The art of negotiating divorce settlements

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A good divorce is one that is as painless as possible. Sorting the finances out can be a painful part of the divorce process. The cost – both financial and emotional – of court litigation should not be underestimated. The delays in the court system mean that proceedings are often dragged out.

Mediation is an effective way of reaching a resolution. However, often this requires the parties to be open to sitting in a room together and each feeling strong enough to ‘hold their own’. This is not always the case. A way round this can be so-called ‘shuttle mediation’ with the parties (and their solicitors) sitting in different rooms and the mediator going from room to room.

In many cases, however, negotiations between solicitors is the most effective way of resolving financial disputes. These negotiations can often run in tandem with court proceedings or alternative methods of dispute resolution. Choosing a solicitor who is skilled at negotiating is a valuable tool. The advantage for clients is that it can give the necessary emotional distance to facilitate a rational, commercial conversation.

This article is written for the benefit of someone going through a divorce who is contemplating their options. It considers negotiation in a family context – and the divergent factors that are at play.

1. Negotiating with your spouse is not the same as negotiating a commercial deal

This is a mistake that many people make. Businessmen and women often feel that as they are adept at negotiating deals in a commercial context, they can apply the same techniques when negotiating with their spouse. Unfortunately, this ignores a key factor present in almost all divorce negotiations: emotions. The emotions following a marital breakdown can be raw and unwieldy. Decisions made with an emotional lens are often irrational and noncommercial. Behavior motivated by anger, bitterness and spite is frequently contrary, counter intuitive and sometimes, odd. It is for this reason that financial negotiations following a divorce are multi-leveled and nuanced.

2. Knowing your spouse

It therefore follows that a key factor in cutting deals is giving your solicitor a good understanding of precisely how your former spouse ticks. This includes where they ‘are at’ from an emotional perspective, as well as their personality quirks. Do they always need to say the last word? Do they respond better to flattery or to orders/directions? Do they prefer to be given more options, or fewer? It pays to know both their Achilles Heel and their raison d’etre.

3. Knowing your spouse's solicitor

It can be an advantage for your solicitor to know your spouse's solicitor. This can assist enormously in cutting through issues. If solicitors are used to working together, and have a good working relationship, this can pave the way to constructive discussions. Equally, knowing how our spouse's solicitor operates, their style and likely approach, can be an advantage.

4. Timing is everything

Knowing when to make an offer, or give way on a particular concession, can be critical to achieving a negotiated settlement. Giving your hand away at an early juncture is not usually the best strategy. Sometimes, however, making a considered proposal and sticking with it can be effective.

5. Minimizing acrimony

As tempting as it might be to send that email, full of vitriol, and to instruct your lawyers to make cheap points in correspondence that are aimed squarely at your spouse's jugular, it is not going to help you reach a settlement. ‘In sorrow not in anger’ is the most productive path to tread.
Making life-long decisions about your financial future when you are seething with anger is impossible. Exacerbating these feelings in your spouse helps no one.

6. Guilt

Guilt can have a huge impact on negotiations. Usually, one party to a martial breakdown is suffering from guilt. Feelings of guilt emerge even if there hasn't been an affair – people often feel guilty because they feel they have failed at their marriage, or let their spouse down. If you're feeling guilty, don't allow your partner to exploit this, but if your partner is, keep in mind that a guilty party is more likely to be amenable to negotiation and act quickly because guilt does evaporate.

7. Trust

Similarly, and sadly, most relationship breakdowns coincide with the disintegration of trust. It is very difficult to negotiate a settlement when all of the trust has evaporated. Before negotiations can properly commence, financial disclosure must be exchanged. Providing full, comprehensive disclosure, and dealing expeditiously with any queries raised in respect of that disclosure is a good way of allaying suspicions and rebuilding trust.

8. Using the children

It may sound obvious, but using the children in an attempt to negotiate a settlement is not recommended. Even if they are adults, or mature teenagers. It is a recipe for disaster. Children often feel torn between their parents and it is unfair (and seriously damaging) for them to be put in this situation.

9. Roundtable meetings

Contrary to what the name suggests, these meetings rarely involve both spouses sitting around the same table as their solicitors, although it can do. More commonplace, are roundtable meetings where the spouses sit in different rooms with their advisors who shuttle between the rooms, or meet in a third room, to ‘talk turkey’.

10. Early neutral evaluation / arbitration

Sometimes it is only possible to go so far with the negotiations as an impasse has been reached. Often what is needed is an independent third party giving their view on the appropriate outcome. This can be achieved on a voluntary basis (i.e. without resorting to court proceedings) by paying for an experienced barrister or retired High Court Judge to act as evaluator.

It is often very effective, but sometimes the parties’ respective positions are so polarized in relation to one specific issue, that a resolution can only be achieved if a decision is imposed upon the parties. An alternative to court proceedings, which would achieve this but are costly and long winded, is arbitration. The advantage of arbitration is the autonomy it provides the parties. A bespoke timetable can be agreed, and the decision can be made on paper or by hearing the parties’ representatives. Although it is, in essence, a ‘private’ court system and so carries a price-tag, parties are in complete control of the procedure (and, importantly, the timing) and so the costs can be better managed and limited.
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