and income requires patience, experience and not infrequently the ability to recognise when expert evidence may be necessary.

Mediators have to be optimistic but they also have to be realistic. Mediation is voluntary and some say that it should not be attempted in the early stages of separation where emotions are running high and it is not easy to see a less volatile future.

There is a risk that too rigid an application of the requirement to mediate will simply be setting up the mediation to fail. The skilful mediator should recognise these shortcomings and enable the couple to go forward with interim arrangements which will remain in place whilst they go through the disclosure process either voluntarily or through the court.

Once disclosure and any expert evidence have been agreed, the case may then be ready for a later solution-based session.

This change in emphasis will present a challenge to mediators who are likely to be dealing with more referrals under the new rules. It will also provide an opportunity for them to use their skills in helping separating couples explore the options available to them as they re-order their lives and futures.

David Wheeler

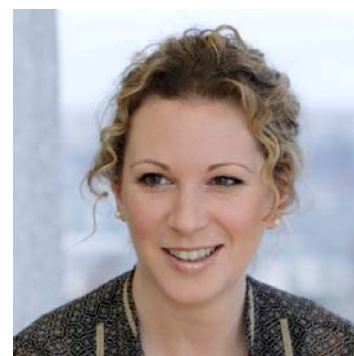
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New addition to family team

The family team at TLT is delighted to welcome new associate Natalie Drew who joined the team in March. Natalie, who qualified as a solicitor in 2004, has extensive experience in all aspects of family law including children law, ancillary relief, cohabitation and Schedule 1 claims. She is recognised in the independent legal guide Chambers UK 2011 as a 'leader in her field' and is described as "*dedicated to her work and clear about her goals – she is able to cut through the paperwork and reach the nub of the case.*" Natalie is a member of Resolution and sits on Resolutions National Children Committee. Prior to joining TLT, Natalie worked at Mogers in Bath.

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Topping up child support

Many people have read the tabloid articles about London becoming the divorce capital of the world with high awards to wives. However many do not realise the raft of financial claims that can be brought by unmarried parents.

Just 20 years ago, only 1 in 5 babies were born out of wedlock in England and Wales. By 2009 this had risen to nearly half of all babies born each year and looks set to continue increasing.

The parents of these children cannot use matrimonial law to secure financial support once separated. The law does not recognise "common law" wives and most parents mistakenly believe that the CSA is their only option. Perhaps this explains why, out of 137,480 children affected by Children Act proceedings from 2008 to 2009, only 1,070 (less than 1%) related to financial claims.

But under Schedule 1 of the Children Act 1989, the parent struggling to meet living expenses on their own can ask for financial help to increase their maintenance claims above CSA levels. This goes beyond day to day necessities for the child and regularly includes claims for holidays and hobbies. It can also include a carers allowance to acknowledge the input of the parent bringing up the child, who is often unable to work.

If there are disagreements over school fees, the Court can investigate each parent's finances and make an order for payment to ensure a child's education is not disrupted unnecessarily.

Added to this is the ability for the Court to order lump sums to provide for housing, furniture, cars and even address the primary carer's debts.

And perhaps most importantly the Court can even make orders for the richer parent to fund the others legal costs, meaning they are meeting both parties legal fees. This may apply to all issues relating to the child, not just disagreements about finances.

As the ongoing recession sees families struggle to meet litigation costs over issues such as residence and contact perhaps this latter point alone may see greater use of Schedule 1 claims in 2011.

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Resolution National Conference

Resolution's National Conference was held in Cardiff this year on 1-2 April. This is the first time the conference has taken place in Wales. TLT's David Woodward is national secretary of Resolution and chaired the AGM which took place at the conference. The key note speaker David Norgrove is chair of the Family Justice Review Panel, which published its interim report on the 30th March. The report proposes wide ranging fundamental change to the family justice system. Consultation on the report continues until 23rd June 2011.

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TLT in the Supreme Court

David Wheeler, associate in the Family team at TLT, will be representing the father in an appeal to the Supreme Court. The case concerns a human rights challenge by the mother to the way the English Court interprets the Article 13b defence permitted by the Hague Convention.

If the appeal is successful it could dramatically affect the way that child abduction cases are dealt with in the Family Division. The appeal will be considered at the end of May. We shall notify you of the outcome in the next newsletter.

If you require this information in an alternative format, such as audio, large print or Braille, please contact Natasha Volkk on 0117 917 8948