

The Socratic Method

Peter Webster defends mediation in the light of changes introduced on 22nd April, and summarises the role solicitors can play.

One of the charges levelled against the Greek controversialist Socrates in the fifth century BC was that he taught how to make a weaker argument overcome a stronger argument by means of clever rhetoric.

Now, as then, commercially strong parties with weaker arguments than their opponents on specific controversies will pay good money to see their opponent's stronger arguments overcome.

In the context of the justice system, therefore, access to justice for commercially weaker parties has in recent years been guaranteed by the state paying for representatives who can ensure that both sides' cases are presented adequately and are decided on their true facts and their legal merits.

It is not surprising, therefore, that legal practitioners should fear a return to the situation decried by Socrates' opponents if, as is happening today, the state starts to restrict these payments.

Alternative methods of resolving disputes have of course been available for some time. The state is seeking to promote some of these in the hope that they will be less of a drain on their budget. One of these processes is mediation.

Mediation is a process of facilitated negotiation. The mediator who does the facilitating is a neutral professional. The parties often embark upon the process neither believing nor even wishing that a freely negotiated settlement might be possible. The process nevertheless turns this discounted possibility into a reality with impressive frequency.

Mediation Information and Assessment Meetings (MIAMs for short) provide mediators with a chance to explain, and the parties with a chance to hear, why mediation can achieve the seemingly impossible.

There are many who still have some concerns about the compulsion that parties will face from the 22nd of April 2014 to attend a MIAM. Parties to family proceedings often have a significant imbalance of

power between them, and an early settlement - before detailed investigations can be carried out into the stronger party - may reflect this imbalance of power. Solicitors have a good track record of achieving informed settlements in family cases, whether by collaborative or conventional negotiation, and the favouring of mediation – whether by the insistence upon attending a MIAM or the availability of legal aid for the mediation process but not for independent advice - may have the effect of sidelining a lot of **leaze** and expertise.

Family mediation is a steadier process than its commercial cousin. Parties are not encouraged to try to settle at the end of just one session with the mediator. Full disclosure by both parties of relevant financial documents is required from the start on an open basis. Proposals are generated which can be checked and advised upon by solicitors before they become binding. The stronger party cannot hide behind his or her lawyers, and has to persuade someone who knows him or her intimately the fairness of a proposed outcome in a face-to-face meeting. Mediation need not defeat access to justice by becoming a more prominent feature on the family dispute resolution landscape.