

# How we earned our DECREE NICELY



After being told by her husband that he wanted a divorce, *Martha Roberts* (left) braced herself for a courtroom battle. But thanks to collaborative law, the process was as swift and amicable as possible

Illustration ANDREW BANNECKER



Imagine a boy blowing out the candles on his fourth birthday cake, flanked by his smiling parents. Now imagine that, during the previous ten months, this same family has been split by divorce, seen the house sold and the assets divided up.

This family is my family, the parents are me and my ex-husband Simon, and when I look at this picture I am proud that despite our separation in November 2009 we could stand side by side to celebrate our son Ezra's birthday in August. And it is largely thanks to something called collaborative family law that we have been able to do this.

For around 136,000 couples every year, divorce is a reality they have to get used to – and most of them end up doing battle in court. A 2009 survey by law firm Mishcon de Reya found that 68 per cent of divorcees said they used their children as 'bargaining tools' and one in five admitted to wanting to damage their ex-partner. Roger Bamber,

head of family law at Mills & Reeve and one of the first collaboratively trained lawyers in the UK, says: 'Bad divorces never end. The conflict goes on for ever and the whole family is poisoned.'

When Simon told me that he wanted a divorce, as well as the distress of realising that my marriage had failed, I felt dread that this signalled the start of our own personal war. We were no longer a team – we were adversaries. I had always admired Simon's strength; now I feared it would be used against me. Although I knew he was a man of integrity, I was worried that our son would no longer see him regularly (research shows that one child in three whose parents separate loses contact permanently with their father). I was terrified that Ezra and I would be left penniless – a recent survey by the Institute of Economic and Social Research found that, while the incomes of ex-husbands rose by 25 per cent immediately after the split,

almost one third of ex-wives ended up in poverty.

As soon as the news was out, advice started pouring in from friends – 'Get yourself a good lawyer' and 'Get whatever you can!' were common themes. In her self-help book *This Little Piggy Got Divorced*, Amy Allen Poon talks about divorce following the same 'emotional cycle' as bereavement – shock, anger, grief and acceptance. And in her memoir *Small Dogs Can Save Your Life*, Bel Mooney describes splitting from a spouse as being 'forced to confront the end of a way of life'. But I knew that what had brought Simon and me together in the first place was friendship, and it seemed clear that we should try to preserve this if we could. So I Googled, not really knowing what to look for: 'Can you divorce and still be friends?' Somehow, my random searching came up with collaborative family law.

In the 'normal' adversarial system, you and





your husband instruct separate lawyers, divorce papers are issued and dates are set for court sessions to thrash out matters such as finance and child custody. With collaborative law, which was founded in the United States in 1990, each person still has their own lawyer, but instead of negotiations being conducted by letter or phone (and ultimately in court), you work things out face to face. According to Resolution, an almost 6,000-strong organisation of lawyers who believe in a non-confrontational approach to family law, 'the aim is to resolve disputes without going to court'. In fact, you sign an agreement saying you *won't* go to court, and if you do, you have to get new lawyers and start the divorce process from scratch.

Simon and I liked the fact that, anecdotally, it leads to better relations between ex-spouses, is better for children, and is known for prompt resolution. 'It's much quicker than going to court,'

says lawyer Judith Goodman, partner at London's Family Law Associates and a deputy district judge. 'Normally divorce takes 18 months from beginning to end – with collaborative law it's often dealt with in less than six months.'

Instead of searching for a lawyer who would

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rip my husband to shreds, I was advised to ask if Simon's lawyer could recommend one he liked working with. I admit I was slightly concerned that he might suggest someone less experienced than him in order to benefit Simon. But his recommendation was fantastic – our

lawyers had worked together on previous collaborative cases and got on very well. Amanda McAlister, head of family law at Russell Jones and Walker, says: 'When people split, they think they have to get an aggressive lawyer to look after them, a "rottweiler". But what they need is someone sensible.'

The first meeting, at Simon's lawyer's office in January 2010, was terrifying. Although I knew that ultimately I wanted to be friends with Simon, I was also angry and hurt and wondered if this touchy-feely process could work for us. But my lawyer reassured me, saying, 'You can decide what pace it will go at, and nothing will happen if you don't want it to.'

Immediately, it felt like Simon and I – not the court process – would be the drivers. And I knew we had similar goals, not least the welfare of our son. Walking into a room with my lawyer and seeing Simon next to his for the first ➤



◀ time, across the table, made me feel immensely sad. However, when we all started to talk, I began to appreciate how being at close quarters was likely to help us find points of consensus rather than conflict. We were able to discuss how Ezra would split his time between us, right down to how we could have identical 'time charts' at both houses so he would know where he'd be from one day to the next.

Of our four meetings, spanning four months, the two in the middle were most fraught as we thrashed out financial details (Roger Bamber says the average is four sessions, with a 'crunchy third' which can be 'pretty volatile'). At one memorable meeting, when Simon was clearly cross, he wouldn't even look at me and I feared the next time we met would be in a courtroom. But as well as sorting out practical issues such as finances and access, the process, carried out under our lawyers' watchful eyes, helped us thrash out many emotional problems, too. I was exhausted, not having had a day off from looking after Ezra in three months, and we were able to sort out an immediate solution – Simon would start to have Ezra every other weekend. We were also able to work out an arrangement for him to come one night during the week to put Ezra to bed, so that they never went more than five days without seeing each other. And there's something very healing about being able to work face to face with each other's vulnerability – we were kinder to each other than we would have been in a courtroom.

Of course I often felt angry. I was coping with having 'failed' in something I'd always vowed to make a success of. At times, I wondered if facing Simon in court might have helped me to channel that anger somewhere. But as Roger Bamber puts it, 'What you are doing in the adversarial process is replicating the rows that brought the marriage to an end, which isn't helpful.' Instead, seeing a therapist was a better outlet for my feelings of abandonment. 'People are now realising you need to bring third parties into the collaborative process,' says Judith Goodman, 'including counsellors with a background in helping families going through separation.'

As the process went on, Simon and I gradually found we were getting on well enough to talk about it. We'd call each other and say, 'This feels so strange. I'll be glad when it's over, won't you?' At the start of April, just five months after Simon left and three months after our first collaborative meeting, we had reached an agreement on everything. A year on, our decree

Martha and Simon's wedding, 24 November 2002



## The last session of our collaborative divorce didn't just feel like an ending, but the start of something, too

absolute is through. When I asked Simon, for the purposes of this article, what he thought of collaborative law, he said: 'I like the fact that we had a lawyer "safety net" there. We could discuss things in an adult way and focus on Ezra. It has led to a balance in our relationship that would not have been there had we gone through the courts.'

He also said it had allowed us to come to terms with everything in our own time, yet through controlled steps set by our lawyers. For both of us, the last session of our collaborative divorce didn't just feel like the end of something, but the start of something, too – our new, separate lives, linked only by the past and our son. Amanda McAlister describes it as 'giving you the insight to deflate the anger in a controlled way'.

The collaborative process is taking time to catch on in the UK (although this year's review of the divorce system will encourage couples to try mediation, where a single negotiator, rather than two teams of lawyers, works with both parties to come to an agreement acceptable to them and

the courts). A Resolution survey found that 2,800 collaborative cases were opened, and almost 2,000 completed, during 2006-7, but this is a small number compared with the 133,000 divorces that don't go to mediation each year. 'Many lawyers don't want to do collaborative because they think they will get less money than from a big court case,' says Amanda McAlister. Certainly, it was cheaper for us – costing around £15,000, a quarter of what we were expecting based on the experiences of divorced friends – but resolution is quicker, so lawyers can fit more

cases into any given year. Perhaps more significant, though, is that many lawyers aren't comfortable with the concept of collaboration. 'You can take the lawyer out of court, but you can't take the court out of the lawyer,' Amanda observes.

Yet divorcing couples need to be informed of their options, says Sandra Davis of Mishcon de Reya. 'Where assets are not very significant, where the divorce involves children so that future co-parenting is important and where the relationship between the parties isn't wrought with conflict, there's no reason not to opt for collaborative law,' she says.

I admit that it's hard to imagine it working if one partner has had an affair. This wasn't the case for us, but Simon has since met a new partner, which has definitely hampered good relations between us: the fact that he has found time to rebuild his life so fast has left me feeling even more angry. We have now had another collaborative meeting and agreed that he will have Ezra overnight once a week, to give me time to rebuild my own life. But divorce is painful however you do it, and takes you through emotions that even a grown-up approach can't eradicate.

If I had to choose again, though, I would still opt for the collaborative route. Open dialogue and working through every aspect of our split – from practical to emotional – is helping me feel positive about my future as a divorced woman, a single mother and an ex-wife communicating with her ex-husband. Simon and I still care for each other – I picked him up from hospital when he knocked himself out a few months ago, and he brought me back a gift when he went on holiday. We'll go to parents' evenings together, and if Ezra ever gets married I hope he doesn't feel he has to choose which of us will sit at the top table – we will both be there for him. We couldn't stay happily married, but perhaps collaborative family law has set us on a steady path to being happily unmarried for ever. **N**

### DIVORCE WITHOUT TEARS

For further information about collaborative law and to find a lawyer, contact Resolution, [resolution.org.uk](http://resolution.org.uk)

For free advice for divorcing couples in the UK, visit [divorce.co.uk](http://divorce.co.uk), a site set up in 1998 by collaborative lawyer Roger Bamber