

## Chapter 20

### The Role of Lawyers in Divorce

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... citizenship requires knowledge, but the pervasive lack of the most rudimentary knowledge about legal rights and procedures for enforcing or defending rights can lead to an unnecessary level of helplessness even among the more competent and resourceful.<sup>1</sup>

Our first telephone interview with information meeting attendees, which took place within six weeks of them attending information meeting, indicated that 39 per cent (N = 3,311) described themselves as being more likely to consult a solicitor as a result. This is a finding that has caused some concern. In this chapter we examine this concern in the light of our research data in order to consider the role of solicitors in the divorce process.

#### Seeing a Solicitor as a 'Logical Next Step'

By the time we conducted follow-up interviews, five to seven months after the information meeting, 59 per cent of attendees had been to see a solicitor (N = 1,838). By the time of our follow-up time-slice survey (up to two years after the information meeting) 73 per cent had consulted a solicitor.<sup>2</sup> It seems that for the majority of people who pursue a divorce using a solicitor during the process is inevitable. As one male attendee in our study put it:

If you're ill you go to the doctor's. If you want to divorce you go to the solicitor's.

Indeed, other studies suggest an extremely high level of solicitor involvement in divorce proceedings. Davis (1988), drawing on evidence from five separate research studies,<sup>3</sup> concluded that

for all the current interest in mediation in divorce, there is no doubt that solicitors continue to dominate the scene. In the overwhelming majority of cases, both husband and wife will, at some point, consult a solicitor.

The examples which Davis cites from previous studies indicate that solicitors dominate the scene. Of 299 people interviewed in the course of a study of contested divorce

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<sup>1</sup> Genn, H., *Paths to Justice: What People Do and Think about Going to Law*, Hart (1999), p. 255.

<sup>2</sup> The follow-up postal survey (time-slice survey) looked at 701 attendees at one of three points in time: 12 months, 18 months and 2 years following attendance at an information meeting. Three-quarters of all respondents had consulted a solicitor since the information meeting and the length of time which had passed since they had attended an information meeting was not a significant variable. Attendees were significantly more likely to have consulted a solicitor if they had applied for a divorce or legal separation, or if they had children under 18.

<sup>3</sup> Davis, G., *Partisans and Mediators*, Clarendon Press (1988). Details of the five studies which Davis referred to are given on pp. 16–17. The high level of solicitor involvement discovered during these studies is referred to on p. 85.

applications, all but two had sought legal advice. In a study of parents involved in 'special procedures' in divorce, 99 per cent of the 230 petitioning parents had consulted a solicitor and 92 per cent of the 144 respondent parents had done likewise.

Given the current culture of divorce it is unsurprising, in our view, that 59 per cent of the attendees at information meetings had consulted a solicitor within a few months of attending a meeting. We question whether it is realistic to expect that the information meeting could or should divert people away from solicitors. There are a number of reasons why it was unlikely to divert people during the pilots. The information meeting itself was never expected to replace the services offered by solicitors. The remit of the meeting was to provide information on a wide variety of topics, including legal services. Furthermore, the information meetings in the pilots were not designed to provide personalised information to attendees, nor to give advice. Our findings have shown that many attendees expected the meeting to be tailored to their needs or would have preferred it to be so. If attendees did not get their specific questions answered by the information presenter or by the information provided to them through the meeting or in the pack, they turned elsewhere for answers – usually to a solicitor. Therefore, attendees may well have described themselves as more likely to consult a solicitor because they had hoped the information meeting would answer their particular questions or provide advice, which it did not do. The following comments of attendees illustrate this point:

The meeting was not impressive. It was informative as far as the [telephone] numbers went, but those are numbers that anyone with an ounce of sense could get from the [telephone] directory or the library. I thought it might be more along the lines of a solicitor, what might happen, scenarios. It boils down to, if you want legal information, go to a solicitor. They're the ones that make the decision that goes to the court. If you intend to pursue along those lines, you've got to get a solicitor. There's no two ways about it. (F)

I don't think the information meeting had enough specific information. That's why I decided to go and see a solicitor. (F)

The solicitor talked my situation through with me and the different reasons why you can get a divorce. At the information meeting the man who spoke to me just gave me some leaflets to read and told me what you hoped to obtain from the meetings. He didn't listen to my situation or answer my questions. (F)

The information meeting did not tell me very much I didn't know already. Actually I didn't find it very helpful, because it did not admit enquiries specifically about my own individual circumstances. That was why I consulted a solicitor – to get advice specifically for me. (M)

I was at the stage where I wanted very specific answers to very specific questions. I wanted advice. I'd got all the information I needed out in front of me. I'd read the books, I'd talked, I'd listened, I'd watched. Now I needed advice on me as a person. Do I need to get a solicitor to get a divorce, or could I do it myself? That's basically what I wanted to know ... my husband and I went together [to the solicitor] to get the kind of advice I was hoping to get from the meeting – basically, where to get the forms from, whether we could do it on our own even if we've got children, whether one solicitor could represent both of us and a bit of advice on financial matters. (F)

The last comment here is typical of the category of attendees who had decided on divorce and wanted answers to specific questions – the third state of ignorance discussed in Chapter 4. This comment also illustrates the point that not all consultations with a solicitor are indicative of an acrimonious divorce. This attendee wanted advice and personalised information, but there did not appear to be any antagonism between herself and her husband. The information presenters were often asked specific questions by attendees on a variety of topics, but, because their remit was limited to information giving, they very frequently suggested that the attendee should see a solicitor in order to have their specific concerns and queries addressed, irrespective of whether the questions warranted a legal opinion. The very structure of the meeting, in fact, directly encouraged many attendees to go to see a solicitor:

The information meeting was not able to clarify my questions about the house. It's in my husband's name and I was concerned that he could sell it without my consent. The presenter suggested I should use the free half hour [with a solicitor]. I did. I also went to the CAB with the same query. (F)

The case was quite strongly put in the meeting that you needed to seek legal advice. (F)

I went upon the recommendation of the information meeting that I have a consultation with a solicitor. Both presenters recommended a talk with a solicitor. (M)

The sheer amount of information provided had alerted some attendees to the enormity and complexity of the divorce process and had led them to feel that the logical next step was for them to seek more personalised information from a solicitor:

Without a doubt the meeting influenced me to see a solicitor. One of those leaflets tells you about separation. A lot of people think it's easy, that you can split everything down the middle. I was one of those [people], but now I realise it's not like that. There are things you need to sort out – like the fridge freezer. The leaflet does explain it to you. It's not black and white like you think. Until I got that leaflet I was under the impression that everything would be split down the middle, so that [the leaflet] helped me there. (M)

Once he [the presenter] had explained all the processes involved and the circumstances involved, it was a real eye-opener for me, and I realised how much I could lose from it. The presenter suggested that I got my backside off the chair and that I go and see a solicitor straightaway – which I did. (M)

Of the 59 per cent of attendees who had consulted a solicitor between the information meeting and the follow-up telephone interviews five to seven months later, almost half had already consulted a solicitor before going to the meeting and simply continued to do so afterwards. Just over half of those going to a solicitor following an information meeting were consulting a solicitor for the first time. Of those who had not been to a solicitor in the 12 months prior to the information meeting, 51 per cent did consult a solicitor following the meeting. When we examine the evidence, we see clearly that the information meetings did not occur in a vacuum. For each attendee, an information meeting was but one episode in a chain of events. Attendees were at different stages of separation, divorce and reconciliation at the time of our second telephone interview. Some had consulted services such as marriage counselling either prior to or following the meeting. Others had spoken to friends and families about their situation, and/or had

sought information and advice from other sources, such as the Citizen’s Advice Bureau, a solicitor or other professionals. Interviewees shared with us the many and varied situations in which they found themselves. For the majority, the information meeting was but one stopping-off point in their journey down a very long road to divorce. Its impact could never be truly measured because there could be no control over the influence of other events in attendees’ lives. We asked attendees, during follow-up telephone interviews, whether they considered that the information provided in the meeting had made a difference to the actions they took or intended to take with respect to a solicitor (Figure 20.1).

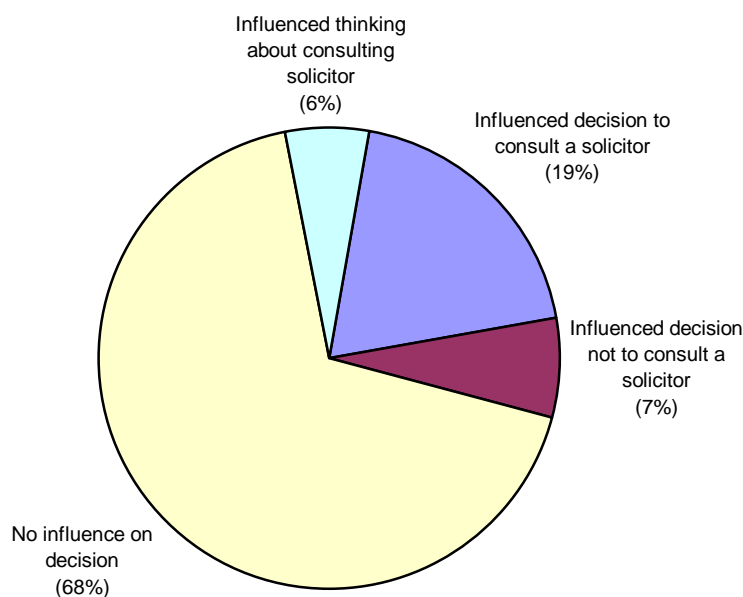


Figure 20.1 The ways in which information meetings influence attendees’ decisions to consult a solicitor (N = 1,738)

Those attendees who felt that the meeting had influenced them to go to a solicitor (19.3%) gave four main reasons for this.<sup>4</sup> Just under a quarter stated that seeing a solicitor seemed to be the logical next step following the information meeting, and the same number stated that the information presenter had suggested that in order to get further or more detailed information they should consult a solicitor. In both these groups of people there were those who asked the presenters specific questions and were referred to a solicitor for answers:

The meeting was not able to clarify my queries about the house. The presenter suggested I use a free half-hour session, which I did. I also went to the CAB and they told me to check with the Land Registry. (F)

They weren’t pressing me to use a solicitor, but they did seem to think I needed legal advice. (F)

<sup>4</sup> Attendees sometimes gave more than one reason when explaining their response, so the percentages do not necessarily add up to 100%.

The advice to go and see a solicitor was important. I was going to do things on my own but I'm glad I went to a solicitor. I was advised 'Make sure you go and see a solicitor'. Otherwise I wouldn't have bothered, but it worked out quite well. (F)

A third of the attendees who felt that the meeting had influenced them to consult a solicitor said that it had enlightened them about, and demystified the role of, solicitors, and this in turn had given them the confidence to consult a solicitor. These people described the information meeting as an important first step that prepared the way for them to consult a solicitor:

The information meeting gave me the context for consulting a solicitor and why I would be consulting a solicitor, and that made me, well, more confident really. I felt I could go to a solicitor. I knew what to ask. (F, intending to file for divorce)

It encouraged me to go and it prepared the way for what the solicitor would say. The leaflets suggested that for further information you should consult a solicitor. (F)

Twenty-four per cent of the 337 attendees who described the meeting as having influenced them to see a solicitor stated that they had needed more information. The presenters had not suggested seeing a solicitor, nor had attendees felt that the meeting itself pushed them down this route, but the information they had been given had made them aware that they needed to explore some areas in more depth and hence they felt more inclined to consult a solicitor:

It made me realise that to get things done properly I needed a solicitor. (F)

I think it just reinforced the need for a solicitor. (F)

The meeting stopped me rushing headlong into a divorce. It did raise a number of issues that I wanted to explore – the house and the welfare of the children and things like that came up in the meeting – and so by raising the issues the meeting encouraged me to see a solicitor. (F)

The author of the last comment, however, was 'very disappointed' by the solicitor she saw, who did not wish to discuss her personal circumstances but instead presented her with divorce papers even though she had not made up her mind that she really wanted a divorce. At the time of our second interview she described herself as separated but working towards a reconciliation. Her seeing a solicitor in this case did not mean the beginning of a divorce, even though the solicitor might have thought that it did.

### **Avoiding Solicitors**

In contrast to those who were more likely to consult a solicitor, 121 (7%) attendees at follow-up interview told us that the information meeting had influenced their decision not to consult a solicitor. Thirty-five per cent of these 121 attendees stated quite clearly that the information meeting had put them off consulting a solicitor. This was not necessarily because solicitors had been portrayed negatively, but partly because the information meeting had alerted them to the fact that they did not have to see a solicitor in order to separate or divorce. This was a revelation to some of these attendees. The information

meeting had highlighted other options, particularly the benefits of negotiating directly with a partner:

We thought we had to use solicitors but the presenter explained all that to us. We sorted everything out ourselves. (F, who went to the meeting with her husband and filed for divorce afterwards)

I asked questions in the meeting. The presenter explained that it was better to talk to my partner as it costs money to go to a solicitor. It's better if you work something out between you. (F)

The meeting influenced me not to [go to a solicitor]. I think it made it clear that if you could agree things between yourselves that was the best option – the cheapest and the best option – and that things could be sorted without having to see a solicitor. (F)

These attendees had recognised the benefits of a 'conciliatory divorce' and acted accordingly. They had managed to avoid the need for solicitors, and indeed mediators, and resolve matters between themselves. Managing conciliatory divorce in this way may well be considered an optimum outcome, since these couples had no need of either a solicitor or a mediator. Thirty per cent of the 121 attendees who said the meeting had influenced them not to go to a solicitor told us that they were planning or undertaking a DIY divorce. Some had already considered this, but the information meeting had given them an extra burst of confidence and they had decided to proceed on their own without professional involvement. Others had learned that DIY divorce was possible by attending the information meeting:

I'm doing the divorce myself – the wife's going to a solicitor – and I wouldn't have been confident to handle that and doing it all if I hadn't been through all the various meetings and got all the information. (M)

After we went to the meeting we decided to do the divorce ourselves without solicitors. The presenter told us we could do it without a solicitor. (F, who went to the meeting with her husband)

Everything that I was unsure about doing it myself was confirmed as OK – I wouldn't need a solicitor. (F)

I was hoping for a DIY divorce. The meeting clarified that this was possible. (M)

It must be acknowledged that DIY divorce may be easier to manage in straightforward cases, perhaps where a couple have no children or property. However, even when children and property were involved, if the couple had decided they wanted to divorce without using solicitors, this could sometimes work out satisfactorily and could be a non-contentious route to divorce. In other cases it proved too difficult to arrange the divorce without legal involvement and solicitors were consulted, although this did not necessarily mean that the divorce then became contentious or was not conciliatory in nature.

Twenty-eight per cent of the 121 attendees who described the information meeting as having influenced them not to consult a solicitor said that they had no need to go to a solicitor. The information meeting had provided some of these people with the information they wanted:

I went to the meeting for my children and from the information I got from the meeting there seemed to be no need to go to a solicitor. The lady in the meeting said 'You are doing it all right', so there was no need to go to a solicitor. It just helped me feel better, because there was a niggling doubt in the back of my mind if I was doing it right. The meeting just confirmed that I was. (M)

I had some specific questions, and had I not gone [to the information meeting] I'd have had to go to a solicitor. I had particular queries about the myth of a quickie divorce if you've been married only a short time. I discovered there were no shortcuts, and that was useful. (M)

Fifteen per cent of the 121 attendees who had been influenced not to go to a solicitor explained that the meeting had alerted them to how expensive solicitors could be, and this had put them off consulting one. Seven per cent had been concerned by the potential animosity that solicitors can cause when they become involved in the divorce process and felt they would rather not consult one:

I was put off, partly by the cost and partly because it seems solicitors make things very confrontational. If you are going to separate, and you've got children especially, it's obviously best not to get nasty. (F)

### **Influencing Attitudes**

It is clear from our listening both to attendees who were influenced to see a solicitor and those who were not that, although presenters worked to set scripts, their attitudes and beliefs about the most appropriate routes were likely to influence the presentation. Some people were given encouragement to manage without a solicitor and others came away with a strong sense that seeing a solicitor was the right thing to do. The vast majority of attendees (67%; N = 1,749), however, were in no way influenced by the meeting as regards their decision to consult a solicitor. Almost two-thirds of these 1,172 attendees told us either that they had seen a solicitor or that they would see one in the future, but in both cases the decision had nothing to do with the information meeting. Fourteen per cent stated that they had no need to consult a solicitor and the meeting had not changed this at all. Nine per cent told us that they might see a solicitor if the need arose, but that if so they would have done this anyway, regardless of the meeting. Five per cent of these people were intending to pursue a DIY divorce and the meeting had not influenced their decision either way. Nine per cent felt that they needed more information from a solicitor, but did not feel that the meeting itself had influenced their decision to consult one. Six per cent of attendees were already concerned about the expense of solicitors and the meeting had not changed their opinion about using them:

I've been to a solicitor since the meeting but not as a direct result of it. I'd made up my mind even before the meeting. The marriage is over and we knew that even before the meeting. I didn't know how to go about it until I got the information. Now I know what to do. (F)

I've not gone to a solicitor yet because I should like to do my own divorce if possible. That was one of the main reasons why I went to the meeting, but all you got from the people doing the presentation was 'solicitors, solicitors, solicitors', that's all, and I found that quite disappointing. (M)

I would have gone anyway. I just needed a solicitor with this one, because there was domestic violence. (F)

To get solicitors involved only means more money and, so long as we're not fighting, I don't see the point. (F)

One hundred and two attendees (6%; N = 1,749) felt that attending an information meeting had persuaded them to consider whether they ought to see a solicitor, but had not influenced them actually to do so. Forty-two per cent of these 102 attendees felt that the information meeting had helped demystify what solicitors do and enabled them to consider a solicitor as an option. Twelve per cent said that they had no need of a solicitor at the moment but had been encouraged to consider one as an option if the need arose. Fifteen per cent felt that they needed more information and the information meeting had led them to consider consulting a solicitor for this purpose:

I think I will have to go to a solicitor eventually. This was confirmed by the meeting. (F)

I'm thinking about it but the time doesn't seem right at the moment. I'd rather keep things open for the time being. (F)

The follow-up time-slice survey<sup>5</sup> received responses from 701 attendees and the findings in relation to solicitors echo many of those which emerged from the follow-up telephone interviews. Nearly two-thirds of time-slice survey respondents said that the information meeting had not influenced their decision to consult a solicitor. Indeed, 49 per cent of men and 12 per cent of women stressed that they saw a solicitor in response to their partner starting divorce proceedings.

The reasons for consulting a solicitor that attendees gave 1–2 years after they had attended a information meeting were many and varied. Sixty-five per cent said they went to get financial advice, 60 per cent to protect their rights, and 58 per cent to manage their divorce. Just over half of the time-slice survey respondents said that their solicitor had given them information that they did not get from the information meeting. This information was predominantly financial, although several other specific topics were also raised (e.g. French property law, surrogacy and injunctions):

He [the solicitor] could advise me more fully as to what I was entitled to under any financial settlement, which was a huge relief as many women are frightened to take the *final* commitment of divorce because of financial worries. (F)

The solicitor made it clear where I would stand financially. She was able to start the proceedings for me and made everything seem easy. (F)

Most of the time-slice survey respondents reported being satisfied with the service they received from their solicitor, but one fifth were dissatisfied. The most common reasons for dissatisfaction were the length of time solicitors took to process the divorce and the expense incurred. Other reasons for dissatisfaction included solicitors being unavailable when needed, and their not explaining things clearly. We note however, that satisfaction with solicitors was greater than satisfaction with counsellors and mediators.

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<sup>5</sup> See n. 3.

It was very expensive – but lots of pointless letters were sent, which they charged me for. The solicitor constantly spelt the family names wrong in official documents, which then had to be amended – time consuming and expensive. The solicitor wanted me to continue contesting the finances to get more money, and when I explained I'd already had a nervous breakdown so I didn't wish to continue fighting and going to court, she then didn't want to know, or care about my case. To go to court would have made her bill even higher. I felt that's why so many trivial letters were written and mistakes made. (F)

It is obvious that solicitors are motivated solely by financial reward. The longer and more involved the process, the greater their share. After using up all available money, my solicitor suggested I applied for legal aid. I dispensed with his services and acted on our own behalf. It was OUR marriage, they were OUR problems, they had to be OUR solutions, not those of a judge or solicitor. (F)

After over a year of being divorced he still hasn't supplied some information to my ex-husband's solicitor. I have tried to contact him [her solicitor] by telephone but he is always unavailable and doesn't phone me back. (F)

The main reasons time-slice survey respondents gave for not consulting a solicitor were that they were too expensive, or that they did not need one. Also, some people had achieved reconciliation.

The data suggest that most people remain unaffected by the information they are given about solicitors. Where people do report that the information meeting has made a difference, this is because it has made them more rather than less likely to consult a solicitor. Some people had seen solicitors because the format of the meeting prevented the presenter from answering personalised questions; others had realised that the meeting could not answer their particular query and so had moved on to the solicitor; others realised that divorce was more complicated than they had anticipated and sought further information and advice from the legal profession; and others again understood more about the role of lawyers and felt more confident about approaching them.

Part of the disappointment that was expressed about the fact that so many attendees went on to see a solicitor may have arisen from a concern that consulting a solicitor might indicate that the parties were in dispute, or that mediation had been rejected. This is not necessarily so. Most family law solicitors are unlikely to promote conflict deliberately, although even if the divorcing parties can agree, the very involvement of a solicitor can sometimes disrupt an amicable relationship simply because solicitors are partisan in their approach. As Davis has noted:<sup>6</sup>

The problem, clearly enough, is that on divorce the parties' interests are likely to be opposed. It is upon this central premise that the adversarial system is based. The unsatisfactory corollary is that technical legal advice always comes in a partisan wrapping, so failing to cater for those couples who can agree – and who perhaps set great store by their ability to maintain amicable relations in difficult circumstances. It's a pity that we have not yet developed a form of advice-giving which caters for them.

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<sup>6</sup> Davis (1988), *op. cit.*, p. 94.

The information meeting certainly did not plug this gap, since its remit did not include advice giving. We have talked extensively with attendees who have consulted solicitors, and they have many tales to tell about their experiences. Some told of solicitors making matters worse, whereas others were more than happy with the service they had received.

### **The Problem of Partisanship**

Our telephone interviews with attendees show that some feared that the involvement of a solicitor might aggravate a situation because their very involvement suggested opposing interests and fighting corners. This was a common concern. Sometimes the fears attendees harboured arose from anecdotal evidence and hearsay based on other people's stories that solicitors make things worse, and sometimes it was based on very real personal experiences:

I'm staying away from solicitors as long as possible. I have talked to people. It causes a lot of animosity so I'm trying to keep things amicable for as long as possible. (F)

I don't think he's acting on my behalf. Even my husband said 'Who's this man working for, you or me?' There's no animosity between us at all apart from when solicitors stick their finger in it ... I think it's dreadful. (F)

I think solicitors end up making it more vicious than it needs to be. (F)

Once the solicitors started advising me of my financial rights, and my husband's solicitor advised him, it could have led to some confrontation and it could have been pushed further than it need be. (F)

One of the consequences of partisanship is that if one party has a solicitor there is pressure on the other party to follow suit. Some attendees told us that they consulted a solicitor only because their partner did so, and there exists a certain inevitability that if one party has a solicitor the other will need one too:

It was inevitable that we would need to talk to a solicitor. (M)

Frankly, if there's any disagreement about finances you won't get far without a solicitor. (M)

I knew I had to go to a solicitor because my husband was going to make it really awkward. (F)

He wouldn't do it, I did ask him [to go to mediation]. He said 'No, I don't want to go to anyone else. You've got a solicitor, I've got a solicitor – we'll sort it out like that.' (F)

Well, my husband applied for a divorce, so that forced me into seeing a solicitor. (F)

As Davis has pointed out, couples who are not in dispute but who require high-quality legal advice are not currently catered for in the divorce process. Fourteen per cent of follow-up attendees (N = 1,838) told us that they had been to a Citizen's Advice Bureau,

which suggests that some attendees were indeed seeking advice, but not from solicitors. If neither the information meeting nor the CAB can provide this, it is entirely likely that people will approach a solicitor to gain this information. Under the current divorce system, lawyers are the most appropriate professionals to provide the advice needed by people involved in the divorce process.

### **Doing the Paperwork**

We know from the interviews that attendees used solicitors in a variety of ways, for example to do the paperwork associated with a divorce once parties have agreed on the arrangements, or to assist in more complex financial affairs such as dividing pensions and property. The information meeting appears to have made some attendees aware that some solicitors offer an initial free half-hour consultation, and some people went on to pursue this option in order to gain further information and to use the solicitor as a sounding board before making decisions. Some attendees had consulted a solicitor on one occasion only since having attended the information meeting, had used only the free slot, and had not had any further involvement with solicitors after this visit. One man – an extreme case – told us that he went to free sessions with nine different solicitors and managed to gather all the information he needed without paying anything!

### **Needing Someone To Talk To**

A small number of attendees who told us that they had consulted a solicitor had reconciled or were attempting a reconciliation with their partner by the time of the follow-up interview. Consulting a solicitor, like attending the information meeting, was something they had done in order to gather information or seek advice while working through problems in their marriage and making a decision about whether the marriage was over. Their visiting a solicitor was not itself indicative of involvement in divorce. Davis has noted that

most people approached a solicitor at a comparatively early stage, perhaps before they were really sure whether their marriage was at an end.<sup>7</sup>

However, approaching a solicitor at an early stage, before a firm decision about the marriage has been reached, can be problematic. In our study we found instances of attendees feeling rushed or pressured into making decisions before they were ready. They approached a solicitor to gain further information, or just to use the solicitor as a sounding board, but found that the solicitor wanted to take action or proceed with divorce. Davis has remarked that when solicitors are first approached by a matrimonial client it is not uncommon for the client to be depressed and unsure of whether they wish their marriage to continue. (Such people exemplify the first category of ignorance, ‘not knowing what on earth to do’, outlined in Chapter 4.) This can cause problems for solicitors, who are used to acting on a client’s instructions rather than to being faced with a client who is unsure of what they want. This underlines the value of the MWMC in helping to reduce uncertainty. It can also prove difficult for clients:

The only thing I would say is that when you sit in a solicitor’s office, they assume you’re there for a divorce. And that really upset me, because at that

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<sup>7</sup> Davis (1988), *op. cit.*, p. 85.

time I did not want to get divorced, and I had to make it very clear to my solicitor that I did not want to get divorced. It was very difficult to get that over. That's why I like the Family Law Act. The idea was that people didn't do things in a rush – you had time to reflect. (F)

They [solicitors] do have a tendency to bulldoze you into decisions that perhaps you didn't want to make initially. (F)

The reason I went to the solicitor was that my husband drew up a separation agreement and I must say, I wasn't forced into divorce, but it seems to be what solicitors want to do. It was as if she wanted me to hurry up and get it over with ... (F)

He [the solicitor] went on about pensions and my husband's assets ... he seemed obsessed by this and he wanted lists of things and I wasn't ready for that stage. (F)

Some attendees explained to us that they wanted the solicitor to understand their situation, which included understanding how they felt. A few reported feeling very let down and dissatisfied when no account was taken of their emotional needs:

The law doesn't allow for my feelings, that someone is to blame or is hurt or that the marriage breakdown is someone's fault ... there's nothing within the system that allows my hurt to be expressed ... I'm in grief and there's little support for that. (M)

He [the solicitor] doesn't get involved in the emotional side of it all, which can be very annoying at times, but there you are, that's not his job. They just see it as fairly black and white. They know that any settlements do not take into account any hurt. They can't consider who's suffering – they have to look at it factually. (F)

My solicitor is a 'mature' gentleman and he's obviously well practised. He said at the beginning, 'Remember, your comments are ruled by your heart. I'm here to rule from the head.' He reminded me that being emotional costs an awful lot of money, so I've come away at times with the feeling that I've not been able to express my wants and wishes. (M)

### **Assessing the Involvement of Solicitors**

Whereas some attendees feared that the involvement of solicitors would exacerbate a situation, others were entirely happy with how their solicitor managed their divorce. Indeed, the results from the time-slice survey show that attendees were more likely to be satisfied with their solicitor than with either counsellors or mediators. At follow-up telephone interview, attendees expressed their satisfaction with the service they had received from their lawyer in a variety of ways:

The one [solicitor] I've got is very good. I wanted a lady because I think from a female point of view another woman might see things differently from a man ... I think men tend to look at things more, material things really, whereas this lady solicitor seems to know what I'm feeling deep down inside me. (F)

I suppose I felt intimidated by solicitors but the gentleman I spoke with was not very intimidating. It was nice to talk to him to get the information I needed. (F)

I suppose I'm lucky really in that I've got a solicitor who doesn't believe in going for the jugular just for the sake of it. He believes in trying to sort things out and he'll come in at the final moment. He has given me a lot of free advice so I'm lucky really. (F)

Solicitors are regarded as offering a good service when they do what the attendee wants in the way that they want. This often includes keeping the client informed about what is happening, not dragging their feet and taking longer than is necessary, and not fostering an adversarial situation between the parties. Whether an attendee felt that the solicitor had acknowledged the divorce to be an emotional process as well as a practical one could affect their view of the solicitor. When an attendee felt that their solicitor *cared* about what happened to them they lavished praise on them and expressed satisfaction with how their case had been handled:

My solicitor was wonderful. It's a stressful time and she was incredibly sensitive. From this experience I would prefer a woman solicitor. (F)

The evidence indicates that for some attendees the handling of the case is as important as the outcome. It is important for people to feel they are in alliance with the solicitor and that their own aims and desires are being taken into account, rather than their actions being dictated by the solicitor. While attendees may not expect to have their emotions addressed by a solicitor it is important to at least have them acknowledged. Attendees often complained that solicitors did not care about them as people and that their particular case did not appear to be important to the solicitor:

They don't actually care about either party. (M)

Some people complained about solicitors spinning things out and being pedantic:

I could have done it better myself. They string things along until the point of financial settlement and then they speed along, wind things up and present the bill. (M)

Sometimes attendees complained that solicitors were too adversarial, as well as very expensive:

I think that solicitors can prolong the agony, as it were, and there are so many letters going backwards and forwards that they are really very antagonistic. And I just think that they make an awful lot of money out of a miserable situation and they make it even more miserable by prolonging the agony. (F)

Once solicitors are involved it gets vicious. (F)

Solicitors to me, they like to take your money. (M)

... they are overpaid and under-useful. (M)

At other times attendees complained that they wanted their solicitor to be more partisan in their approach and to protect their interests rather more than they appeared to:

I don't think he was that good ... he didn't show a lot of interest. I think he should have done more and tried to fight for more than what he did. But then we weren't getting a lot of response back from his [i.e. her husband's] solicitor either, so I don't think he was particularly good either. (F)

I think I got a very bad deal from the solicitors ... my wife seemed a pathetic soul and I think that came across – she realised it was going to get the court's sympathy. I was the villain of the piece who had gone off with another woman and taken all the bank accounts with me ... [it was] a poor deal in the end. (M)

This last attendee felt that his solicitor had been taken in by his wife and that he showed a lack of partisanship and did not represent his interests. When a marriage breaks up there is often a great deal of bitterness, and some attendees with whom we spoke wanted a solicitor who would fight their corner and get the most they could from the ex-partner. They want their interests protected and the partisan approach of the solicitor met their needs:

The reason I went to see my solicitor was that my husband was like threatening me with court orders, things like that. He'd taken the key to the house off me and ordered me to get out of the house one day, and I wasn't allowed back in and I wanted to know where I stood legally. It was [for] quite a specific reason [that] I went to the solicitor. (F)

It's good to speak to someone about finances, especially if you can't talk to each other. If I didn't have a solicitor I would probably have lost the house. A solicitor can put it in perspective and write a letter saying 'OK, you pay half and it's due such and such'. (F)

My husband can be economical with the truth, withhold information and give us the run-around, provide six lever-arch files in response to a simple question and say 'The answer is in there'... He's playing a game and he's beaten me into a corner ... he refuses to give way and has basically refused to give me anything. I've no home, nothing ... (F)

Traditional partisan approaches can aid parties in situations such as those above where they feel they have no other way of getting what they deserve, or are divorcing partners whom they consider untrustworthy or unfair. In such situations the professional legal support of solicitors can be essential, particularly if the solicitors concerned show understanding of and concern with their clients' needs. When a person has been abused within a marriage or has been treated uncivilly and unfairly, their using a solicitor during the divorce becomes the best way for them to communicate with the ex-partner. For such people it is important that an emotional and physical distance is created between themselves and their spouse, and the partisanship of solicitors can help to achieve this.

One attendee told us that the involvement of solicitors had helped to keep their divorce more conciliatory than it might have been had they handled it themselves or through a

mediator. They did not distrust each other and both wanted to have a quick and clean divorce, but they could not communicate with each other without arguing, and the more they attempted to the more arguments they had. They found that the distance solicitors created between them was conducive to their keeping their relationship amicable. By contrast, it was interesting to note the inflammatory language attendees occasionally used when speaking of their solicitors and their divorces. Attendees commonly used figurative language relating to wars or battles to describe their own situation or a situation which they felt their solicitors had caused:

I'm not into fighting or mudslinging ... but the solicitor is talking in that way, which I don't like. (F)

I'm very much against battle lines being drawn between two people because the only people who really benefit are the legal profession. (F)

We both have solicitors and are battling it out in a very bitter sort of way. (F)

The more communication, the more hassle I got, the more arguments it created ... we couldn't get past a week without a major argument. Step-kids didn't get on with each other – total war, like living in a war zone. (M)

He wants to fight the whole way. My husband is quite aggressive. He wants to fight custody of the children, he wants to fight over the house, so I don't think it [mediation] would be a good idea. (F)

### **The Interface with Other Services**

Most attendees looked to other sources along with the information meeting in order to obtain information, sound out ideas and make decisions. These included solicitors, CABx, libraries, mediators, counsellors, religious advisers, health visitors, GPs, friends and family. The complexity with which the information meeting and solicitors fitted together and meshed with other services was revealed during the telephone interviews:

I went to the solicitor first and they put me in touch with the pilot scheme [the information meeting]. (F)

Referred to solicitor by mediator to sort out pensions and ratify the agreements. (M)

I did consult a solicitor before the meeting, and it was she that recommended the information meeting. (F)

I went to my GP with it all and he recommended Relate. (F)

My solicitor recommended mediation to me. (F)

The male attendee quoted below compared his experience of going to an information meeting with his experience of other consultations:

In the information meeting and the solicitor's you are restricted for time, so the information I got from the meeting I could have got from the local library. The CAB had a lot more brochures and information and you were able to talk because there was no restriction on time. The information meeting had a

syllabus to cover and it was very short in some areas and the presenter wasn't qualified in those areas, whereas the person in the CAB seemed to be more legally-minded and *au fait* on things. The information in the information meeting was set out like an egg-timer – once the sand ran out that was it. It was the same with the solicitor – you can have a free half-hour session but then the clock starts running and that's not really what you want when you're in an emotional state. CAB were a bit like Samaritans. You chose which way you wanted to go, whether you wanted to pour your heart out or get information, whereas in information meetings, they imposed what they thought we needed. Solicitors just try and find more income.

Attendees used the variety of available services in a number of ways and had different perceptions as to their legitimacy or authority. Some used the information meeting to check what friends and family had told them, or what they had heard anecdotally. Sometimes the information meeting preceded a visit to CAB and sometimes it followed such a visit. The information meeting sometimes acted as the first port of call before attendees approached other services. Sometimes solicitors were later used to verify and confirm the information which had been provided in the meeting, or to provide information in more depth about certain topics that had been raised. Attendees described the information provided in the information meetings as 'neutral' or 'impartial' and that provided by solicitors as 'legal' and 'definite'. However, some went to the information meeting after consulting a solicitor in order to check what the solicitor had told them. They apparently used the various services in ways which met their needs and satisfied their personal sets of concerns or uncertainties. For others, information gathering and a philosophy of leaving no stone unturned motivated them to use whatever services were available, and the information meeting became another stopping-off point in the course of this process.

Information meetings existed during the pilots as another service available to people who were separating and divorcing. They were used in various ways alongside existing services by people in a range of different circumstances, with varying degrees of satisfaction. Overwhelmingly, however, attendees reported that they were glad to have gone to an information meeting, and the majority found it a useful experience. The following comments made by attendees at follow-up interviews illustrate how they used information meetings in conjunction with other services and how they viewed them:

I was still unsure when I came out of the meeting ... I felt I hadn't really done anything except seek advice for myself. Actually going to see the solicitor I felt was a lot more constructive ... The information [from the solicitor] didn't contradict it [information from the information meetings] but it was a lot more helpful and in-depth, more definite. (F)

It's new territory for me. The information meeting gave us the background of legal process and the solicitor backed it up with detail. (M)

I just wanted to hear from her [her solicitor] that the information [which the presenter] had given me was correct, and what she told me was exactly what they told me, so I was happy with that. (F)

I found out at the meeting [where I stood legally], but I suppose you feel more secure when you know it comes from a solicitor. (F)

Some attendees used the information meeting as a preparation for their visit to a solicitor:

I wanted to arm myself with information before I went to the solicitor, because I do feel it's an area that you don't know anything about. They're the experts and you're not ... it's difficult for people to go in and speak to a solicitor and the information is very useful for that. (F)

[Going to the information meeting] seemed like an in-between thing to do, before going to the solicitor. The more information you have the better. It was information gathering before I actually did anything ... I read all the leaflets but I still buried my head in the sand. I didn't know what to do first. I went for an initial free interview [with a solicitor] and still buried my head in the sand. Then my husband changed the locks on my house, which forced me to do something, and that's what influenced me to go to the solicitor really. (F)

Others went to the services in the reverse order, using the information meeting to check that the solicitor had not missed out any information:

I went to the information meeting after having been to the solicitor's. [I] used it as a check to make sure I hadn't missed anything ... I was actually quite switched on before I went to the information meeting. I had seen a solicitor because my wife had, so I was already quite well aware of my rights and what the ... solutions were, so the meeting was for me a method of making sure I wasn't missing anything. The CSA information in there I found quite useful. (M)

At the time of the follow-up telephone interview a large number of attendees had seen a solicitor as well as having gone to an information meeting. The majority (66%) reported nothing contradictory in what they had been told. Twenty-nine per cent commented that the information they had sought from their solicitor was of a very different nature from that given in the information meeting, and that it was therefore not possible to compare the sets of information from the two services. Many attendees commented that the solicitor had built upon the foundations laid down during the information meeting, and so the sets of information from the two sources complemented each other:

The information made me feel I was on a firmer foot making decisions. When I receive a letter from my wife's solicitor, I've got notes of the things to look out for, and would be able to respond to it. (M)

When you go to a solicitor the information you get becomes more refined to your individual case. The pack is fairly generic. (M)

It wasn't a rehash of what was said in the meeting. There was a whole lot of new things that the solicitor was dealing with for me. (M)

It was different. It was about finances. At the information meeting I don't think that I gained anything really. (F)

A small percentage of attendees, however (5%), told us that the information they received from a solicitor contradicted what they had been told in the information meeting. This percentage is small, but conflicting verdicts about entitlement to legal aid were mentioned on several occasions:

The only thing was the legal aid matter. That was the main thing for my reckoning ... I was told [at the information meeting] that irrespective of the house, pensions – I’m not talking millions of pounds, obviously – they would take off how much payout you would qualify [for], but I was told that didn’t happen these days by my solicitor. (M)

Information about the splitting of assets was also thought misleading. One couple were told that personal assets were not included in settlements. The gift of money in question, however, was a large amount that had been given some years earlier to the husband, but the wife felt that it now belonged to the family as a whole and not to him. The information meeting seemed to suggest otherwise, and the wife commented that it ‘scared the hell out of me’. She felt that such information should be offered far more cautiously since it can cause unnecessary upset and anxiety. Another female attendee remarked:

In the leaflets it said don’t expect to get half of the property, but the solicitor said you did get half.

A few attendees mention other examples of contradictory information having been given:

At the information meeting I got the impression that I would stand a pretty poor chance of getting custody. The solicitor seemed to think exactly the opposite. (M)

I thought that because I’d started divorce proceedings I would not have to pay for the divorce, because I was unemployed at the time. Basically I’m not saying it was the presenter’s fault, but I’d got the impression I’d be all right financially – not so much wrong information, but I probably got hold of the wrong end of the stick. (F)

Such contradiction was not limited to that between information given by the solicitor and that given at the information meeting. Attendees mentioned that there was conflict between what different solicitors said:

I had contradictory advice from the two solicitors I was using, but not from the information meeting. (M)

The one [i.e. solicitor] I had before was no good. The first one told me I wouldn’t be eligible for legal aid, but I went to another solicitor, applied for it and got it. (F)

Nevertheless, information meetings and solicitors were seen as a more authoritative source of information than informal sources such as friends and family:

One thing that came out of it [the information meeting] was that if my partner agrees I can fill out the forms without a solicitor. A friend told me that and when I went to the meeting I asked about it and the presenter said ‘Yes, you can do that’. I was glad to have it confirmed because I’d rather not use solicitors. (F)

I went to the solicitor for reassurance that what my daughter had told me about my husband not having a leg to stand on was correct. (F)

## **The Symbolic Importance of Solicitors**

Attendees told us that the decision to consult a solicitor, or indeed to go to an information meeting, could be an emotional as well as a practical one. Some attendees regarded consulting a solicitor as making a statement that the marriage was in difficulty or as the beginning of the end. Hence they regarded it as a serious and difficult step.

Ending a marriage and pursuing a divorce is emotionally fraught for most people. Attendees have told us that even when the decision to end the marriage and divorce is theirs, and that this is what they want, the process is bound up with emotion, outlets for which are very limited. We have already noted the problems that can arise when attendees visit a solicitor before they have made their mind up that they want a divorce. Some attendees recognised for themselves that they were not emotionally ready to approach a solicitor:

It's very difficult for me, and emotionally I don't feel up to going to a solicitor at this time. (F)

I didn't see the point in going to a solicitor unless I really want to finalise it, or start something. I don't really know at the moment. (F)

When I go to a solicitor it is a final acknowledgement that there is definitely a problem. I want to be quite clear about what I'm doing ... not plunge into anything and then regret it. I'm near it, but I'm not there yet. But it won't take much more to make me go. (F)

Once I see the solicitor it means I'm committed to getting a divorce. There's no turning back. (F)

I think once you've seen a solicitor it's definitely over. (M)

This view of the seriousness of involving solicitors was borne out by the comments of those attendees who used the solicitor as a threat to negotiate with their partners or who were themselves threatened with a solicitor by their partner:

When I see him [her husband], I tell him if we don't agree on everything, I'll go and see a solicitor. (F)

I just didn't know what to do. My husband's left and I didn't know what to do. [The information meeting] gave me the chance to sit down and sort things out. It made me realise what was available to me. When my husband was saying 'I'll go to a solicitor' he'd heard that from other people, to actually turn round and say 'Well, actually you can't just go ahead and get divorced and you can't have this and you can't have that - I've been to a meeting', so it ... made him realise, so it did have an impact. (F)

The fact that some attendees had been to a meeting was clearly enough to jolt their partner into taking notice:

After the meeting that was a big turning-point in our relationship. That was like we now go forwards and put into practice everything we had been going through at Relate or we'll call it a day. Most of what was in the pack, children and finances, I think shocked him ... it made my husband more aware of what it all entails. I certainly learned that he did not see past the next stage until it

was put in black and white. This is what happens, this is what you go through. It didn't shock me, but it gave him the kick to pull himself together. (F)

### **Using Solicitors Differently**

Some attendees told us that, following the meeting, they felt more confident and therefore better able to approach a solicitor: the information meeting had made them aware of what solicitors could do. Others who had already consulted solicitors were sometimes led to feel by the information meeting that they could be more in control of the process, and they therefore felt better able to instruct the solicitor as they wanted. Some attendees told us that after having been to an information meeting they felt less intimidated by solicitors overall and felt better able to enquire about costs, the need for letters, the length of time taken to complete instructions, and so on. The fact that solicitors offer free half-hour sessions, and the fact that it is possible to change a solicitor if necessary, were new pieces of information which were enlightening for some attendees:

The meeting helped me understand not just to go willy-nilly to just any solicitor. (M)

Reading the pack helped me decide to go to a solicitor. I found out about the free half-hour sessions. Reading the notes [leaflets] was more helpful than the meeting itself. (F)

It [the information meeting] made me go back and ask questions from the solicitor. (M)

I think the information meeting did stress that the solicitor was working for you, rather than the other way round, which was helpful. In fact, I've been a bit more pro-active with the solicitor following that than I would have been before. (F)

It was far better, what I got from [the information meeting]. [It] forewarned me a lot and I felt more wise to the situation due to the information I received ... I handled most of it myself but eventually I had to use a solicitor right at the end ... I felt able to say what I wanted rather than have him telling me. (M)

I had enough information from that booklet [the information pack] and I told my solicitor what I expected of him ... I am giving him instructions. I am the customer. (M)

Some attendees changed their solicitor after having attended the information meeting, and saw the list of local solicitors provided in the Local Service Directory as being very helpful:

I suppose it helped in sorting out the order in which to do things ... I think I learned from the meeting or the pack that I could ask for someone trained in family law. (F)

In a few cases attendees commented that having the general background information meant that they began their consultation with the solicitor without needing to obtain background information and therefore spent less time with the solicitor, which in turn reduced the cost:

The information meeting helped us speed things up as we knew how to use mediation for finances, and only needed the solicitor to sign the papers. (F)

It enabled us to make more economical use of the solicitor's time. (M)

I don't think I needed to depend on the solicitor a lot ... because of the information the meeting gave me. I more or less know the areas I'd got to cover. I actually went to the solicitor with a lot more knowledge than I think a lot of people would have done ... which meant I probably spent less. (F)

## Personal Stories

The in-depth interviews with attendees gave us a vivid picture of their experiences of solicitors. Most attendees were quite happy with the service they got from their solicitor, but some were extremely dissatisfied and sometimes angry. The following stories<sup>8</sup> have been selected to cover the range of their experiences, both positive and negative, and to provide a context for their views about solicitors.

### *Geoff – needing to protect his rights*

Geoff was very keen to tell his side of the story of his divorce. He described himself as 'beaten' and 'passive', and as having been through an emotionally draining divorce. He saw himself as the injured party, since his wife had committed adultery, and yet he felt the divorce had cost him more both emotionally and financially than it had her. His wife had insisted that he drop the proven grounds of adultery against her and bear the cost of the divorce in exchange for being allowed to stay in the marital home indefinitely. Geoff was anxious to find someone to whom he could tell his side of the story – to complete the narrative. *You've got to let the anger go and then sit down and reconcile what's left.*

Communication between Geoff and his wife was very strained, and she refused any kind of discussion with him. Geoff contacted the mediation service before going to the information meeting. It had suggested that he discuss mediation with his wife first, but she would not entertain any suggestion he made. At the information meeting (Model A) Geoff paid very little attention to the information on mediation, and the presenter *skirted around it* because Geoff had already ruled it out as an option. He commented that he had been to CAB for advice and he tended to make CAB his starting point for any enquiry he had; CAB had advised him not to employ the first solicitor he came across but to *shop around*. He recalled the information on solicitors he had been given at the information meeting as having been *vague*, but had felt that solicitors were an integral part of the divorce process. *Obviously you need to involve a solicitor if you are going to pursue a case. Whether you're going to take out proceedings against your wife or whether she's taken proceedings against you, you need to safeguard yourself and therefore it's advisable to see a solicitor because you should get the proper legal advice you need to protect yourself.*

Geoff was one of the many attendees who described a need to protect his rights, to safeguard his own interests. To do this he felt he needed legal representation. However,

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<sup>8</sup> All the names used in this chapter have been changed to protect confidentiality.

he felt that employing a solicitor only served to make matters worse and that both solicitors were equally as costly and slow. He described his own solicitor's attitude as *very blasé, very devil-may-care*, and remarked that the legal system gives many people going through a divorce *more distress on top of what you've already got*. He was originally informed that the process would be over in a few months and would not be problematic, but this proved to be far from the case. He described his own solicitor as having a very offhand attitude and as lacking any understanding of the emotional impact of the divorce. His wife's solicitor had apparently tried to persuade her to push for a better settlement, which she resisted. Geoff described his wife's struggle with her solicitor thus: *All he kept trying to persuade her to do was push and push and push and push and make a fight out of it. She said 'I don't want to fight because I don't hate my husband' ... and he said 'Oh, I don't want to hear that. I want you to tell me that he's got X amount of money' ... and all that.*

After Geoff's wife refused to follow her solicitor's suggestion, Geoff believed that her solicitor paid the case less attention and the whole process slowed right down. Both parties were left with a very negative view of solicitors, and with hindsight Geoff did not think that solicitors are a necessary part of the divorce process. *To me it's like insurances – they've got the monopoly on them. You've got to have them. They're saying it's legal, so you've got to have them.*

#### *Jonathan – a long-drawn-out process*

Geoff was not alone in his re-evaluation of the legal profession following his experience during divorce. Jonathan felt that his divorce had become a long-drawn-out affair because his wife's solicitor, rather than his own, had misguided his wife. His own solicitor, though good in some ways, was *disappointing* in many others. Jonathan's experience of solicitors led him to question his own belief in the high standards of the legal profession. He told us that his wife's distrust of him was so great that she would not contemplate arranging the divorce by any means other than legal ones. However, he felt that she kept changing her mind about what she wanted from the divorce, and that this made negotiation very difficult. She refused to believe that her husband was trying to reach a fair deal and questioned any offer that was made. Her solicitor began to push for court action, while his solicitor tried to resist this. *My solicitor was very anti going to court, trying to keep the price down. I think my wife's solicitor was quite keen. He was always trying to revv it up a bit, really. Our financial position was quite good for him.*

Jonathan's solicitor did appear to be trying to minimise the contentious nature of the divorce but Jonathan was disappointed that he never offered any information freely, and when he asked him a question he would resort to legal jargon which seemed to cloud a lot of the issues. *Looking back, what guidance he gave me was very minimal. I found it hard to pick his brain. I had to go through all this legal jargon to understand what he was trying to say. We spent a lot of time. Rather than talking in plain English, he used all the legal jargon almost to cover up what I needed to know.* Jonathan felt he had done a lot of the ground work himself, despite having been charged the usual high fees, and at one point he felt very let down because the solicitor had let negotiations go on on the basis of an estimated figure for his pensions which he later found to be inaccurate, whereupon it all had to be done again. For Jonathan, the divorce was his first experience of using a solicitor. *It was quite a difficult experience for me, sort of guiding the solicitors and*

*knowing what to expect from them. Early on I saw it as one of the 'high professions' sort of thing and it took me a while to get over that sort of hurdle.*

#### *Danny – over-involvement of solicitors*

Danny described his solicitor as not partisan enough in his approach, and because of this he felt he had got a poor deal from his divorce. He felt forced to use a solicitor when his wife appointed one and set out to fight him. He had left his wife for another woman *after a long and unhappy marriage* and described his wife as embittered. Danny told us that his solicitor did not protect his interests. *I wish I could have avoided them more than ever. I see them as legalised highwaymen, and these unfortunate times of people's lives, you know, are a very lucrative business. Their profession, they make quite a lot of money out of it.*

Danny felt very disillusioned with the whole process and said he could easily feel bitter too. *I feel I have been badly let down by my solicitor. I feel I have been let down by the legal system who I sort of had on a pedestal before. I thought that the judicial system was a pinnacle to be admired, and now I have lost all faith in that, and I feel it's wrong. I have become very disillusioned ... I could easily feel very bitter.* He felt in retrospect that the contentiousness in his situation had been exacerbated by the involvement of the legal profession in the divorce. *What we were trying to divide really was a cake, and you would think it would be easy to cut it up. Clever people get involved, solicitors and things, and sort of add up how much money there is, pay off the debts and then divide down the middle. They seem to make it such a complicated mathematical sum ... they definitely made it worse.*

#### *Susan – confidence in the solicitor*

Some attendees we spoke with were very positive about their solicitors. Susan felt her solicitor had handled the situation just as she wished. She felt her solicitor understood the emotional impact of the divorce, which was important to her, and she was confident that her solicitor would protect her interests. At the time of our in-depth interview she was waiting for her decree absolute to come through. All matters concerning children and finances had been settled through the solicitors. She would have considered mediation, but her partner would not entertain the idea. He had left her for another woman who had children and she had at first hoped for a reconciliation, finding it hard to believe that her husband had walked away from a twenty-year marriage. However, he was adamant that he was not prepared to stay in the marriage. She described mediation as *not counselling*, but somewhere to go to *discuss emotions, discuss finances and try to resolve them. If there was any chance of actually getting back together then obviously somebody else with a different point of view might say, 'Well, don't you think you ought to give this a try?', that sort of thing.*

At the time she went to an information meeting (Model C) she was at the stage of *not really knowing where to turn, where I was going, what I was doing, and what I needed to do.* At the time of the information meeting she was still ambivalent about the future of her marriage. She wanted to gain more information about divorce while still hoping in the back of her mind that *if I actually forced the issue of divorce proceedings then he might think twice about what he was actually doing, but it didn't really work.* Throughout the

entire divorce process she would have considered reconciliation had her husband been willing to try it.

Susan said she had found the information meeting useful since it had given her *so much information on how to handle things and what would actually happen, and how things would work, and what was available for me as well*. She had found the pack very useful in terms of its information about courts and residence of the children. In her view, the role of solicitors was presented *neutrally, but as part of the process, as you don't need to use a solicitor if it's straightforward*. She did not feel the meeting had had any impact on her decision to see a solicitor. It was something she would have done anyway, since she did not trust her husband to reach a fair decision. *I didn't really trust what he was saying to me at the end of the day, and once I used a solicitor I realised I was right not to*.

Susan explained that although she could talk with her husband and they could sometimes make arrangements, she did not feel she could trust him in those arrangements *at all*. This was why she decided to consult a solicitor. *I think when you've got children involved then you're not only protecting yourself, you're protecting the children, and I decided, knowing my husband the way I do, I decided to see a solicitor and get their best advice, the best way about it, not just to accept what he actually said to me*.

Susan felt that she needed the legal support and advice of her solicitor to protect her own and the children's future interests. *There was quite a bit of money involved, and equity in the house, and I really wanted to secure it for the children, for their future, and make sure if they decided to go to college or university there was some fall-back or come-back so I wouldn't have to bear all the costs, because they are both our children at the end of the day*. Despite wanting to protect her own interests, however, she was also keen to communicate with her husband and to discuss what she could directly with him. She did not want a solicitor who would try to take over. The first solicitor she consulted appeared to want to do just this, and so she consulted another, a female solicitor. *I think we gelled, and she was so understanding. Maybe she saw it from a woman's point of view, I don't know, but I was very impressed with her. I felt like towards the end, I know she's a solicitor and I'm paying her for a job, but I felt I could really open up and talk to her about things that were going on, that I wasn't sure about, without feeling silly. She explained every step of the way everything that was happening*.

The second solicitor Susan consulted allowed her to handle her divorce in the way she wanted. Susan felt that her solicitor understood that the divorce was an emotional process as well as a practical one and she allowed Susan time to think through suggestions that she made and to discuss them with her husband if she wished to. *The solicitor suggested one thing and we [Susan and her husband] would get together about their letters and decide what was best for both of us*. The solicitor respected Susan's wish to keep the divorce as amicable as possible and advised her but did not push her. Susan was extremely happy with both the process and the outcome. *I would give her ten out of ten. She was very supportive and didn't make things more adversarial. She made sure my future and the children's future is covered, which is what I really wanted to do*.

Susan and her ex-husband managed their divorce via a mixture of informal agreements and legal advice. Although she remarked that they *had their moments*, they managed to remain on a fairly amicable footing and keep communicating with each other. *It was difficult. Sometimes it was a strain when we wanted to resolve something and couldn't see any solutions, but we did manage to get it all resolved in the end by purely talking*,

*but there was a lot of to-ing and fro-ing. That they managed to keep the divorce amicable meant that they were still able to talk to each other and make arrangements for the children. He's got contact ... I'm quite flexible. I think it's important for children to see their dad. What has gone on between the two of us, I don't think it should affect the children in any way, although it does. I would never have stopped him from seeing the children at any time, so long as he lets me know. She felt, however, that the arrangements should be formalised more at some point, and intends to tackle this after she has moved house so that she can settle the children into a routine. I want to make it more set in stone, more secure for them.*

Susan felt that it was her efforts that had kept the divorce reasonably amicable and that this was important because of the children. She had been deeply hurt by her husband, and commented that when there is a third person involved in the breakdown of a marriage an amicable divorce is much harder to achieve than if both parties have agreed together to end the marriage. She felt that she had managed to keep things amicable because she had had support from her family which had enabled her to think through what she was going to do. *I think it was having the time, having support from my parents, so I could stay in the house where I was, so I didn't feel pressurised to just get up and move, which would probably have been the wrong thing to do, and really just keep the channels of communication open between the two of us.*

Susan did manage to keep the channels of communication between her partner and herself open throughout the divorce. Her solicitor did not try to persuade her otherwise but rather supported her in this, whilst at the same time advising her about how best to protect her own and her children's future. Susan had only praise for her solicitor. At the end of the interview she described herself as having come through her divorce and as having reached a point where she felt able to move forward with her life. *I do feel now is the time to move on, really. I feel ready and more positive about it.*

#### *Sarah, Heather and Ian – satisfactory and adequate experiences*

People appeared more likely to provide full accounts when they were dissatisfied with a service than when a service met their needs. We encountered many cases of people describing the service they had from their solicitor as adequate and satisfactory, perhaps commenting that they were expensive or took a long time, but accepting this as part of the deal. These people did not speak of solicitors in either glowing or negative terms, but were neutral in their appraisal. Sarah, for example, used both solicitors and mediators during her divorce. She used the mediation services to resolve issues connected with arrangements for the children, and consulted solicitors about financial matters, which were still unresolved at the time of the in-depth interview. She was unhappy with the first solicitor she hired since she felt that he did not do anything and would not answer her questions. She then changed solicitors and was happier with the female solicitor she then had, although she was more expensive. She described her second solicitor as *competent*, but remarked that as the case had been going on for some time she was able to provide the solicitor with a great deal of information, which probably meant that the solicitor herself did not have to chase around as much. She was satisfied with the service her solicitor provided. *She's as helpful as a solicitor can be. I know they're protecting themselves. They can't say 'Yes, you'll get A, B and C and then you get E, F and G', because then you're going to sue, or whatever.*

She was waiting to see how her solicitor fared in the forthcoming court appearance to resolve finances. She saw her own case as complicated, but believed that in straightforward cases it might be possible not to use solicitors at all. For Sarah, however, solicitors were a very necessary part of the process. *If there's no trust and you can't agree, then you've got to have solicitors.*

Another attendee, Heather, also felt she needed solicitors. She had previously taken an injunction out against her husband, who had been physically violent towards her. She described the situation as having calmed down over time, and at the time of our last interview she was hopeful that the remaining issues to be resolved could be settled reasonably quickly. She felt she needed legal support in order to reach a fair settlement and so consulted a solicitor. *In my situation I'm glad they were there.* She did not find her solicitor particularly helpful or unhelpful, but remarked that solicitors took a long time. *I mean, you go into these things – you don't know what you're entitled to or how to go about things. It was only if I asked the questions that I got an answer.*

A male attendee, Ian, made a similar remark about solicitors. He felt they took a long time, but they were thorough. *They didn't add coals to the fire but they just wanted their client's position clarified on every point legally.* Although he and his wife were on fairly friendly terms he saw solicitors as necessary and helpful. He felt it was good *to have someone there to give leverage if things were stalling*, and also to be assured that agreements made have *proper legal standing*.

### *Difficult situations*

Some attendees found themselves in such difficult circumstances that their solicitors were struggling. One man, for example, told us that his wife had stopped communicating with her own solicitor, and would not communicate directly or indirectly with her husband either. He described his own solicitor as being more at his 'wit's end' and unable to help. He remarked that his wife's solicitor was also very helpful in trying to resolve the situation, but that his wife's total lack of co-operation made it extremely difficult to move forward at all.

In another case, the attendee described how the solicitor tried to keep the situation amicable when antagonism between the couple flared up. What had started off as a straightforward divorce suddenly exploded into a battle when the wife threatened to stop her husband's contact with their child.

### **Pulling the Threads Together**

It seems that after attending an information meeting most attendees continued to choose solicitors to guide them through the divorce process. The information meetings do not appear to have discouraged the use of solicitors or to have diverted people away from the legal profession. The pilots were not set up to do that. Neither the information meeting in its current format nor mediation can take the place of a solicitor. Indeed, some attendees were told at the meeting to seek the advice of a solicitor whereas others who had not had their questions answered saw a solicitor as the logical next step. Some attendees felt they *had* to consult a solicitor if they wanted to get a divorce or if their partner had consulted one. Others saw solicitors as the legitimate or authoritative source of information during a

divorce. Only a solicitor, they felt, could really assist some attendees with their situation and hence they appeared to have little real choice as regards where they went for advice.

There is evidence to suggest that the information meeting had encouraged some attendees to use solicitors differently from how they might otherwise have done. Some attendees used the free half-hour consultation with a solicitor which they had learned about at the meeting. Others changed solicitor, or approached a family law specialist. Some told us that they felt more confident in dealing with solicitors, and better able to instruct them and to express what they expected from them. Another effect of the information meeting was that some attendees decided to pursue a DIY divorce, either having learned about the possibility of doing so at the meeting or having had their feelings that this was indeed possible confirmed.

In the present climate solicitors are likely to continue to dominate the divorce scene, and it would take a much more radical intervention than an information meeting to change this. King<sup>9</sup> has argued that solicitors are adapting to the climate of change where emphasis is increasingly on the welfare of the child, and are equipping themselves to deal more effectively with issues relating to arrangements for children at the time of the divorce. Some are training as mediators, while others present to their clients an understanding of child psychology and emphasise to them the importance of safeguarding the welfare of children. King's research suggests that, even if Part II of the FLA were to be implemented, solicitors would be unlikely to be removed from centre stage during the divorce. Our research supports this view.

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<sup>9</sup> King, M., 'Being sensible: images and practices of the new family lawyers', *Journal of Social Policy*, vol. 28, no. 2 (1999), pp. 249–73.

