

Family lawyers are facing the double-whammy of a squeeze in their incomes and root-and-branch changes to their fields of practice. *Grania Langdon-Down* reports on how practitioners are responding to both challenges

Family fortunes

Family law is facing an unprecedented year of change, with practitioners under intense pressure to be innovative if they want to maintain the viability of their practices. Some family law departments are already downsizing, or are being closed, as experienced practitioners move firms or set up their own niche practices. However, others are embracing change and are among their firms' top teams in terms of fee income and profitability.

It is unsurprising if some feel daunted. A brief summary of the changes in their field of practice includes a drop in demand with fewer divorces. There is pressure from clients to offer fixed fees. There is the prospect of a 10% cut in legal aid fees and a proposal to remove legal aid from most private family law. Increased competition is expected from new entrants to the legal market and online websites. Emphasis on mediation (*see box, page 16*) has increased. And one can add to these the new Family Procedure Rules coming in next month, interim proposals from the Family Justice Review later this month, a consultation paper on pre-nups and a review of child maintenance.

Shrinking market

'Family law will contract quite substantially,' predicts Roger Bamber, joint head of national law firm Mills & Reeve's family practice. 'It will become even more specialised and far more technology-based. But it is also the best time. You can either embrace this as a fantastic challenge, which we as a profession have to adapt to, or you can down tools.'

It is going to be an 'immensely challenging' year, agrees David Allison, chair of the family lawyers' group Resolution. 'The mood among some members is downcast and worried. One of our jobs is to help people see the opportunities that

can arise out of these challenges if they are willing to take them on.'

Top of the list of concerns for many is the legal aid green paper. If its proposals are realised, public funding in private family law will only be available for cases where there is domestic violence or there are child protection issues – 'a hugely retrograde step,' says Allison. 'It is entirely disingenuous for the legal aid minister to say the government shouldn't be funding people's divorces and they can resolve their problems through mediation. It is going to have significant consequences for the poorest and most vulnerable.'

It will also put huge pressure on legal aid practices already facing a new fixed-fee regime for advocacy and family work and a 10% cut in fees. While some firms are pulling out of legal aid, others remain committed to it. Blacklaws Davies is merging on May 1 with TV Edwards, which will create the biggest family department, with nearly 80 solicitors.

Blacklaws Davies managing partner Christina Blacklaws, a Law Society council member and former chair of the Society's family law committee, says: 'It is so unusual to have a positive story from a legal aid practice. This is a merger of strength rather than desperation.'

About 80% of Blacklaws Davies' work is legal aid, and it will lose about 25% if the green paper changes go through. 'It is no accident that we major in child protection, domestic violence, mediation and child abduction,' she says. 'Firms that haven't been honing their services towards those areas risk missing out. We will also be offering packages to those on moderate incomes who may no longer be eligible for legal aid.'

'It is certainly a time of unprecedented change,' says Elspeth Thomson, family partner with Newcastle-based David Gray. Just over a third of its work comes from legally aided private family law. 'Some will fall into the

domestic violence exemption but it is a big chunk to lose,' she says. 'We are hopeful we can make up the deficit by attracting privately funded work. We are developing our alternative dispute resolution side with collaborative law and mediations and we will increase the amount of advocacy we do in-house.'

With all the changes ahead, who do practitioners see as their main competitors? 'Alternative business structures will be big players in commoditised products and will change the market in private client services,' Bamber says. 'But I wonder how far they will penetrate beyond the obvious commoditised bits of family law. I don't think people realise the extent to which family practitioners have been safety valves in dealing with really difficult social problems.'

Allison agrees. He says competition for those who don't currently do publicly funded work will come from legal aid practices which are already experienced in providing low-cost legal services.

So, faced with a contracting market and increased competition, what strategies should firms be developing? Business development consultant Mike Ames says: 'It is crucial firms decide what groups of people they are going to serve and



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it their buying motivations are – everybody buys the cheapest. They may consider outsourcing, use of IT and the internet, being selective about the type of work they do, and reorganising themselves to do more for less.

Mills & Reeve has a family team of about 40 lawyers working across six offices.

Bamber says firms need to

'listen to your clients and

provide what they want, not what you think they want'. It means being 'lighter on your feet', he says, offering more consultancy arrangements, for instance when someone is going through mediation or has done some of the work online. 'You also need to offer a holistic service, referring clients out for emotional support or financial advice. There is a danger in a recession that our knee-jerk reaction is to keep the fees. But it is better to say to clients this can be done better and cheaper by outside professionals, come back to me for the legal work. You will get more clients, even though they are spending less on you.'

It is also important to make more use of technology, Bamber argues. He set up www.divorce.co.uk in 1998 to provide easily accessible information, and has designed the 'divorce calculator' on the Consumer Financial Education Body's 'money made clear' website.

'Interactive products help create a virtual dialogue between client and solicitor,' he notes. Allison observes: 'What we can't go on doing is simply being pedlars of legal information at a high price.'

Allison also highlights the trend towards 'unbundling' legal services where different aspects of the traditional legal role are subcontracted to other professionals. With websites such as Wikivorce and Divorce-Online, clients are increasingly doing more for themselves and looking to their lawyers to act in a consulting role.

If not this, then what?

Some firms are planning to take advantage of the Legal Services Act changes. Midlands practice

Brethertons, one of the first firms to make its finance director a partner, is investigating becoming an ABS.

Andrew Woolley, chairman of family law specialists Woolley & Co, which he founded as a virtual practice in 1996, tells the *Gazette* the firm is also going to apply to become an ABS, so that two senior commercial managers can become directors.

Another business model is Blacklaws Davies' 'hybrid', which combines solicitors working in-house with a virtual practice of experienced solicitors who can continue doing legal aid work because the firm provides the backroom support. 'We will be looking to expand those models nationally through the larger, merged firm,' says Blacklaws.

A key part of any business strategy for new ventures is client care. Woolley says the average divorce lawyer is 'good enough at the law but almost all are nowhere near up to scratch on client care. There needs to be a lot more training on soft skills.'

Suzanne Kingston, head of family law at London firm Dawsons, gives clients a leaflet with practical tips on how to work well with your lawyer. 'It sets out what they can do to make the process more cost effective. Clients feel you are being fair and educating them on how best to use you,' says Kingston, who moves with her team to City firm Withers next month.

At Brethertons, Linda Jones, head of the family team in the Rugby office, has developed a free workshop on 'divorce through the eyes of a child', run by a children's counsellor. 'I was delighted that, at the latest workshop, three clients brought along their spouses. From a business development point of view, that is three people who aren't clients who are now very positive about us.' She adds: 'Divorce is very people-focused but you also have to develop a profitable business and it is important to find the right balance between the two.'

Providing a holistic service is at the heart of sole practitioner Jane Oakes' Cambridge practice. She set up Jane Oakes Solicitors two years ago and formed Collaborative Chambers, based on the bar's chambers model, to bring her 35 years' experience under one umbrella service with independent

professionals specialising in finance, therapy, family counselling and children. Oakes explains: 'I had felt for some time that clients needed as much emotional support as they did legal advice, so I will usually have a family consultant with me at the first interview. My personal crusade is that if clients use family consultants or therapists to assist them, they will end up spending less on their legal fees.'

The price of everything

And that brings us to one of the biggest worries for clients – the cost. While the divorce itself is easily commoditised, firms are concerned about offering fixed fees for ancillary relief and children's issues because there can be so many unknown factors.

Fixed fees can work, says Ames, as long as you follow three key requirements: a clear idea of what is being provided which can be written up and presented in a contract; a change clause to the contract that clearly defines what happens when a change to the original specification arises; and how this change will be costed and authorised.

'Solicitors hate fixed fees, clients love them,' Woolley notes. 'I refuse to accept that just because you don't know in advance how much it is going to cost, you can't do it. You can charge an hourly rate until you know what the case is going to involve and then break it down into small sections and agree a fixed fee for each. You make it clear what is included and what isn't. You can even include a "fair use" clause for the client who phones you every day, but that is going to be very rare.'

Essex firm Ellisons' decision to introduce fixed fees for divorce last year led to a surge of work, says family partner Jon Armstrong. 'We were the first in the town to do it. We put posters in the window and information on our website. It is the first time I can remember any marketing initiative having such an immediate response. It is more complicated for ancillary relief and children which we are considering offering on a capped-fee basis.'

Brethertons has developed a fixed-fee package for ancillary relief cases where the gross assets are less than £350,000 and the gross income is below £30,000. 'We

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haven't achieved it yet for higher money cases,' says Jones, 'but that will happen in the next financial year. We are also about to launch a fixed fee children's product. Clients love it because it gives them certainty.'

'It isn't a cheap option,' Jones adds. 'We ask for payment on account at the beginning of each stage so cash flow is good. If we settle it quickly, they are happy with that and they don't ask for a refund because they appreciate we are sharing the risk with them.'

It has also changed how the team works, Jones insists: 'We give cases to the most senior members because they can settle them quickly, so it is proving more profitable. I have been ecstatic with results both in terms of client care and profitability.' She says the benefits of fixed fees are also being recognised by barristers.

3 Paper Buildings is piloting a limited resource ancillary relief scheme as a way of giving clients certainty and keeping junior members of chambers involved in family work. Clerk Lee Giles says it is being booked for cases under the scheme: 'We have pitched the rates at just over the legal aid rates. The incentive is to capture clients who can't afford huge fees.'

Minority sport

Developments in the law are also promoting new work, such as pre- and post-nuptial agreements and cohabitation agreements. But, Allison says, 'they are always going to be a minority sport and neither area will make up for losses of work on separation and divorce.'

Practitioners are hoping for innovative proposals from the Family Justice Review. 'I would love them to recommend chucking out the

existing divorce law and bringing in no-fault divorce,' Bamber says, 'but I am not holding my breath. Anything they can do to promote ADR will be great.'

Joanne Edwards, a family partner with London firm Manches, would like to see an overhaul of the costs rules. 'There is no incentive for litigants in money cases to settle. Costs should follow the event, and if someone is unreasonable they should be penalised. It should be the same with the compulsory mediation assessment meetings – people should be penalised if they refuse to go to the meeting, or unreasonably refuse to mediate.'

With so much going on, it is understandable if firms with family law practices feel nervous about the future. However, Ames says they should remain confident: 'Don't forget that, even after a contraction, it is still a multi-million-pound business – you just have to give people a reason to choose you over the competition.' ■

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Room for compromise: The role of mediation

Mediation has been thrust into the spotlight as the government attempts to cut costs and reduce courtroom battles over children, property or money.

From April 6, a new pre-action protocol will require anyone contesting the terms of their separation to attend a 'mediation awareness session' before they can go to court, unless there are domestic violence or child protection issues.

Mediation is also one of the few areas for which public funding will still be available in the face of government proposals to remove legal aid from most private family work. In response, practitioners are queuing up to train as mediators or to refresh their mediation skills.

The Law Society has a Family Mediation Accreditation Scheme. Members must have a minimum of three years' experience as a solicitor or legal executive, have attended a Law Society-approved training course, agreed to comply with the standards for practitioner membership within two years and agreed to be bound by the Law Society's code of practice for family mediators. More details of the scheme can be found at tinyurl.com/6dv4877.

For the last 15 years, Resolution has run one or two eight-day courses a year. It is also putting on six three-day refresher courses and four one-day mediation assessment meeting courses, with more in the pipeline.

'The pre-action protocol will really promote mediation,' says Suzanne Kingston, Resolution's spokesperson on ADR. 'We should all go through the process of setting out mediation and other ADR options at the initial interview with the client but I don't think every solicitor does that, so it is really important for this regime to be established.'

Joanne Edwards, family partner with London firm Manches, trained as a mediator two years ago, but has yet to do one, although her collaborative practice is booming. She is doing the one-day course so she can run assessment meetings. She is also developing a network of firms which will refer clients to each other for mediation as, once a firm has advised a client on possible litigation, its practitioners cannot act as mediators.

'I don't want lawyers being lawyers and saying "we don't want prospective litigation becoming a mediation so I am going to send my client to any old mediator to do a tick-box exercise",' she says. 'I want some of these cases to become mediations as I am passionate about this – even if it means I lose a client to another firm. I will still be there advising in the background and, hopefully, that firm will send me a client to consider for mediation. There is a commercial element to this, but there is also a genuine desire to convert cases to mediation.'

The new Family Procedure Rules will also fundamentally change practice in those cases which end up in court, she says. 'A new Part 3 requires a judge at every stage of court proceedings to consider whether it is appropriate to stop proceedings and send parties off to ADR. That has got to be right.'

Family lawyers are leading the way in developing a range of ADR options:

- Collaborative law. More than 1,400 Resolution members have completed the training. While some say their collaborative practices are booming, others say take-up is disappointing.
- Mediation with lawyers. A small group of practitioners have trained as advanced mediators in the commercial model.
- Family arbitration. Former Resolution chair Andrew Greensmith is leading a group designing a training and accreditation scheme with the Chartered Institute of Arbitrators, initially for financial matters.
- Private FDRs. Mills & Reeve's Roger Bamber says: 'There are staggering delays in the court system so people have been opting for private hearings before barristers or retired judges. The result is not binding but they are becoming popular in big-money cases because they are more cost effective, timely, and the parties are more in control.'