

## **Divorce doesn't have to be hell on earth**

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Nicola Walker, family law solicitor at the Birmingham offices of Irwin Mitchell, asks if there is such a thing as a good divorce.

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Divorce tends to be a popular topic in the media, with coverage of high profile cases, not least the McCartney Mills' divorce, in addition to reporting on issues such as pre-nuptial agreements, like those entered into by Mr Stuart Crossley and his wife, Susan Sangster.

She had a short marriage - less than two years - to Mr Crossley, who attempted to have the financial issues between them settled on the basis of a pre-nuptial agreement that they had entered into. However, Susan Sangster sought not to rely upon the pre-nuptial agreements alleging that Mr Crossley had not fully disclosed his circumstances.

Media commentary was generally inclined to suggest that the divorces were difficult and time consuming processes for all parties. However, I believe that there are ways in which people can separate from their spouses in a more amicable manner.

The new process of Collaborative Law in particular is helping a great number of parties separating to do so in a far more constructive and friendly manner.

The Collaborative Family Law process is a relatively new way of dealing with family disputes including issues such as separation, divorce or other family law matters, with each person having his or her own lawyer and agreeing to resolve issues without going through the Court process.

Matters can therefore be resolved not by acrimonious correspondence and Court proceedings but via a series of face-to-face meetings where the parties, accompanied by their lawyers, sit around a table to discuss and deal with the issues.

Each party and respective lawyer signs a 'participation agreement' at the beginning of the process. They also draw up what are known as 'anchor statements'. These set out in clear, unambiguous terms what the parties hope to achieve by engaging in the collaborative law process.

There is no pre-agreed number of meetings but the process on average requires four although, in theory, the parties could just keep going.

These four-way meetings - lawyers and parties - are minuted and progress monitored and discussed in line with the objectives highlighted in the framework provided by the anchor statements. This can prove to be useful should the process become difficult or hit a sticking point, to stimulate the parties to remember the factors which motivated them to opt for the collaborative law process in the first instance. The process also does

away with the perceived costly and potentially damaging correspondence passing between solicitors.

Collaborative Law is proving immensely popular across the country and a large percentage of our work is now being resolved by the collaborative process rather than by traditional Court proceedings and correspondence.

The net effect has been to remove much of the acrimony and also enable parties to be more involved in the process of sorting out matters and devise more creative and constructive solutions.

In many cases the parties can come to solutions that could not be ordered by the Court but which suit their particular family. The collaborative process can be used to settle both disputes about children and about financial issues. Although it may not suit everybody who is separating, it certainly seems to herald a way forward that allows for a 'good' divorce.

The process has a good rate of success as parties have to be committed and lawyers have received training on how to screen parties who are considering collaborative law to assess their suitability.

Both parties will have to voluntarily commit to the collaborative process and sign up to the participation agreement. This is unlikely to occur if relations have degenerated to the point where a couple is at war, or one of the spouses is abusive and/or violent. In the highly unlikely event that the process turns out to be inappropriate, the lawyers will cease to act.

However, for couples who are not only looking to maintain their dignity for the sake of family or indeed themselves, but who also want to manage the divorce in a non-confrontational style, collaborative law is the solution.

The process also allows for the use of other professionals such as counsellors, financial advisors and accountants. These provide neutral support to the parties to deal with all the issues they face on divorce and separation.

Collaborative lawyers undergo intensive training over and above that which they go through to qualify as experts in family law. This training and subsequent, regular updates, equips them to counsel clients in this new and different style of resolving matters.

Given that this is a developing area, not all family lawyers are trained in this field, so collaborative lawyers are developing relationships with each other and forming what are referred to as 'pods' to share experiences and best practice, within the boundaries of client confidentiality.

Returning to the subject of pre-nuptial agreements (PNAs), the Crossley case sent out a message to lawyers and marrying couples that there is a great deal of benefit to be derived from entering into a pre-nuptial agreement prior to getting married. The idea of such agreement is to set out each party's financial circumstances and to have an agreement at the outset as to what should happen in a sad event that the relationship does not work.

Although the pre-nup may be branded as unromantic, it can be extremely helpful. It ensures that a couple discusses openly their financial circumstances and their expectations and it can be particularly helpful where people are perhaps marrying later in life, once they have been widowed or divorced or where they have children from a previous marriage.

Pre-nuptial agreement enable complicated issues such as inherited wealth and pre-acquired wealth to be taken into account. As in the collaborative process, entering into a pre-nuptial agreement gives parties an element of control and enables them to be constructive in their plans for the future.

A good PNA should enable spouses to understand what will happen in the event of divorce and is still relevant for those who are looking at following the collaborative law route.

It is the case that PNAs in this country are still not absolutely binding - meaning that the Court retains an overall jurisdiction as to what should happen when couples divorce - but they are increasingly recognised and given weight by the Courts. I believe that PNA's are helpful because they enable parties to set out their position in the event of separation in advance. They give clarity and control to the parties. In the Crossley case the PNA was upheld and so there were no expensive and acrimonious financial proceedings matters were resolved as per the agreement.

The fact is that there are ways forward for people that are separating to try and ensure that if, sadly they do end up seeking a divorce, collaborative law can be a dignified and constructive process. Any final settlement will be embodied in a formal court consent order.

However, the parties do not need to attend court and settlements are reached within a timescale agreed between the parties and their advisors.

Collaborative law may not save money, as it is little different in cost from the court process, but it may save face and allow for more cordial relations going forward and, particularly in cases where children are involved and may feel stressed by the split, that is an entirely worthwhile objective.

No one would dream of suggesting that divorce is not a potentially emotional and upsetting life-event, but there are ways in which people can organise their affairs both in advance of marriage and at separation so as to avoid expensive, unpleasant and undignified litigation.

Engaging in a strategy which allows the parties to reduce the trauma and impact can only be for the good.

I would therefore suggest to those planning to wed to seriously consider a PNA, possibly as a form of travel insurance covering the journey of married life.

In addition, I would also counsel those who are sadly facing the prospect of divorce to carefully consider the collaborative law process.

If in any doubt, seek your lawyer's opinion on its suitability or visit the website of Resolution to find out what its members can offer you, which may start off as a

straightforward meeting to talk over your individual circumstances and what alternatives there may be to the court process.

Anyone seeking advice on collaborative law can visit the Resolution website at [www.resolution.org.uk](http://www.resolution.org.uk) or contact Nicola Walker on 0870 1500 100.