The day of the dinosaur is dead - looking back at dispute resolution week

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CATEGORY:
BLOG

We are now at the end of DR week promoting #keepingitoutofcourt. This is not only a constructive and sensible objective but surely the way family lawyers need to go. There has been a huge shift in the last five to ten years and long may it continue! Nearly all of the mainstream commentators in the world of family law advocate the use of dispute resolution and not court. Firstly, in the Family Justice Review Final Report, David Norgrove found '_a system that is not a system, characterised my mutual distrust and lack of leadership, by incoherence and without solid evidence based knowledge about how it really works'. _ More recently the judges have come out in support of DR — Mr Justice Coleridge is clear: Current divorce and financial provision law, he said was '_designed in a wholly different era to deal with a wholly different society and way of life_' and is no longer fit for purpose. In the immortal words of John Cleese it is as dead as a parrot it is no more it has gone to meet its maker or should do. Further, this issue was recently highlighted by the President Lord Justice Munby in the Seventh View from the President's Chambers in which he stated that the court system has lost the respect of its users. Why is this?

1. **Time**. The court works at a snail's pace. The court system lets everyone down especially children. The average time for the care or supervision application in the fourth quarter of 2012 was 45.1 weeks. Further, is the court the right place to resolve disputes in relation to children? Edward Timpson (Parliamentary Under Secretary of State for Children and Families) said on 29 April 2013 '*it is not acceptable that the courts are the first port of call for tens of thousands of parents applying for contact and residence issues every year. It is crucial that we do more to encourage them to settle their disputes themselves, in more positive and constructive ways.*'
2. **Costs**. Delay leads to costs escalations. This can be stemmed by using DR and having a bespoke tailor made process without the clunkiness of the court process.
3. **Party autonomy/bespoke solutions**. Increasingly people are looking for bespoke solutions to individual problems rather than the "one size fits all" approach taken by the court. Using other forms of dispute resolution processes means that clients can deal with their own situation in the best possible way for their family

We are urged by judges at all levels to make proper use of alternatives to court at every stage of the court process. A number of Judges have recommended the use of arbitration – in *AI v MT* Baker J approved an arbitration process before a Rabbi in New York and the auspices of the Beth Din. In *T v T Nicholas* Francis QC refused an injunction to prevent a case going to arbitration. In *W v M*, Mostyn J made it clear that the only way of being afforded total privacy is to sign an arbitration agreement. There may also be of significant advantages in terms of enforcement — work is currently being undertaken in relation to the use of the New York Convention to enforce arbitration awards in the family law context. Watch this space… Of course it is not all about arbitration — that's the "new kid on the block" but thousands of families have been helped in mediation over the years — most family lawyers would recommend mediation for children disputes above court proceedings any day. So let's hope that looking back at this week of all things DR, the profile of alternative ways of dealing with things has been raised and more clients consider using mediation/collaborative/arbitration if they have a family law issue. #keepingitoutofcourt.