

## Rising to the Challenge – What Matters Most?

CHRISTINA MCGEE

Divorce and parenting coach

JAMES PIRRIE

Flip

When we identify client's aspirations in collaborative cases, their kids are always right at the top of the list: when they are able to focus on these issues in a rational way, managing matters well for the children goes hand in hand with managing it well for the clients.

Clearly where we can address what matters most to our clients, we are more likely to:

- Deliver services in a more efficient and comprehensive way
- Have more satisfied clients
- Secure more of the recommendations and referrals that keep our services going.

It is strange therefore how often law practice leaves the children issues to take care of themselves.

### The approach of lawyers to parenting issues

There are law specialists whose antennae are highly attuned to addressing the legal issues surrounding children ... however, for too many of us:

- We approach family cases as if the "real" issues are around money or addressing conflicts, not children. This has become our reality and we assume that this is why our clients come to us for help.

- We turn a blind eye to children's issues and function under the assumption that unless there are presenting 'symptoms' in the form of disagreements or anxieties everything is fine and our clients tell us if there are issues that need to be addressed.
- Our success becomes shaped by these aspects instead of the long term well being of our clients. We consider our work complete when we have a decree absolute, a final order – and implementation has been managed.

Section 1(5) of the Children Act 1989 says that the court should not make an order unless "...doing so would be better for the child than making no order at all." So a practice that leaves children issues alone unless they command involvement seems to fit with that legal culture. If we are compelled to engage we first of all are negative about the court process – rightly, we tell our clients that it should be a last resort. However, secondly and, perhaps wrongly we share our perception of what the legal principles are – ie what would the court do if it were dealing with this situation. As we will consider in this article, there is a great deal of wisdom that we should offer to our clients that has nothing to do with what a court might do.

We may also choose to dispense our own personally received 'wisdom' ...In SFLA's 2004 paper, *Practical Steps to Co-Parenting* there was a focus on amounts of time and a norm of alternating weekends and one night each week was helpfully discussed there. However, that has helped to create an approach where we inclined towards managing disputes over time towards that norm. Once the parents have been persuaded to come within an acceptable zone, we may feel that the problem can be treated as resolved and we can get on with the rest of the case, the "real" stuff of separation.

In other situations, where there is no presenting dispute, it is as if, as professionals, we "buy into" the parents' fantasy that they ought to be able to automatically manage the intricacies of separation for their children and that they will do it well – as if they come hard-wired with knowledge of how to navigate the family's transition through this crisis. We mistakenly assume if clients don't raise the issue then they don't need our input. Clients aren't wired this way and we shouldn't pretend otherwise.

### What should we be doing?

How much better we might serve the needs of our clients and their children if we helped them to access research-based wisdom instead of legal precedent or our sense of norms. This approach might very well rescue the vast majority of children, who currently slip silently past us, like ships in the night, because we failed to give their parents guidance as to how to manage the situation well.

Until we learn to help our clients better, we have a bizarre situation. Even though this is generally the aspect that clients say is most important to them, it may well be the aspect on which we do not engage with our clients at all. And, if we do so, we engage in a way that does not reflect our position as expert for this family. Little wonder then that the demand for the services we offer will start to tail off.

It is no answer to say “...but my clients don’t want to pay me for the time it would take to provide this sort of information.” No doubt, clients come with expectations as to what they will receive from their lawyers. In the past, we may have failed to create the culture of expectation that we can help our clients effectively manage other aspects of their separation or signpost them towards the services that will enable them to do so. However, that does not mean that we should continue to operate in this way.

Further, providing significant help doesn’t necessarily equal more time but rather spending time with clients differently. Over the last three years working with parenting expert, Christina McGhee, we have made significant strides towards creating tools that enable us to be effective and efficient for our clients.

We suspect that when this transition is broken down into a series of steps or tasks clients can get on board much more easily. Through our work with Christina we have identified seven essential components that need to be completed for a family to make a good transition. It will not always be important that we provide this information ourselves – indeed often, considerations of time or funding or indeed expertise will demand that we do no more than:

- Understand the structure.
- Provide ‘how to’ information to the client to manage the most pressing issues, for example guidance on:
  - how to share information with the children about the decision to separate; or
  - how to manage the process of an imminent physical separation.
- Provide good referral or signposting to other services or supports that our clients may need by helping them to understand their situation and the needs of those who rely upon them.

Further, we must not give the impression to clients that simply managing these two aspects well represents *all* that they can usefully do. From the outset, we may need to help our clients engage with the idea that there are a series of stages and transitions that need to be completed. In earlier issues of the *Review* we addressed seven fundamental aspects usually involved in the uncoupling process. They are:

1. The relationship
2. Emergencies
3. Children
4. Finances
5. Divorce and separation
6. Process
7. Particular aspects

This article will expand upon the non-legal tasks relating to children.

## Seven essential tasks for helping parents address children’s issues

### 1. Informing

Informing usually comes first. Our clients have come to our offices and the crisis is upon them. Very often the separation or pending divorce has become a reality for them and they see the need to “*talk to the children*” immediately. The worry about what to say has grown and their level of stress increased. When this occurs clients often stop thinking clearly about what their children actually need from them.

In other families, the dynamics may be different. One parent may insist on talking while the other wants to wait until everything is clear. Each of these parents need a plan for how children will be told about their parents’ decision, who will say what, how will it be said and when.

In particular, where we have seen impacts on a family up close – personally or through working as a mediator – the difference made by addressing this aspect, even half well, is astounding. It is not as if parents need to put on an amazing performance. Rather the focus is on offering basic information about how life will change, answering questions raised by the children and providing reassurance.

Even if clients say they have already talked to their children, discussion needs to be ongoing not a one off event. Parents will need to keep the lines of communication open between one another and with their children. As life changes, parents may need to address new issues to help children make a good transition or clear up any confusing or mixed messages from previous talks. Our role then as lawyers is to enable our clients to tap into best resources whether this is to help them to access workshops, books, local child-development-specialists or whether to continue to provide the help ourselves.

### 2. Staging the separation

For many families, hard on the heels of “task 1, informing the children” will come “task 2, providing the good separation”. We may feel that this is work that should be done by our client with a therapy-trained specialist from our network of referrers. However, rather like the first-at-the-scene

paramedic, we should ensure we have the skills to help our client with this task if it is pressing and needs immediate completion. Many adult children of divorce have spoken about the painful memories they have of a slammed car door being the point at which it was clear that dad was leaving. We should recognise instantly how that mis-managed moment of separation can create an emptiness echoing through the rest of a child's life. We have a responsibility to help our clients manage this process better than was so often the case for past generations.

For many families, final separation is also a longer-term process. Frequently separating into two homes is simply not possible until the finances have been addressed and the family home sold (which in the current economic climate may take even longer to happen). Here it may be easier to plan arrangements that avoid children feeling bewildered or bereft. Whatever the situation, separation needs to be planned and the existence of this "task" is there to remind parents that it does not automatically happen well of its own accord.

### 3. Principles and objectives

In many cases, it is only after those two aspects are addressed that the longer-term work of goals and principles can start. Parents may need to spend time asking themselves:

- What do we seek for our children?
- What sort of childhood do we intend our children to look back upon?
- What do we seek for them to become and believe in?
- What are the truths that are self-evident that will underpin the way that we need to co-parent?

This task will see the identification of fundamental principles that will help clients make good decisions about the remainder. Rather like the vision/ mission/ values of our businesses or organisations – with the big principles in place, we are in better shape to make decisions over the details. Getting this right will help us to manage the new and challenging situations and make faster decisions with less grief and with greater consistency.

### 4. Arrangements

The basic structuring of where the children will start to spend their time is likely to follow. Will they have one base or two? How will they spend their time and their significant days? What wider family relationships will be made, maintained and how? If parents can be clear about what sort of childhood they want for their children and what sort of people they want them to be then as lawyers, we are in a much better position to help guide them towards constructing what this would look like "on the ground". This

can be done by us directly, by our involving other professionals, making referrals to workshops or providing books such as Resolution's *Separation and Divorce: Helping parents to help children* guide (available via Resolution central office) or other materials.

### 5. Story

We make sense of our lives through the stories that we tell about ourselves. Any set of facts can have many different interpretations or versions imposed upon it ... events might be seen as a set of dots that can be joined in different ways to make different pictures.

Too often, the family story is born of betrayal and seeks to point the finger of blame. Usually this generates a counter-attack and a different version of events unfolds, holding the teller blameless and colouring the story very differently. It is the ongoing set of exchanges that makes it difficult for family and friends to avoid being polarised. However, if our children benefited from that web of family and friends whilst their parents were together, then they will definitely need that web of support when their parents are apart. We need to find a way to help our clients ensure that the entire family context remains intact for children, rather than just being accessed by them sequentially through one polar parent or the other.

We can suggest to our clients that they can do this by the control they take of their divorce and separation story – they can decide how they are going to present this separation to friends and family. More importantly how they will present this story to the children and avoid telling their individual stories of blame. They agree to do this because if they don't then their different versions risk sucking friends and family into one camp or the other or alienating them entirely.

Children, of course, usually can't escape the stories and are stuck with the burdens that their parents end up laying upon them. Parents' principles are unlikely to own that this is a good idea for their children. The neutral story offers a way forward that helps to clarify identity and avoid blame.

### 6. Issues and changes

There will be other big questions that need addressing and also family life does not, of course, keep still. Making decisions about the big issues in a way that is consistent with the underlying agreed principles and anticipating changes and helping parents plan for how they will manage those changes makes for a better voyage. Issues such as introducing new partners, geographical changes, medical treatment, education choices, significant out of school activities and school moves are all possible situations which can create conflict between Mum and Dad. When those issues are raised in advance, our clients become better

equipped to address these hard issues. They can also plan for the bigger scale changes that are likely to be coming along later.

What this seven tasks approach offers us is the opportunity to build the foundations for decision making through the early agreement of principles. Through creating principled and consistent agreements regarding children's needs, we aim to help parents manage the challenges of parenting with lower conflict. Therefore, when particularly hard issues do crop up, parents are likely to be better prepared to cope. Where, through our referrals, we have offered parents a reliable service and process by which to address these aspects of parenting themselves then they also have the experience of prior success and a default service to adopt again before their views harden into positions and become harder to shift.

### **7. Implications**

Finally there are the wider implications ... if we have a clear principle of shared parenting then there are financial consequences and it is hard to justify a financial outcome that puts one parent in a castle and one in a cardboard box. Principles of shared parenting are also likely to impact upon how we manage the divorce. If clients are aiming towards maintaining their existence as a family then why would they adopt high-resolution behavioural particulars or allegations of adultery if there were a less blaming alternative?

This is the work that will ensure good transitions for children and build stronger foundations for post-separation parenting.

Not only is it is enormously valuable for children but it also has tremendous value to our clients. This seven point process is simple which makes it easier for clients to take on board these core principles. By sharing these perspectives with clients, they realise that an important part of caring for their children involves creating good parenting transitions. Engaging with clients from a child centred perspective also send a powerful message that this is part of what lawyers are there to do.

Parents will want to pause before they abandon the research-based approach for addressing their children's issues in favour of a rights-based (what would the court do?) approach. If the seven tasks listed above appropriately indicate what children need, then we realise immediately how little of this work can be completed appropriately by the processes of the court. Whether we are thinking about how to tell children about the separation, how to manage it, how to make consistent decisions, avoid polarisation of the family or manage the wider aspects of separation in a way that works for the children, parents will manage this well because they have been helped by their lawyer (either directly or indirectly by referral and recommendation) to access the resources they need. These resources will help them to keep their children at the centre of their planning, which is where it seems that most parents, who are operating at their best, know they should be.

In our next instalment of this series, we will look next time at some of the resources that we may want to use to manage this work well.