

# Rising to the Challenge – What Do Our Clients Need?

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Family Law in Partnership

The approach that we will take with our clients and the relationship that we will have with them is probably most defined when we first meet our client. During that meeting we must somehow:

- Address any prejudice that the client may have against lawyers in general and divorce lawyers in particular.
- Speak to our client's concerns and connect with them personally.
- Prove to our client, our ability to contribute significantly to the resolution of those issues.
- Establish the basis on which a partnership can work, start to lay out the different processes and what our separate roles could be in those processes and look at what our client can expect in each of them.
- Promise nothing that we can't deliver upon.
- Meet the myriad requirements of professional practice including somehow giving realistic information about costs; and yet somehow:
  - Be commercially viable for our firms; and
  - Ideally build our reputation and the reputation of our firms so as to help reach from this client to the next client that we aim to have seeking our services.

## The challenge

It is a pretty tall order and we must manage it when:

- It is probably harder to secure clients than it has ever been.
- Our budgets are tougher.

- The job that we do is more complicated.
- The world has just been turned upside down by what is happening with public funding.

On the other hand, we are massively more skilled than we have ever been – we have more tools at our disposal to get our message out there and greater ability to communicate what it is that we do and how we can assist.

## The first meeting

When a client comes to see us, they are stressed by their position, their worries for the future and indeed – for many – simply by coming in to see us. We all know about this but it is worth repeating that when we are stressed our brains flood with cortisone and that affects our cerebral functioning.

Our brains were formed at a time when our crises usually came in the form of physical danger. The logical brain was, if anything a liability when confronted with the crises in the primitive world that were likely when our brains were shaped. We did not need profound cerebral analysis – what we needed was instant physical response – our brains then were developed to be effective to prepare our bodies for physical action, raising our breathing, our blood flow to our muscles, downgrading our logical thinking in preparation for action. Unfortunately though the world and the society in which we live as changed, our brains have not and we have developed no alternative stress response mechanism. So when our clients feel stressed, their brains still prime them more for physical response than the sort of responses that they really need if they are to address modern world challenges, including grasping the complexity of the issues and options described above.

We will not be able to change that for our clients. However, what we can do is look to manage our relationship in a way that takes account of it. We must remember that the stresses for clients of coming in to see us and indeed of their situation generally will unfortunately – because of the way that our brains work – make them less effective in coping with the difficult and novel things that we have to share with them. Our clients' situations are complex and it is difficult to avoid having to give them hard-to-grasp information. In short, unless we are careful, many of the people to whom we give perfect and extensive descriptions of sophisticated strategy may leave our offices frustrated by a lot of complex babble that appeared to have nothing to do with solving the problems that they think that they explained so well. At the time that we think that surely we have knocked them dead with our expositions on section twenty-five factors, they are likely to be going away distinctly under-impressed by what they have been through with us.

## What do we learn for how we must be?

Bill Eddy (author of *High Conflict People in Legal Disputes*) talks about managing this condition by EAR – empathy attention and respect. We need to connect with our client in a profound way rather than simply seek to summon from

ourselves a blistering intellectual performance. We will need to be listening rather than explaining and we may well need to be slower in what we deliver and quite possibly need brighter and simpler metaphors and tools to ensure that some of what we are trying to present will be retained.

The more that we adopt a simple branding and the more that we can adopt it consistently through our communications the more likely it is that clients will be able to grasp the strategy and work with us in an effective partnership:

- For the legal aid lawyer, that will enable the lawyer to complete the legal task more efficiently and effectively.
- For the private client lawyer, the likelihood of doing the job better which will be reflected in higher levels of future referral.

If we cannot be an effective partnership, then it is unlikely that we will be working in a coherent way, complaints are more likely and costs are more likely to rise.

### The essence of what is needed

There are two aspects in particular that we must get right:

#### Our role

How long can or should we be professionals who explain enough of the mystery of some hidden process to get instructions to pursue the case – in effect – on behalf of our client. If that is all that we do then why would the client need us at all now that the information is available for free (and less stressfully, by just sitting at their computer at home) – this information is in many cases no longer hidden at all and the process can be accessed at low cost through website services.

Instead we should recognise that the thing of value that we provide is our support and insight: our ability to help our client because of our experience and training, combined with our ability to connect. Instead of carrying our client each step of the way, increasingly we will be the person helping them prepare for a journey, one that they may decide to complete with a whole range of different sorts of help at different stages. Our preliminary role will be to help the client to:

Identify choices.

Understand likely implications of each route.

Provide them with the means to weigh up the pros and cons of each option; and then

Access in the most efficient way the resources that they need to pursue the course they decide upon.

So we must envisage a change in our role from managing everything to managing parts of the process and being the gateway towards a whole range of other sorts of service and support. We will enable our client to make sense of their predicament and pull together from a whole range of services the particular things that they need to get them through.

Where the legal aid lawyer is able to access these resources (a challenging task where there is not the financial incentive for the client to seek them) the lawyer can define their role as managing more strictly the legal task and thus be able to reduce the work-burdens that will otherwise go with completing the case.

#### A clear presentation

As the job that we do becomes more and more complex so it is increasingly hard to boil all of this down ... however the second requirement is that we provide the client with *the big picture*, something that:

Is simple enough for them to grasp quickly when they are struggling to function well.

- Which is also robust and comprehensive and will not collapse as we mine down into the detail of the work that we do.
- It needs to have simplicity but also provide them with a way of accommodating all the issues that confront them now or will confront them as the process unrolls.

#### Suggested structure

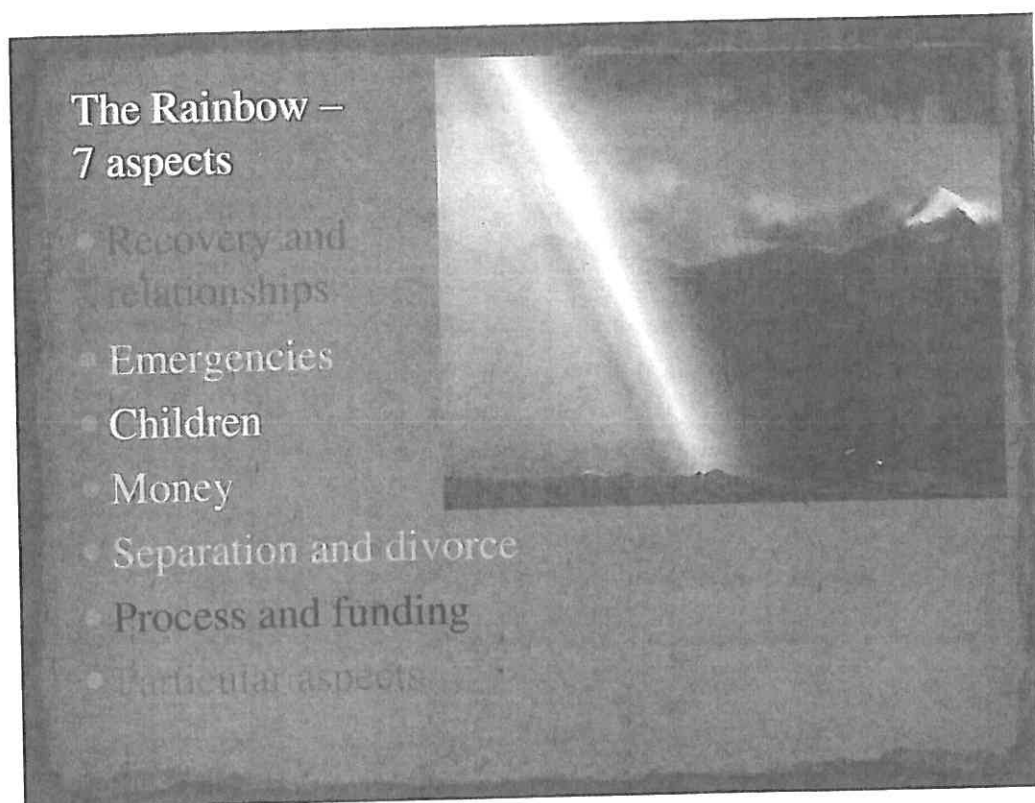
When clients arrive at our offices, they will have a whole range of issues to address. Many of them seem to have knock-on effects to other issues. Standing alone, they are complex enough. However the interconnectedness of this tangle can quickly make the problem feel impossible to unravel. It will be very difficult for us to come up with a plan that will seem coherent to the client whilst the client is struggling to see where each worry fits in and make decisions which fit in around the decisions that they are considering making in other areas.

For example, it might seem to make financial sense that our client collars the savings into their name to protect them against being dissipated. However, how is that consistent with building a relationship of trust without which the parenting needs of the children are not going to be met and what are the likely impacts in terms of turning up the heat in (and cost of) a process that already seems scarcely affordable particularly when there may be numerous other issues, practical, legal and emotional impacting upon the client?

#### A tool to use – seven strands and seven stages

So we have come up with a rainbow because:

- It provides us with bright branding.
- Everyone knows the order in which the colours come – and that there are seven of them. It is an easier structure for our clients to hang onto.
- There may be subliminal recognition of the fact that all the various elements must be held together to get the white light from which clarity emerges. There are the child-like Wizard of Oz metaphors to tap into and it carries with it the stuff of aspiration and light.



We see different aspects of separation as linked to each of the colours (see graphic):

### 1 – Recovery (emotional support) and the reconfigured relationship

When we think about the first element – red – we are reflecting on the fact that:

- There may be a primary question about the viability of the relationship – it is right that clients pause to reflect on whether their marriage is saveable.
- For those who have been left as well as those doing the leaving there is a strong need for support – where we fail to address it, those deep-seated emotional reactions will track along with the aimed-for progress, probably sabotaging crucial steps along the way. We all know how much easier it is to manage situations for our clients where they have been separated for two years and things have moved on for them emotionally. We should therefore recognise the value in taking steps to manage the emotions of breakdown in every case, where the personal circumstances of a client force them to engage with the other aspects of the case at an earlier stage.
- Even where the relationship can't be saved, then "relationships" is still a crucial component in how well our clients will come through the change:
  - Clients need a good enough relationship for there to be an effective negotiation – how many

hundreds of thousands of pounds are wasted on the process because of the fury that clients bring to the legal negotiations. If only that earlier stage had only been managed better – and then paced better, the discussions would have needed a very different level of intensity and probably had a very different levels of success.

- Next, clients need a good enough relationship for what comes after the negotiations – will they have laid waste to their families and friends or split them into two different camps? Is it possible to have managed it well such that more of the common story will still be there for each of them? The more that we can manage the conflict of separation and our clients' reactions to it, the better the chance we have of leaving our clients with a better memory of the relationship's good times.
- Of course where there are children involved, there is an imperative of ongoing connection and managing this aspect well should be a core objective for those seeking to protect their children from the impacts of their decisions.

### 2 – Emergencies

Orange is the international colour of emergency. In terms of emergency or safety, we might be thinking about:

- Self
- Children

- Money
- Jurisdiction

Clients can't embark on these negotiations whilst there are anxieties about these aspects. The steps that we take within the other areas must enable these basic securities to be prioritised.

### 3 – Children

Children are the third aspect and our next article will look in more detail about how their needs might be better addressed in the processes that we offer our clients.

### 4 – Money

Whilst many clients come to our offices, most focused upon "the answer" to the financial conundrum, they are likely to be better able to think through this issue once the emotional, relationship, emergency and children aspects are addressed in some measure at least. In particular, they are easier to resolve when they can be informed by the principles of 'family' that we have for ourselves.

### 5 – Separation – physical and legal

The blue strand stands for the goal that one at least of the couple focuses upon: physical and legal separation. For some the staging of separation must be managed and planned – for others it will fall into place. All our married clients will need to progress the process of divorce.

### 6 – Process & funding

Indigo stands for choices of process: DIY? Mediation? Collaborative? Court-based; or ... any of the hybrids now being generated.

Process is not just a question of the means to the end, with the means fading into irrelevance as the end is reached. A significant part of what clients are left with as they emerge with their solutions is *the how* – the way in which those solutions were reached. These aspects have significant impact upon the first aspect that of the relationship and secondly how viable will be co-parenting. Those whose solutions are imposed after a long and hard-fought court case are likely to emerge into a very different sort of family from those who found their way through a collaborative process with support of family consultants. However, some at least of our clients emerge from relationships that do not seem to admit of any alternative to the court-based process.

The question of funding that process also reminds us of the direct impacts that the process will have on all aspects – from the financial resolution through that to parenting.

### 7 – Particular

Seventh are the violet issues that are particular to the clients' circumstances – for example some may have very particular immigration issues. Others may attach particular

prominence to securing a religious marriage. There are a small handful of clients for whom the publicity aspects either are – or should be – the priority because of their visibility in the public eye.

### Hypothetical case study

Your heart sinks when first meeting with client Emily, when you learn the complexity of the issues that she has faced and that you are the third solicitor to be involved. On the previous two occasions, she returned to an abusive relationship with husband Ted. Her greatest concerns seem to relate to her safety, how this process will be funded and whether her money will be cut off if she stands up to Ted. However, as she talks, she shares her worries about how the children do actually need Ted and that Joey has a great relationship with his dad and she fears about how this is likely to fry in the red hot heat of litigated process that she believes is inevitable. Concern layers onto concern and Emily seems to have a knack at burying herself beneath an ever-expanding tangle of inter-related argument and counter-argument. Little wonder that despite it all, a return to the relationship that makes her so miserable keeps coming up as the easier option – the route through the mess of worries that she constructs around her leaves her with no other way out.

Using the rainbow model, we are able:

- To take things through in order; and also
- To find a way of assessing the consequences of each area on the others.

We have found in working with this model that:

- Firstly, it seems to make sense to clients.
- Secondly, it provides some clear branding for them – it is a structure that they recognise.
- Thirdly, it works – that the issues in their case can helpfully break down in this way.
- Fourthly it enables them to make more profound decisions, in that they realise that each aspect needs to be considered in the light of the others for strong decisions to be made.

### Process

If those are the strands of substance then a further dimension is needed: a structure to explain process so that the client can orientate themselves in the chronology. We are used to explaining "process" in terms of *court* stages but quickly our explanations can degenerate into a different sort of muddle, one populated by terminology that alienates the client it is intended to assist.

Couldn't we do better than this? Isn't the reality that each of these seven aspects actually unroll in a sequence of events that is similar for any aspect that might be mentioned? Consider:

1. First there is the stage of engaging with the professional(s) and working out the basis on which help is to be provided.
2. Next, the professional and client will clarify their objectives and strategy and reach agreement as to the steps and stages by which matters will advance – a planning and preparation stage.
3. Thirdly, there is the moment of engaging with the other person or their lawyer.
4. From that flows the gathering and exchange the information required to address the challenge of the problem.
5. This information coalesces around the taking of a position (in court-led process) or the identification and exploration of different interests and options (in ADR processes). This stage hides a multitude of steps in traditional process (in financial cases, from the issue of the form A to the closing speech at the final hearing). However, essentially it is the same task as the one completed crudely at the kitchen table in a few sentences. Whatever the process:
6. Eventually, the outcome is reached and it is often then recorded – where the outcome is court imposed, the court order is often integrated. For some processes such as mediation or DIY – significant further work may be required to create an order. Others, such as parenting arrangements, may not actually be recorded other than as a roughly drawn agreement or meeting notes.
7. There may then be the implementation stages, for example as the ancillary relief court order is worked out through the transfer of property etc.

2. Work with the professional to agree what they are endeavouring to do and how they will do it.
3. Start to communicate with the spouse or solicitors, from which the likely process map will emerge.
4. Disclose.
5. Set out what each wants and begin to address differences or generate further options for addressing the needs.
6. Achieve an agreement as to whether and if so how the divorce will proceed.
7. Carry out the transaction stages (property transfer/pension share etc).

So in relation to finances, the client would:

1. Appoint the professional.

**Table of process and substance**

So we might have a table that looks like this and hopefully what is now starting to happen for each client is that this tangle is starting to emerge rather more into a structure that helps them to manage the challenges that they face.

**Branding**

We are interested in whether practitioners find a structure and branding such as this useful.

As client’s minds collapse in the stress fury and upset of the relationship breakdown (and yes, occasionally taking us with them), they can handle the branding of colours and when we consistently adopt the colours won’t clients start subliminally to hold onto the bigger structure? The result will be that we are able to work together more effectively and efficiently.

*This article is based on a presentation given by Neil Denny, Liz Edwards, William Hogg and James Pirrie at the National Conference on 14 March 2010. Comments or suggestions are welcomed, direct to James at [jp@flip.co.uk](mailto:jp@flip.co.uk)*

	1) Engage	2) Objectives & Preparation	3) Contact and explore	4) Information gathering	5) Options/ Positions	6) Outcome	7) Implementation
Relationships Recovery							
Emergency and protection							
Children							
Money							
Divorce and separation							
Process and Funding							
Particular concerns							