

## Let's play happy families

Solicitor **Richard Gregorian** argues for an interdisciplinary approach from psychologists and lawyers to help those in the family justice system

The incidence of family breakdown in this country and, consequently, political interest in improving the family justice system, has never been greater. It is estimated that family breakdown directly affects approximately one third of the UK population (*Every Family Matters*, p.6), and many individuals consulting a psychologist do so for reasons relating to such collapse. Others do so for problems such as business or money worries, which eventually lead to families splitting. Unfortunately, the reputation of the family justice system has never been lower. Senior family court judges have expressed concern: for example, in 2008 Mr Justice Coleridge said that government 'is allowing the whole justice system to be starved to death... [It] is part of the same attitude which fails to recognise the singular importance of the family justice system to the functioning of our society'.

Such opinions are shared by the increasing number of support and lobbying groups in the area. Each has their own vision of change, but it was very apparent to me when I was involved in the process of evidence gathering for the report *Every Family Matters* that they all share a common concern: when their members were involved with the family justice system, they did not feel listened to.

The government's response to this criticism was to accede to demands for the family courts to be opened up to public scrutiny by granting the media access to previously private court hearings. This development provides reassurance to anxious litigants that if they feel that their parental concerns have been ignored by the courts, they have some psychological, if not legal, redress through the involvement of the media. Unfortunately, it is clear that what little interest the media had in sitting through lengthy court hearings of non-celebrity parents has already been lost.

However, I do feel that in seeking to assure that parents are listened to, this

development has inadvertently highlighted the inability of those individuals the client encounters in the family justice system, including his or her legal team, to listen to and process the complex family dynamic involved. The client frequently believes that this underpins the family breakdown and the harmful decision making of the other parent towards them and, possibly, the children due to a lack of psychological understanding.

I often reflect why family lawyers, whose focus is solely on individuals and their problems, do not proactively seek input from those experts who are trained



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**Richard Gregorian** is Solicitor and Principal with *Gregorian Emerson Family Law Solicitors* [richard@gelaw.co.uk](mailto:richard@gelaw.co.uk)

to have a greater insight than they have into the human condition and, in particular, their decision-making processes. Perhaps psychologists have been led to believe by the legal profession that their only function in family litigation is as a sole or jointly instructed court sanctioned expert – the infrequency of such instructions meaning that they are effectively excluded from any significant involvement in the family justice system. I also think it may be the case that lawyers and mental health professionals do not communicate effectively with each other due to their different training and skill set. Lawyers are essentially advisers in the context of rigid rules, a recipe for 'black and white' thinking. Conversely, psychologists, in assessing the possible processes and motivations behind an individual's decision making and behaviour, are more adept at interpreting and communicating the 'grey' areas.

Neither of these problems is insurmountable. Given that family breakdown and post-separation parenting results from a large number of decisions made by the parents, stemming from their unique emotional and psychological make-up, we need to find ways for lawyers and psychologists to work together for the benefit of their mutual clients. The following areas of cooperation are the main ones that we employ within our everyday interaction with our clients in family law.

### Developing and communicating a client's case

It is a rare parent who feels their parental concerns have been accurately and completely understood and, therefore, represented to those who have the power of influence and decision making in the family justice system. It is a rarer parent still who feels that their solicitor has any understanding of the psychology of their case, the family dynamic or their former partner.

At their first meeting with their solicitor, time pressure, deep upset and the 'Q&A' manner in which the solicitor obtains the information they feel relevant, leads to a narrowing of the information base on which a client's case will be built. In particular, the value solicitors ascribe to legal precedent further narrows the case in the solicitor's mind to those facts that are similar to or can be distinguished from legal precedent. This gives the solicitor a benchmark against which to advise when, inevitably, they are asked to give an opinion on the client's likely chance of success. The typically cautious percentage usually given, before the full facts are known and without the necessary psychological understanding of the case and the parties involved, can set the client on a path of disillusionment, conditioned helplessness and increased anxiety.

Rather than possessing the necessary psychological skill set to look beyond the differing facts of each case to discern what makes it uniquely different – the infinitely variable psychology of the case and the parents' decision making – the solicitor will feel encouraged to prove their value and experience by distilling the facts of the case to two or three significant precedential points. Here, psychologists can assist greatly in ensuring that a client's case is formulated and presented to maximum effect. Over a number of months or years, either in relation to the family breakdown itself or for other problems that eventually lead to

it, the client's psychologist will have obtained detailed information by taking a full personal and case history in a non-threatening, therapeutic setting, as well as an understanding of the client's ability to cope with and express those difficulties, particularly under stress.

The legal and factual matrix is, of course, important. But it is this psychological information that – from the very beginning of the client's interaction with the family justice system – will enable an appropriate litigation strategy to be formulated, with the lawyer's involvement and with the client's consent. This will maximise the prospects of the client successfully communicating their parental concerns to the court, and achieving a consensual settlement in the best interests of the children.

The 'conventionalists' might argue that any party or their legal advisers disclosing information about the case – including psychological advice – to a third party without the court's permission is guilty of contempt of court. This is incorrect. Indeed, a parent or their solicitor may communicate information relating to the proceedings to any third party to obtain support, advice or assistance in the conduct of the proceedings, and (more specifically), a parent may disclose any information relating to the proceedings to a 'health care professional' (meaning a registered medical practitioner, clinical psychologist or a child psychotherapist) or a person or body providing counselling services for children or families in order to enable the parent or child to obtain health care or counselling.

### Emotional support

It is very stressful for any parent to be involved in family law litigation. This pressure may last many months or years. A client who cannot communicate their feelings at this anxious time is not in the best frame of mind to conduct litigation or think flexibly. Preserving the client's emotional and psychological well-being in these circumstances is best undertaken by the psychologist within the existing therapeutic relationship.

In order to effectively support their client, however, it is necessary for the psychologist to have an understanding of the family justice system, since this is the external stimulus creating much of the anxiety. The by-product of such therapeutic intervention is a litigant in a calmer, more positive frame of mind who is better able to articulate their concerns in a more constructive manner to those in the family justice system and

to the psychologist, thereby leading to further cross-fertilisation of important information to enhance the case.

### Mediation

The legal profession's need to promote mediation and other types of dispute resolution as an alternative to the family justice system has increased in response to growing criticism of the latter. Proponents of mediation as an alternative to the family justice system in some cases emphasise the control the parents have over resolving their own dispute, and savings in time and legal fees.

However, the Achilles heel of mediation is that, without psychological assistance, the one thing that needs to be mediated – the parties' beliefs systems so far as they result in negative emotions – is not properly addressed. Without dealing with the underlying causes of that negativity and unifying the parties behind a common positive goal leading to their empowerment, rather than an environment based in threat and fear, any attempt to mediate may feel like forcing agreement on the parties and so result in as much polarisation as does litigation. That function is best served by a psychologist and not a lawyer.

By way of illustration, research undertaken by Dr Liz Tinder and Joanne Kettel in 2007 on behalf of the Ministry of Justice found that about 60 per cent of agreements reached by parents had been dropped, or had broken down, by the two-year follow-up point. This was due to one or both of the adults not supporting the agreement, rather than an adaptive change to circumstances. The majority of parents continued to report a negative relationship that had not improved, or had worsened. At the follow-up point, the number of children with borderline or abnormal scores for reporting psychological distress on a standardised measure remained about double the UK norm. One of the main conclusions reached in that report was that there needed to be more relationship-based or therapeutically orientated interventions, under the umbrella of public health rather than the family justice system.

### Getting the best from experts

Typically, an expert in the same field plays no part in the process of formulating the correct questions to the court appointed expert. Consequently, it is not unusual for the questions asked to be grossly over simplistic: Is 'X' an 'alcoholic'? Can 'alcoholism' be cured? Does being alcoholic make them a 'bad' parent?

Invariably, such ill-informed questions can be dealt with by agreeing that, in isolation, just because a parent has a diagnosable condition does not make them a 'bad' parent, but that there is a need to consider on a deeper level whether the underlying reasons for that condition having developed and its impact on their decision making affect the individual's ability to parent. Psychologists working closely with their mutual clients' legal team can play a vital role in ensuring that the court-appointed expert is appropriately instructed and their reports interpreted beyond the purely clinical diagnosis.

### Expert testimony

Since the court most easily understands the 'tangibles' of diagnosis and medication, psychiatrists are the preferred court-appointed experts at present. As psychologists become more involved in family law and the courts acquire a greater understanding of the importance of parental decision making, particularly when it manifests itself in parental alienation and intractable hostility, I believe the day will soon come where – save for the most straightforward of cases – the qualities and skills that psychologists can bring to family disputes are universally sought as part of the court's decision making.

Indeed, in their report *Every Family Matters*, the Centre for Social Justice recommended a three-month cooling-off period before initiating divorce proceedings to enable the parties to reflect on the past and the future (which the report describes as having psychological benefits), and the establishment of a network of 'Family Relationship Hubs', to provide relationship and parenting information and support throughout the duration of the relationship. Such recommendations will have the effect of promoting psychologists in family law.

### Conclusion

Family lawyers often say that they know they have done a good job when both parents leave the court unhappy – the implication being that a child centric outcome has been reached in the face of two warring parents with polarised positions. I would prefer to see an outcome where, whatever the result, both parties acknowledge that their respective concerns and positions were comprehensively communicated to the court with the complexity that an interdisciplinary approach between psychologists and lawyers can achieve.