

Why we need a two-track profession

**By Jo O'Sullivan, solicitor, accredited mediator and collaborative practitioner
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Twenty years ago I qualified into family law and there I stayed. It is a Marmite area of law but I remained because I love to hear peoples' stories and help them sort out the mess of their separation. But for a good while I have worried about the service that we solicitors are routinely offering clients.

For my book *(Almost) Anything But Family Court*, the editors thought it would be useful to define what a solicitor is and does. I took this definition from the Law Society website: 'Solicitors represent and defend clients' legal interests, and provide advice...'. But are there any limits to what lawyers should do in the interest of their clients?

Many family lawyers still work in the traditional way. They write letters setting out their client's case and their version of history. Sadly, these letters are too often vicious in tone and do not temper their client's anger and all the other emotions that go with a break-up. If swapping letters does not work, they then issue their application at court and maybe even the Court of Appeal thereafter. When two solicitors, each separately instructed, offer conflicting advice, so much is lost. The 'fire of dispute' is fanned and in the 'fight to be right' the whole family is victim; especially the children. The court will do its best to help but by then it is usually too late and the damage is done.

Very poor solicitor behaviour is often defended and even applauded, because the solicitor is working in the best interests of their client. Sadly, the Solicitors Regulation Authority (SRA) find it difficult to police us as, after all, the solicitor is just doing what their client asks of them. Often, I do not think we solicitors realise the long-term negative effects of our work. [...]

I want to see a change to how we are trained, how we work and ultimately how we see ourselves in the family law arena.

Family law needs two sorts of professional and two tracks of training. The first is what we are used to: the family law professional who protects the person or the asset and will write letters and go to court. But the rest of us do not need to do that, not really. So, the second sort of professional would be a family law solutions professional working for the whole family, not just their own client, but still managing to meet their professional obligations. Yes, it is possible. No letter writing and no court. Both professional tracks need to be just as valued and applauded. At the moment there is no accreditation for those who avoid court and have dispute resolution expertise. [...] The big problem is that we have created process options (for example, collaborative justice, mediation and arbitration) which each have their own set of rules and are complicated for clients to understand.

It is also difficult for solicitors to be creative when other pressures abound. They inevitably find it hard to be flexible about what process might work for which couple and when or if they have to bring in the fees; it is easier just to write letters and go to court. Even with the court in crisis, those fees will keep coming in. [...]

Often the last thing the clients need is our legal intervention. Usually, they just need time – time to get counselling, therapy, a divorce coach or a co-parenting. Couples need to learn how to move forward as a couple, not competing but cooperating. For those who cannot or will not, then of course the court must intervene, but only as a last resort.

Family law solicitors will need to upskill to become family solutions professionals. Why can't solicitors train to do this from the off? It would be so refreshing if solicitors could choose which kind of work they wanted to do from the beginning of their career.

More importantly, the public will know what they are 'buying'. There is a reluctance among the public to instruct solicitors for fear of massive fees and rising acrimony and, frankly, who can blame them. I say we need to work hard to preserve our position or lose out to the wild west of the internet. If there was a two-track profession, the public would know and could trust who they are instructing and what service they are being offered.