

## **NOWELL MELLER SOLICITORS LTD FAMILY LAW SERVICE**

### **LEAFLET NO.15C – WHY YOU SHOULD CONSIDER COLLABORATIVE LAW**

**The revolutionary new way to restructure your family,  
resolve legal issues, and move on with your life**

You and your spouse have the power to divorce with integrity, dignity, and mutual respect. You have the ability to act in ways that make it possible to preserve what remains of good feeling between you, and to negotiate new relationships with those you will continue to be connected with after the divorce is final: your children, your spouse (who is still your children's parent), and the many friends and relatives who form your community of support.

Preserving what remains of good feeling between spouses during the divorce process has obvious benefits for couples with children, who may continue to come together over a lifetime of births, graduations, marriages and deaths. It can be equally important for childless couples whose ties to one another's extended families are deep, or who simply do not wish to mar happy memories of the good days of their marriage with unnecessary unpleasantness during a divorce. For many divorcing couples, their marriage was profoundly meaningful in its time. That chapter of life can be remembered without undue pain, and even with acceptance or good will, by those who choose to part with respect and dignity.

By choosing a collaborative route, you will be saying no to filing inflammatory court papers, no to taking hard-line emotion-based positions that diminish one's dignity and self-esteem, and no to drawing your children into the nightmare of seemingly endless conflict.

Say yes to a process where you both work with your lawyers and other professional advisors and are all committed to resolving your differences justly and equitably out of court; yes to using your best efforts to reach agreements that meet your fundamental needs; and yes to keeping at the forefront integrity, civility, and the long-term well-being of all involved as important financial and child-related concerns are resolved.

You should understand that although divorce and separation may be difficult and painful, it is a normal life transition that unfolds in a step-by-step sequence over a predictable timeline. In today's

society, 4 out of 10 first marriages and 7 out of 10 second marriages end in divorce. You are not alone.

While spending time in the grip of powerful negative emotions is completely normal during the grief and recovery process associated with the end of a relationship, nobody can make good decisions when those decisions are made in a state of strong emotion rather than considered reflection. You are encouraged to reflect before acting, to understand this position, and to negotiate solutions based on your best hopes rather than your worst fears.

Collaborative law does not make it easy, but it helps. A collaborative lawyer will:

- Encourage both of you to remember your goal: the best divorce that the two of you are capable of achieving
- Educate and remind you about the divorce grief and recovery process so that you can choose to operate from your hopes rather than your fears
- Help you focus on the future rather than the past, and on your deepest personal values and goals for the future rather than what the local judge might order
- Make it possible for your financial advice to come from a financial expert and your parenting advice to come from a child specialist, so that your lawyer is freed to do what lawyers do best: help you to reach a well-considered resolution
- Keep you and your spouse focused on how your children are really doing and how the two of you can help them move through the divorce with the least possible pain and “collateral damage”
- Teach both of you new understanding and skills that will help you to be more effective co-parents after the divorce than you may be capable of right now as your marriage ends
- Make sure that you and your spouse have all the information you’ll need to make wise decisions – information not just about the law, but also about finances, child development, grief and recovery, family systems, negotiating techniques, and anything else that will help you devise creative, long-lasting solutions

- Emphasise consensus and real resolution, not horse-trading and quick fixes
- Help you maintain maximum privacy, creativity, and self-determination in your divorce.

### **The old or the new way of divorce? You have a choice**

You don't need to be a lawyer or a psychologist to know that going through a divorce is one of life's roughest passages. It can cause a myriad of emotional responses that at times make you feel overwhelmed and limits your ability to think clearly or make good choices. Unfortunately, this occurs at the very time you are called upon to make some of the most important decisions in your life.

For many people, the ending of a marriage is a time of temporary "diminished capacity". By this we mean a period during which the person you thought you were – competent, thoughtful, considerate, reasonable, fair-minded, resilient – disappears for days or weeks at a time. The person you generally know yourself to be is temporarily replaced by an unfamiliar and frightening self who can hardly summon up enough energy to get out of bed; wallows in fear, confusion or anger; or jumps to hasty conclusions in order to end the conflicting impulses about what to do and how to behave.

Recovering from the shock of a failed marriage involves moving through that initial period of diminished capacity, until gradually, more and more of the time, your pre-divorce "best self" is back at the helm. For most people, this process takes between 18-24 months, though it happens more quickly for some and more slowly for others. During that recovery period, it is quite normal for people to veer suddenly and dramatically from day to day, or even hour to hour, between optimism and darkest pessimism, between cooperative good humour and frightening rage.

Thinking about what kind of divorce you want and how you will get there may seem very strange. But the choices you make at the start of the divorce process have a great impact on what kind of a divorce experience you will have.

Even when people do understand the high stakes of those early choices, thinking clearly and making intelligent choices at this time can be very challenging, as you are on an emotional roller coaster and may experience a wide range of emotional states making it difficult for you to think clearly, impairing your judgment and making rational decision making difficult or impossible.

## The emotional roller coaster

Being sad at the end of a relationship is natural. Although it is painful, grief is a healthy emotional response to the loss of an important relationship. The emotional impact of divorce is as severe as that of a death in the immediate family, the grief and recovery process has a beginning, a middle and an end. Your pain and confusion will gradually lighten and finally go away.

Elisabeth Kubler-Ross, a pioneer in the hospice movement, first described the stages of grieving about and recovering from a major trauma such as death or divorce:

- **Denial** – “This is not happening to me, It is all a misunderstanding. It’s just a midlife crisis. We can work it all out”
- **Anger and resentment** – “How can he/she do this to me? It is not fair”
- **Bargaining** – “If you will stay, I will change” or “If I agree to do it [money, children, sex, whatever] your way, can we get back together?”
- **Depression** – “This is really happening. I can’t do anything about it, and I don’t think I can bear it”
- **Acceptance** – “OK, this is how it is, and I would rather accept it and move on than wallow in the past”

Understanding these stages can be helpful. If you are in the early stages of this grief and recovery process, it can be challenging to think clearly and make decisions at all, much less to make them well. Most people experience at least two of these stages and all are perfectly normal.

In addition to grief and sorrow, many people experience guilt and shame at the end of a marriage and may feel a sense of failure. That’s partly a matter of personal expectations and partly of not having fulfilled what society seems to expect of us. Few divorcing people find it easy to see or accept their feelings of guilt and shame which often remain deeply hidden. For many, such feelings rapidly change into more tolerable feelings, such as anger or depression. This is why it is so common for each partner to blame the other and why it can be difficult for either to accept responsibility for their own part in the failed relationship.

Guilt can cause spouses to feel they have no right to ask for what they need, causing them to negotiate unbalanced unrealistic settlements they later regret.

Similarly, shame often transforms into blame, anger or rage directed at the other party. Bitter fights over children or property can be propelled by feelings like these, because modern divorce seldom brands either partner as Snow White or Hitler, Prince Charming or the Wicked Witch, and therefore the anger, which needs to go somewhere, goes into fights over matters that courts are permitted to make orders about.

Fear and anxiety are other common reactions to stress. When under chronic stress, people may have anxiety attacks in which they tremble or their heart pounds. Or they may be paralysed by almost over-whelming feelings of fear that seem to come out of nowhere. People who feel overwhelmed or confused in this way tend to fall back upon old habits of thought and action rather than looking intelligently at the facts of their situation and weighing the best choices for the future.

Unfortunately, both our court system and our culture at large encourage us to take action in divorces based on how we feel when we are at the bottom of the emotional roller coaster and are most gripped by anxiety, fear, guilt and shame. It is at that time that most people first consult a lawyer. As a result, people are encouraged to make short-sighted choices based on emotional reactions that do not take into account anyone's long-term interests. The resulting "bad" divorces harm everyone and serve no one well. They are very costly; they fail to plan intelligently for the future; and they inflict psychological scares on both the adults and the children.

### **The challenge – making good decisions at a bad time**

Understanding the connections between strong emotional states and bad divorce choices can help most people make better, more conscious, more informed ones.

You can rarely achieve your own "best divorce" working alone. You need the right professional advisors to help you stay focused on that goal even when the roller coaster has once again swooped to the bottom. The collaborative process gives individuals and couples the specific kinds of help they need to make good decisions, even – perhaps especially – at a very hard time.

You may consider that your divorce is only of concern to you and your partner but in truth a bad divorce spurred by bad decision-making has a much broader impact than you might think. If you have children – even adult children – you need to understand that they are the forgotten casualties in most divorces. Children of all ages are typically left out of the process, subjected to enormous life changes about which they receive little or no information and over which they are permitted to exert little or no influence. Their home and school may change, their contact with Mom or Dad may be restricted greatly; their financial welfare may be at risk – all without explanation or any opportunity for them to give input.

What's more, you (and your children if you have any) have important relationships with many people outside your immediate family. Battling adults who consider their divorce a private affair may unwittingly foster conflicts and rifts that can make it impossible for such relationships to continue. They do not think about the impact the divorce will have on children's relationships with their grandparents, aunts, uncles and cousins.

Even if there are no children, most people have important relationships with friends and extended family, all of whom will be affected by the divorce. In conventional "old-style" divorces, these people are often pressured to take sides, so that what one or both spouses thought was a solid web of supportive relationships may crumble and disappear in the face of divorce-related conflict. Work colleagues may become resentful of your reduced productivity and increased absence from work.

You should not over-look the effect of a bad divorce on the local community – if the time and energy you have to devote to other activities is reduced, your community life is likely to suffer. Collaborative divorce is the first system that encourages you to pay attention to factors such as these.

The way to minimize the unintended affects of divorce is to be aware of all those who may be affected and to make good, careful choices that are the best for you and those you care about.

### **The best divorce for you**

We assume that your goal is the best divorce you and your partner are capable of achieving.

Such a divorce would protect your children, help you retain your dignity, preserve your finances, and allow you to have a cordial

relationship with your spouse in the future. A good divorce builds your self-esteem.

If this is what you want, here are some questions to consider:

- Do I want to get advice from someone who believes that taking care of “number one” is the only agenda that matters?
- Or would I rather be advised by people who believe that paying attention to healthy recovery from the divorce and to creating healthy new systems and relationships after the divorce can be as important as paying attention to the bottom line?
- Do I want my advisor to be someone who believes that nothing is important unless the law allows judges to make orders about it?
- Or do I want my advice to come from professionals who believe that my own values and concerns should determine what is relevant?
- Do I want my advice to come from someone who believes that going to court is just another way of resolving the issues?
- Or would I rather be advised by someone who believes that staying out of court if at all possible is healthier for both adults and children?

These are the kinds of issues to consider when you make your first choices about what kind of divorce you want and who can provide the best help to get you there.

### **A good choice – collaborative divorce**

Collaborative divorce prepares you to deal with the emotional challenges and changes associated with divorce and provides the resources that can best help you make a healthy transition from married to single.

Collaborative divorce builds in important protections for children, too. It informs you fully about how your children are experiencing the divorce and what they need to weather the changes in their family structure without harm. It helps protect your future relationship with your spouse by informing both of you fully – together, at the same time – about the financial realities of your marriage and divorce in a way that eliminates pointless arguments

about economic issues. It teaches you new ways of problem-solving.

Collaborative divorce:

- Helps you clarify your individual and shared values and priorities
- Helps you and your spouse reach maximum consensus
- Includes complete advice about the law without using legal rights as the sole template for negotiation and resolution
- Helps you and your spouse resolve serious differences creatively and without destructive conflict
- Helps parents improve their ability to co-parent after separation
- Builds in agreement about the resolution of future differences
- Focuses not only on resolving past differences but also on planning for healthy responses to current challenges and on laying a strong foundation for the future
- Aims towards deep resolution, not shallow peace.

### **A bad choice – why you do not want an “old-style” divorce**

You already know much of this. In summary:

- It is based on the centuries-old belief that divorce is somehow wrong and abnormal
- It seeks to find fault
- It focuses on the past
- It is premised on conflict
- It is constrained by an arbitrary legal framework intended to resolve matters of right and wrong by the exchange of money
- It fails to take into account current understandings of how people are wired, what they need in times of change, what children need during and after divorce, and how families

change and restructure

- It is expensive
- It is hurtful and damaging
- It is “one size fits all”
- It deems irrelevant many common concerns that are extremely important to most people because judges cannot issue enforceable orders about them
- It encourages unrealistic expectations on the part of both spouses about what should happen in the divorce
- It resolves disputes through competing predictions of what a judge would do rather than on focusing on what you and your partner can agree on
- It won't provide essential help to you or those you care about
- The emotional and social costs are incalculable

There is a better option.

### **Collaborative law is not for everyone**

Although collaborative law is the best approach, it cannot work miracles and may not be a good choice where:

- One or both partners have serious mental illness or drug or alcohol problems that are not under control
- Domestic violence is taking place
- One or both partners lack the ability to participate fully and freely in the discussions that will lead to resolution
- One or both partners lack the capacity to make and keep commitments about behaviour and follow-through, even with the help of counseling
- One or both partners are prepared to lie in order to conceal information about their finances

Of course, no other process handles these challenges very effectively either. Even the conventional process cannot make a liar

honest, cannot cure mental illness and cannot make an immature person behave responsibly. However, since collaborative law was introduced in 1990 in the States, research suggests that most people have what it takes to give collaborative law their best try.

There is every reason to do so and seldom a strong reason not to. Collaborative law may be the single best thing you can do for yourself, your spouse and your loved ones.

### **Finding out more about collaborative law**

Uniquely in the UK, the specialist family law group, Resolution, has set up a group of collaborative lawyers, who are trained and skilled in helping people like you to benefit from the collaborative approach to resolving family disputes. Collaborative lawyers are now practising in many parts of the UK and are on hand to help you.

Our Steve Kirwan is one of the few solicitors in Staffordshire to be trained as a collaborative family lawyer and he can be contacted on 01785 273141 or by e-mail at [steve@nowellmeller.co.uk](mailto:steve@nowellmeller.co.uk). Details of the regional group can be found on their website [www.staffscollaborativelaw.co.uk](http://www.staffscollaborativelaw.co.uk). To find out more nationally visit [www.collabfamilylaw.org.uk](http://www.collabfamilylaw.org.uk).

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NOTE: The above is intended as a general guide for your information. It is NOT intended as a substitute for proper legal advice. Each case is different and advice cannot be given without a proper analysis of your own circumstances.

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