

Good Practice Guide to Communication

The introduction, development and evolution of new methods of resolving family disputes for changing families means there is a need for us all to look at how we communicate as members of Resolution; with our clients, with other members, with our clients' former partners if they are not represented by a lawyer, with other members of our clients' families, with other non-member lawyers, barristers, judges, mediators and arbitrators and more widely within the family justice system.

Poor communication accounts for the largest number of complaints received by Resolution.

This Guidance was reviewed in January 2023. Members should always check the up-to-date position.

Until recently, written correspondence, such as emails or letters, has been the main method of communication in family disputes. While written correspondence remains essential for certain purposes, it is no longer the main method of communication in many cases. Good practice is that it should not be the main or only method in the majority of cases. When it is used, it should of course comply with the **Code of Practice** and the **Good Practice Guide on Correspondence**. For our mediator members, it should comply with the **FMC Code of Practice** and its Standards.

The basic premise of this guide is that it is good practice to engage verbally on a regular basis with clients and others, particularly at the most important stages of cases, and not to hide behind, or default to the written word because that is what we have always done, unless it is necessary, essential and beneficial for our clients.

Try to put yourself in the shoes of the recipient of your proposed written communications and to ask yourself whether it would be better to pick up the phone to talk things through, to update your clients and others etc. Consider how you would feel on receipt of such communications, and most importantly consider whether that written method would really benefit your clients, taking account of their desired realistic aims, objectives and primary concerns.

The reason for the shift in how members communicate is the recognition that the written word is often misinterpreted and misunderstood. This is particularly so

when the reader is under stress and more inclined to think the worst. Such misunderstandings can be clarified as quickly in verbal communications as they arise in written communications. This means that meeting around the table or picking up the phone will often result in more effective communication, which is absolutely critical for dispute resolution in all its forms and must therefore help our clients and others in a more non-confrontational way.

An emphasis on the benefits of verbal communications is likely to increase in importance, given the numerous diverse conduits for communication which are currently used and those that will appear in the future. For example, WhatsApp, Instagram, Snapchat, TikTok, Facebook messenger, LinkedIn, Twitter, Facetime, Skype, Zoom, Microsoft Teams, etc. These platforms were unheard of a few years ago and they demonstrate the vast range of forms of communication which also includes interactive and usually short written communications (eg emails), recorded video and audio or video calling and podcasts. The traditional methods of communicating have changed, and it is important that members make conscious decisions about how best to meet their clients' needs over sending the traditional letter.

Members (and their clients) have also had to adjust to the increase in remote hearings and especially to the use of the HMCTS Cloud Video Platform (CVP). Whilst the initial introduction of remote hearings was in response to the Covid-19 pandemic, plans for a more general online approach in proceedings are well advanced and it is unlikely that there will ever be a full return to attended hearings. ►

This introduces two new responsibilities for members, first to be as knowledgeable and familiar as you can in terms of explaining to your client how a remote hearing works, ensuring that they can take part as fully as is possible and any expectations there will be for them and your own role in any remote hearing. Secondly to be aware and alert to any basic inequalities or unfairness that may apply for your client or for you in any remote hearing and how to approach or challenge same appropriately and diplomatically.

This Good Practice Guide looks at methods of communication in our developing family justice system, makes some recommendations and suggestions of best practice for cases in which there is no current process framework in place, such as those in mediation and the collaborative process. It pulls together the wealth of resources available to members to use to assist them in providing clients with the best possible advice and service, whether they are lawyers, or members from other professional backgrounds. The guide also recognises that the diverse nature of families, the diverse personal characteristics of clients and others involved in the family justice system, and the evolution of the practice of family law professionals from all disciplines and the system itself, mean that a “one size fits all” approach is not appropriate.

The starting point – know your client/s and their family

This is key to effective communication, and to building an effective relationship with clients that will work for them. A pre-requisite for understanding others is to have good self-awareness and also to have excellent communication skills. Resolution offers various courses that can assist with honing these skills.

It is good practice to find out about your client/s and their family; in addition to the usual factual information (names, dates of birth, where are they living, and how are all the wider family related, and the financial details).

To ensure that you understand your client and their family it will usually be important to delve deeper, for example:

- What sort of personalities are all the significant people in the situation? **Tools such as the iMA questionnaire can help to ascertain this.**
- What is most important to your clients and their children, and any significant others?
- What are their aims and objectives in the current situation and more generally?
- How are they feeling right now? What are they most worried about or frightened of?
- What practical and emotional support and help to they have access to and/or need?

- Getting a sense of each child involved, how much do they think their children might know about the situation? How do they think their children are coping?
- How safe or afraid do they feel right now, and how do they answer the **domestic abuse screening questions?**
- Are there concerns for either client about any of their children? Do they have worries about abusive behaviour or matters of child protection?
- what process do they think is most likely going to help them to achieve an outcome that will be workable for them?
- If you are using client ‘onboarding’ or engagement software such as Settify or Engage, the systems will prepare for you a great deal of information about your new client, which will achieve two things, firstly, you will have an idea of who that person is and more importantly, it leaves you ready to be able to really spend time ‘filling in the gaps’ in understanding more about your client, how they are and where they are in terms of their personal ‘journey’ of family separation.

Consider using a **genogram**, ask to see photographs, really get a sense of each child and help parents to bring each of their children to the forefront of their thinking, make a note of what is most important for them and refer back to that, and most importantly aim to genuinely and effectively with your client and their family. At most we only get a snapshot of the lives of our clients, and the more multi-dimensional that is, then the better the service we can deliver, the greater the chance of a workable outcome and the more likely we are to be recommended to others. For parents in conflict, probably the one thing they can agree about is their children, who they are individually, their likes and dislikes, what they are good at etc.

Effective methods of communicating with clients and others

The mediation and collaborative processes include **frameworks** for the stages of process leading to a resolution of the issues raised by clients. It is the role of the mediator or the collaborative practitioners to manage those processes and adapt them for the individual family. Both of these frameworks are structured around verbal dialogue, and have a detailed **Agreement to Mediate** or Participation Agreement (in the case of collaborative practice), which set out the principles everyone commits themselves to, the way in which the approach will be conducted by the practitioner/s and any expectations on clients. These essentially ‘goodwill’ documents form a critical component of these practices and have clear information about, eg confidentiality and how communication takes place. Generally, mediation and collaborative practice is a more discursive form of problem solving with clients. Mediators and collaborative practitioners may document progress very briefly using particular written formats, for example minutes or notes of meetings or brief summaries and noting of any tasks to be undertaken before the next meeting, and then more detailed

client outcome documents, memoranda of understanding or outcome statements, and open financial statements, or consent orders, 'anchor' statements, statements of information and records of parenting arrangements, whether parenting plans or in some other format.

The benefits of verbal dialogue for discussions around the issues between the parties leading to negotiated outcomes are clear to those who practice in this way; for example, misunderstandings can be clarified quickly rather than perpetuated in correspondence, factual issues can be resolved without the need for production of supporting documentation where clients agree that isn't necessary, and most importantly lines of communication between the clients are kept open rather than the reverse, so assisting in ongoing parental communication and co-operation where there are children, and the reduction of unnecessary legal fees.

The court process in all types of family case requires specified pleadings, court documents and statements to be produced and documents to be provided at various stages including pre-application, and again these are specified either by court rules, protocols, and are specific to the particular case. As more hearings move to be remotely conducted, please ensure that you remain alert to how best to help your client to understand the documentation which may now only be available to them electronically and how any online court procedures work.

There is no framework currently for the process of solicitor negotiation or for pre-action discussions, nor for communications during the various different court processes. This good practice guide recognises that increasingly these communications should

- take place face to face, where it is practical to do so, or on the telephone or by some other means of verbal dialogue (e.g. using video technology),
- be recorded formally when required in accordance with this guide, and
- comply with the **Good Practice Guide on Correspondence** when they have to be written.

Effective and formal recording of verbal communications

When communications take place verbally, some written formal recording of those communications will be advisable and/or essential.

Where the communications are between the clients' advisers, then ideally the formal recording will be undertaken by one of those involved, and agreed by the other/s, either in an agreed meeting note or an attendance note/email.

Where communications are between one adviser and a litigant in person (LiP), or between adviser and client, then

the formal recording will usually take place by the adviser present.

It is suggested that the following is considered and adapted appropriately for the particular case:

When it is essential to record communications in writing after verbal dialogue

- terms of engagement/business setting out the scope of the retainer between solicitor/mediator and client/s and any subsequent variation
- formal solicitor/client advice
- the detail of any issues that are agreed between advisers or between adviser and LiP
- please remember that in all cases, written communications should use language that is easily understood by clients and especially by any LiP

When it may be advisable to record communications in writing

- instructions from the client
- proposals for settlement, where it is agreed or appears that that will assist ongoing dialogue
- the detail of issues that are still to be agreed, possibly with the current stage that discussions have reached
- agreed next steps/actions

Code and regulatory compliant communications

All members will appreciate the importance of ensuring that communications comply with the Code of Practice, and reference should be made to the various **Good Practice Guides that support the Code**.

Reference may be usefully made also by all members to guidance from the SRA which is available on the SRA website, for example in respect of **Offensive communications**. All communications need to be conducted in compliance with members' regulatory obligations.

Poor communications lead to the highest number of complaints received and upheld by Resolution.

Multi- and inter-disciplinary working

An increasing number of Resolution members are working in a more inter or multi-disciplinary way either with other members or with a range of other professionals who work to provide services or support to family clients, eg financial professionals, family consultants and coaches, counsellors and therapists etc. These are valuable relationships for

professionals and can often enhance the overall service provided to clients.

It is essential that members who are working in this way consider issues including:

- appropriate contracting or agreements with clients about inter-disciplinary or multi-disciplinary working
- confidentiality – how information is to be shared, if at all. Whether there are or must be particular arrangements to protect confidentiality (eg SRA conduct rules or regulatory rules for other professionals in respect of client confidentiality)
- arrangements in respect of safeguarding that make clear the responsibilities of everyone involved and which are compliant with any safeguarding requirements set out by each professional's code or regulatory requirements or responsibilities
- any confidences agreed with individuals in relation to sharing that information with their former partner
- legal or other professional privilege
- secure exchange of any information between professionals
- communicating any required arrangements in a clear and understandable way with clients and colleagues working with you in an inter-disciplinary or multi-disciplinary model
- arrangements relating to raising concerns or complaints with any professional involved (see also **concerns and complaints**)

Inter- and multi-disciplinary working is a relatively new but growing practice. As such, members and colleagues may be exploring and/or experimenting with various models and it will be critical that in doing so, they establish a means of communicating together to ensure that in any model they build, choose or use they have considered their working relationships with one another and with individual clients and how they ensure compliance with any applicable codes, legislative or regulatory requirements by which they are bound.

In respect of clients, it is especially important to consider that they may already find themselves in unfamiliar or unknown territory. What is familiar to and between professionals who work in family law, dispute resolution processes and in client support services is not always familiar to clients. Care must be taken to ensure that clients fully understand the parameters of any process or procedures and remain clear about the relationships between themselves and any individual professional and the relationships between the professionals involved particularly in regard to information sharing. Care should also be taken in respect of written communications and/or records shared between the individual clients and/or other professionals.

For collaborative practitioners and mediators there are **existing template agreements** provided by Resolution.

Confidentiality and privilege

Clients should understand the extent to which discussions and communications (including written or other formal communications) are confidential. Members have a responsibility (and in the case of solicitor members, a regulatory responsibility) to ensure that client confidentiality is properly explained and adhered to.

Legal professional privilege, whether it is legal advice or litigation privilege or 'without prejudice' privilege is complicated to explain to clients. However, it is important that you explain privilege as simply and clearly as you can. Using an example of how confidentiality or privilege might apply in their case or situation can help people to understand more clearly than trying to communicate confidentiality and privilege in abstract.

If you intend to provide written explanatory information to clients or potential clients on your website or in written form either in advance of meeting with the client or to support a verbal explanation, you may wish to think about how you could provide a 'this means' paragraph that clarifies your explanation clearly and succinctly and in lay language, or consider whether, if you have to provide such a paragraph, whether you should in the first place provide an explanation in a way that is immediately understandable to your client/s.

If you are a mediator member, confidentiality is an important principle of mediation practice. It is however conditional and mediation clients need to understand the exceptions to any confidentiality that may apply. It is also important that mediators remain clear that discussions in any mediation process are confidential as between the participants and the mediator and confidentiality cannot be waived unless both participants and mediator agree (or where any of the other exceptions to confidentiality apply) whereas privilege is a right of the participants to the mediation and they can agree together to waive their privilege. Information about confidentiality and privilege is set out in the **Family Mediation Council's (FMC) Code of Practice**, in and in the available on the Resolution website.

Other professionals who are members of Resolution and/or who work with other professionals as part of an inter or multi-disciplinary service to clients should ensure that they are clear about their own professional responsibilities or requirements in relation to confidentiality (and/or how they might relate to legal privilege) and provide a similar and clear explanation to clients. Where members or other professionals are working together to assist clients, it is important that they have discussed and agreed how confidentiality (and any privilege) applies individually and together and how it is to be clearly explained to clients and set out in any agreement made between clients and professionals.

Working via remote technology

This part of the Good Practice Guide on Communication has been prepared to provide some useful hints and tips about the use of remote technologies. Members should also be aware of guidance and especially, any advice or regulation issued by regulators, the SRA, **Bar Council**, **HMCTS/MoJ**, the **Judiciary**, the **FMC** and any governing organisations or regulators pertinent to our financial and therapeutic professional members.

Many of our members will have ready access to online video technologies such as Skype, Microsoft Teams, Zoom etc. and if so, your firm or practice may well have already produced its' own guidance in relation to usage, it may be that these technologies have, up until relatively recently, been used for inter-firm use, for meetings with representatives from other firms or business meetings generally etc.

When using these technologies to work directly with clients,

- **Please take the time**, especially if there is no existing guidance within your firm or practice, to consider how best to use these technologies and especially to ensure your own professional protection, the protection of clients and protection from complaints.
- **Plan ahead**, talk any compliance or risk issues through with your COLP and with any IT professional within your firm or practice. Think about what information you should provide to prospective or actual clients about how you will work with them. Review your terms and conditions letter and amend as necessary.
- **Make clear that time will be billed for meetings via video technologies** in the same way as face to face meetings. Check (or ask your COLP or Practice Manager to check) with insurers whether they have any specific requirements you should meet.
- **If you are going to be working from home and remotely**, ensure that any laptop, tablet or computer system you are using has the relevant security systems in place, and if necessary, have your IT section check it and/or carry out appropriate penetration testing
- **Make sure that you choose [a] platform/s that is/are sufficiently secure and encrypted** if you don't already have access to an existing platform through your firm or practice. Check for ease of use, (for you, for any colleagues and especially for clients). Many people already have access to Facetime (which has end to end encryption) and Skype or Zoom.
- **If you decide to use Apps such as WhatsApp**, please ensure that you have used settings that do not allow your client to add another user to the 'group'. Be aware too that applications like What's App are immediate, that is, clients can message you at any time they wish, during and outside of office hours. WhatsApp does have secure encryption, some of the other and similar

technologies do not, please check the level of security available for any App you choose to use.

- **If you are going to share documents on screen**, make sure that you remain compliant with GDPR requirements and that you are doing so through a secure connection. Always ensure that clients are also provided with notice of the papers they should have for any meeting in advance, and that you have provided or they have the means to access, (and if necessary, download and print) anything that is needed so as to save time and to work as efficiently as you can. There are a number of software programmes available that allow you to synchronise, update and store information of all kinds across and between devices simply and securely.
- **Be clear with clients about issues such as confidentiality and GDPR**, any kind of recording, who will or might be in the room or with them during any meetings and who has access to any of their online accounts (of whatever kind) and to their personal information.
- **Be aware and carry out careful checks with individual clients, especially if they remain under the same roof, of issues of privacy and safety**. Always check out with individuals whether they are in a 'private space' and are free to talk with you without being disturbed, interrupted or overheard. Watch for signs of discomfort or anxiety, and if so, check again. If there are children in the home, try to ensure that they are not party to overheard conversations about conflict between their parents, concerns (or insults) being expressed by one parent about the other etc.
- **It may surprise you** that people may think it's fine to have a meeting with you 'on the go' via their phone, or with family life going on in the background (and remember, occasionally, some people may choose to do this deliberately if their partner is there). This may be fine for a quick 'catch up' call, but make sure they know when they will need to be somewhere where they will be able to have a longer meeting.
- **Agree practical arrangements**, eg that there is no-one else in the room with them when that hasn't been agreed, that you can see each other sufficiently well enough, that they are not recording the meeting without your agreement, what to do if the signal drops out etc.
- **Be aware of issues such as coercive control** or abusive relationships, check whether the individual can talk/ is talking to you in a safe and secure place away from their partner (see below).

Working from home

It is essential that this Good Practice Guide is followed in all working situations whether working from home or

in the office. However, working from home brings with it other complexities such as the need for confidentiality and security. Regulations and the Law Society provide Guidance on this, and you should also follow any of your firm's policies that are in place that governs this.

Where you receive difficult communications, it is essential that you do not respond in haste and seek support before responding.

Communications via social media and by Skype/video link (or equivalent)

As the popularity of social media and the use of video chat software advances, it is likely that increasing numbers of people will expect some or part of their access to services may be via video chat or by use of social media sites. The use of video platforms, such as Zoom and Microsoft Teams has been particularly popular with legal professionals to communicate with their clients during the Covid-19 pandemic and it is likely that clients will continue to expect (or demand) some art of service to be available via remote means.

Members who have a social media presence (personal and/or professional) should take appropriate steps to ensure that they do not post information that may be perceived by clients as relating to their case or to them individually. You should also take care that information or comments posted are not offensive or might be construed as offensive or insensitive (see SRA guidance on **Offensive communications**).

Many individuals (and an increasing number of children and young people) search for information about professionals online, via social media sites, to provide reassurance about any professional they are thinking about or are working with and occasionally because they may have a hostile intent. Members should also be aware that children and young people search sites as they too may be seeking information about the professional either of their parents is working with.

Occasionally members may also receive requests to link with or be a 'friend' with a client or their former partner via a social media site. Care should be taken here as to the appropriateness of accepting such invitations.

As is mentioned earlier, the essence of good communication with clients is establishing a level of professional trust. Establishing such trust relies on both appropriate engagement with and a professional relationship with your client/s.

Communicating with children and young people

A child or young person is not yet an adult even though they may have (or appear to have) particular maturity, perhaps as a result of their experience of family separation

or family crises. Communicating with children in a family law context requires a particular skillset and a clear framework and undertaken in line with safeguarding at its heart. Safeguarding is further referred to below and see Resolution's **guidance note on safeguarding children and young people**. For the moment, any request or decision to talk with a child or young person is most likely to come from one or both parents. However, with the increasing ease of communication via other media it is likely that some children and young people may comment on their own feelings or views or make or request a direct contact with a practitioner via text, phone, social media or app.

Successive research outcomes have shown that children and young people commonly report that they lack any information about what might be happening in their family and that having and understanding that informant is very important to them. Members may want to consider what child friendly information they provide on e.g. their website as it may be the case that a child or young person will access websites as a means to trying to understand what may be happening in their family.

Hearing the voices of children and young people has become an important aspect of family law policy and there is change underway to ensure that children and young people have an appropriate opportunity (in and outside of proceedings) to be heard, especially in relation to decision-making that affects them. Members who are qualified and/or accredited to work with children will be aware of the protocols surrounding communicating with and seeking the views (and/or the wishes and feelings) of individual children and must adhere to those protocols.

For our care practitioner members, communicating with children and young people will be a central part of their practice and they commonly work 'in tandem' with a Guardian. Hearing the views of children and young people subject of care proceedings has become every more central in public law matters and work continues to improve and enhance the opportunities these children and young people are offered. The **Family Justice Young People's Board** members have produced a number of helpful short videos and 'Top Tips' documents in relation to communicating with children and young people, which provide valuable insights into how children and young people would like to be communicated with and how best to communicate with children who may have additional or special needs.

Some mediators are qualified to conduct child inclusive mediation (formerly called direct consultation with children in mediation). The FMC Code of Practice states that all children aged 10 or over should be offered the opportunity to meet with a mediator (where appropriate and safe to do so) in cases that affect them, and it may be appropriate for younger children to be offered that opportunity also. Members should be aware of, and consider this with parents.

Members who work as family consultants/coaches or other child professionals or members who work with these other professionals should ensure that they are able to meet standards expected of them. Generally, it is important that

if members work directly with children and young people that they:

- have the appropriate qualification to do so
- hold the required level of DBS check
- are conversant with safeguarding responsibilities and have made clear these responsibilities to any parent or carer
- where appropriate, have the agreement or permission of the parents or carers, or anyone who holds parental responsibility for the child(in writing)
- as appropriate, have carefully discussed and agreed with parents or carers how best to approach the child and any arrangements the parents or carers believe are important to be in place for talking with the child
- are able to offer an appropriate setting in which to see any child or young person (and to take especial care if they are considering doing so by any remote or online means)
- as appropriate, can explain to any child or young person in an age-appropriate way any confidentiality of discussions and in regard to safeguarding and ensure (as far as is possible and practicable) that the child or young person has understood and agrees to those arrangements
- ensures that there is a mutual understanding between practitioner and child about how and with whom any information and/or views shared by the child will be communicated.

Helping parents to communicate with their child or children

Often parents struggle with communicating with their children in times of family difficulties; what they should tell their children (about a forthcoming or actual separation), how to seek the child's views on future arrangements or simply how to check how their child is coping. In care proceedings, parents might want assistance in the ways in which they could communicate with their child after they have been removed from their care or on visits with their child. Members can provide information about where parents might access that help and key messages about what helps children and young people to cope with family separation or crises.

Resolution's website includes access to the '**Parenting through separation**' section for parents where there is a wealth of information for parents, grandparents and kinship carers. Young parents whose child/ren are subject of care proceedings will find that the **Family Rights Group** website and helpline are a valuable resource.

There is also a lot of information available directly to children and young people via a number of websites;

Childline has information for children and young people and deal with a considerable number of calls to their helpline from children whose parents are planning to, or have separated or are planning to divorce. The **CAFCASS** website and the **Kids' Health** website also provide a good range of information for children and young people. Children and young people today are often much more adept at finding information online than are their parents, but it is useful to provide information to parents about reputable websites that can help their child or children.

Safeguarding

We all have a responsibility to keep children safe and to promote their wellbeing. For our members this means that you should be conversant with the 'Working Together' framework, any Code or regulatory arrangements by which you are bound and your own local arrangements for ensuring children's safety.

Members can access safeguarding information via their local Safeguarding Children Board website (enter your location followed by Multi-Agency Safeguarding Hub – MASH or Safeguarding Children Board), and should be familiar with the Resolution **guidance note on safeguarding**.

It is essential that members are able and confident to raise with clients if they have a concern about the safety of a child or young person (or a vulnerable adult). Members should also be able to respond appropriately when someone discloses a safeguarding concern. You should be aware of any safeguarding policy and procedure in your firm, service or practice and whether there is either a designated Safeguarding Officer (DSO), or if not, then with whom any concern should be raised (eg the COLP in a legal practice). If you are a mediator, you should also refer to your Professional Practice Consultant (PPC) and to the Safeguarding Policy Guidance in the Mediation Handbook. You may wish to introduce a safeguarding policy to your organisation if there is not one already in place.

Communicating with vulnerable adults and others with additional needs (eg language difficulties or a disability)

It is important that members consider both the inherent vulnerability of all individuals who are involved in a relationship breakdown, family separation, divorce or a family crisis that may involve the statutory services, and the likelihood that many of our clients will have a specific vulnerability. Levels and types of vulnerability will vary between individuals, and some individuals may be doing their best to hide that vulnerability because they may have a perception about how they should present themselves and what you might expect from them.

You should ensure that you have carefully considered how to engage with clients and especially how you do so if and where that person is vulnerable or has any form of disability or difficulty that may affect their communication with you

and/or with others. Some vulnerabilities are especially difficult for individuals to tell you or to talk about. For example, literacy problems affect a significant proportion of the population, and you should ensure that you check whether clients may need help with reading documents, forms, etc, or with writing or completing forms, so that you are able to assist in a sensitive manner.

Similarly, for those who do not speak English as their first language, it will be important that you consider whether there is another practitioner member or provider who might be able to offer a service in the client's first language or someone who can provide information in their primary language or via a suitably qualified interpreter if necessary.

If you are working with an interpreter, please remember that it is likely to affect your direct engagement and communication with that client so it is important to consider how you can demonstrate your engagement via your body language and demeanour. You should also be mindful of the ability of the interpreter to relay information that may be unfamiliar to them as well as to your client. Always use a qualified and independent interpreter rather than relying on, for example, a member of the client's family or a friend.

Please also consider practical arrangements. For example, if you are working with someone with a hearing disability, first of all, always check what their preferred means of communication is and if their primary language is British Sign Language (BSL), and whether you have a BSL interpreter or not, always face the person since many BSL users can also lip-read. If you know you are going to be working with an interpreter, make sure that you have sufficient room for all of you and always consider with your client whether it is or is not useful for the client to also be supported by a friend, family member or specialist lay advocate.

If you consider that an individual has a disability of any kind you should ensure that you are aware of and consider with the individual concerned whether they consider themselves to be disabled and how best to assist them in any communication with you or with relevant others. In the case of physical disabilities, consider what access issues they might have and how they could be overcome. Please also see the sections relating to Equality, Diversity and Inclusion for members (and for mediator members contained in the **Mediation Handbook**)

Some clients will have specific mental health issues or disabilities and it is important to consider their readiness or capacity (either because of their current emotional or mental health or because of their specific disability) to be able to give instructions and/or to progress matters or to fully participate in decision-making.

It is not unusual for family law clients to be suffering from some form of transient mental health issue or to have been diagnosed as anxious or depressed. When someone is unwell, whether that relates to their mental or physical health, it is important to consider how able they are to progress matters and whether it might be more

appropriate to consider some form of 'holding strategy' whilst they recover.

Resolution's **Good Practice Guide on working with vulnerable clients** provides a comprehensive guide for members in dealing with all types of vulnerability and disability. Other sources of information may be available from the range of national organisations supporting people with a disability, and from organisations such as Women's Aid, Adfam, MIND etc. Many of the organisations who support those with specific vulnerability or disabilities will have information and/or support services in local areas and it is useful for you to know what organisations might be available to help you and your client.

The Law Society has also produced a helpful Practice Note on **Meeting the needs of vulnerable clients**.

Online family dispute resolution services

As a result of the pandemic, many of these services are now offered remotely, online to clients. There are (and are likely to be more) online dispute resolution services available as direct services to individuals.

Generally, online communication can remove some of the advantages of face-to-face communication by disrupting the ability to 'read' the nuances in face-to-face conversations. If a technology such as Skype, Microsoft Teams, Zoom, Facetime or other 'video chat' software is used, conversations can be disrupted by loss of or disruption to the link.

Visual clues from body language can also be missing or harder to read and that can make it difficult for an individual to engage with you or for you to pick up on signals from the individual. However, the use of online communications has distinct advantages; it can be more convenient, it is an increasingly familiar means of communication and can increase accessibility for an individual to you and for you with individuals and assists in the provision of other online information.

The security of personal information is an important aspect of any online service provision and members must ensure that they are compliant with any regulation or legislation in respect of protecting personal data and must have an agreement in place regarding confidentiality, information transfer or exchange, the recording or posting of any video material, etc.

In the case of mediation, the Family Mediation Council (FMC) has issued guidance for mediators on **Online Video Mediation**. Mediators must remain compliant with the FMC Code of Practice when offering these services. It is also essential that mediators ensure that they comply with any principle of confidentiality pertinent to mediation process and with data protection legislation.

Mediation Information and Assessment Meetings (MIAMs) can be conducted via Skype, Teams, Zoom or other secure

online format but at present cannot be conducted via telephone unless it is in the case of, eg the loss of a secure online link during the MIAM and if/when the client has a particular disability (the mediator must record the reasons for conducting any part of the MIAM by telephone). If the client is at distance from the mediator, this in itself is not a reason to conduct the MIAM by telephone; mediators should provide information about other mediation services closer to the client's home base. In the case of international clients, a MIAM may be conducted where it is required via Skype, Microsoft Teams or Zoom. Child abduction mediations (and especially those where there are Hague proceedings) are available via [Reunite](#) who are able to use both Skype and telephone as the Hague proceedings child abduction mediation scheme has special arrangements to do so. Mediators should discuss with their PPC if they have a concern about conducting a MIAM or mediation via Skype, Microsoft Teams or Zoom or wish to use online technology generally as part of their service. Further information is available in the [Mediation Handbook](#).

Where clients are considering other types of online dispute resolution, it is important to help them think through how appropriate it is in their particular circumstances, the quality of the service offered and what they should expect and/or look for in terms of security of information or discussions.

This is a developing area, and it may be that further guidance is needed in due course.

Communications and complaints

Complaints are often described as being a “formal expression of a dissatisfaction”.

“Expressions of dissatisfaction” may be moans, groans, sighs, or other types of body language, or communicated in writing or by telephone or through another person.

How we respond to these signs and complaints may influence whether the dissatisfaction can be resolved quickly or whether it escalates into a formal complaint, which may involve third parties such as the Court, a Regulator or Resolution.

When a complaint is made about you or your practice, the first tip is to try not to feel personally attacked, and to take a step back and seek support from your supervisor, peer, compliance officer etc where appropriate before responding to any formal complaint. A response in haste can often be regretted later.

Communication skills in handling such grievances are important worthwhile skills to acquire and there are many publications and training available to help members acquire or further develop those communication skills. Resolution provides information and useful guidance to members such as the [Complaints Handling Toolkit](#).

This toolkit will help you to acquire good communication skills on how to handle and deal with complaints effectively.

This will hopefully avoid the “dissatisfactions” escalating out of control. The Toolkit relates to various situations including whether the complaint was from a member of the public or from one of your fellow colleagues/other members.

Not having an effective procedure in place can lead to losing valuable fee earning time and also fines imposed by a Regulator. Resolution's complaints team also produces regular updates and tips on complaint handling and how to avoid complaints. These are produced in the regular ebulletins sent to Members together with features in the Review. Workshops on complaint handling in the local regions can also be arranged; contact Resolution's admin team for more information.

As a community of Resolution members, we have a duty to act in accordance with the Code of Practice and to contact our fellow members if we have concerns about non-compliance with the Code. The Code should give the public confidence, and we all have a responsibility to ensure that we do not simply pay lip service to it, or act in a way that devalues it as some sort of marketing ploy.

How members' concerns about other members are communicated may be fraught with potential difficulty given the need to have ongoing professional relationships in the interests of our clients. However, many members report that Resolution's Member-to-Member complaints procedure is greatly beneficial in helping to address problems early for the benefit of the members' clients.

In addition, you can contact [Resolution's complaints team](#) for a chat at any time about concerns that you may have.

It is worth noting that most of the complaints received by Resolution centre around aggressive letters. See the [Guide to Good Practice on Correspondence](#) for tips on how to avoid this.

Communication by telephone

Communication by telephone continues to be one of the main ways in which we communicate in family disputes. Lawyers, like other professionals, are expected to be effective communicators. Effective telephone communication is key but how can this be achieved? Here are some suggested tips:

- Before making a call, think about what you need to say or want to convey.
- Think about how you propose to get your information across.
- Think about your words and your tone.
- Speak clearly and succinctly.
- Plan to make your call when you are not trying to attend to any other business.

- Minimise distraction and do not be tempted to do other things at the same time, such as checking your emails.
- If making a call to a client, ask if it is a good time for the client to talk; if not, agree a specific time to call back.
- Similarly, if you take an incoming call and you do not have sufficient time to talk, for example because you are doing other urgent work, then agree a specific time to call back the caller.
- Try using the three key communication skills of:
 - reflecting back or summarising what you have heard (without embellishment)
 - acknowledging AND normalising the emotion you hear the other person expressing (eg “it sounds like you are very upset/angry/unsure/frustrated/sad/stressed/finding it hard to cope – which is understandable in the circumstances and clients often tell me that they feel that way in situations like yours”) – if you get it wrong, they will tell you, and you will then understand where they are coming from better, and if you get it right, the person will feel that they are being properly listened to
 - silence – try holding the silence and see what happens – we are not used to doing that and it can be enormously powerful.

Effective communication means listening, more than talking. Very often, complaints can arise from misunderstanding or miscommunication that can occur because although you may have listened, you may not have heard.

If there is something that the other person said that you do not understand, ask them to repeat it. If receiving instructions from your client, summarise what they have said to confirm that you have understood their instructions or repeat it back to them if either of you need clarification. Try saying to clients “there is no such thing as a stupid question – please ask me anything, because this is really important and I’m here to help you”.

It is advisable to make attendance notes of telephone communications that will be held on file and can be invaluable if there are problems or queries later or follow the call with an email to confirm the matters discussed. Therefore, have a notepad and pen ready so that you can write down any pertinent information and instructions; or type a note.

Litigants in person (LiP) are increasingly common. In the past, Litigants in person were often perceived as ‘difficult’ or deliberately vexatious. We know that the number of individuals who seek legal advice in family matters is continuing to fall and that for some, it is unaffordable in any event. With the implementation of the ‘no fault’ divorce legislation in April 2022, as an online ‘registration’ system, an increasing number of individuals may think that they really don’t need legal advice. It is everyone’s choice as to whether they do or do not seek legal advice

or representation. Whatever the case, lawyers have a duty to deal fairly with LiPs. Someone who for whatever reason has not sought legal advice is likely to be confused, uncertain, anxious and wary of talking with a professional who knows the law, even more so if they perceive that person as on their former partner’s ‘side’. Remember, that most individuals know very little about family law and proceedings, they may view the situation as entirely ‘adversarial’, that there will be a ‘trial’ and that they may ‘lose’. They may have considerable unmanaged expectations, perceptions or presumptions about the law, about you and about what might happen, despite the increasing availability of good and accurate information and guidance available to them online (including that published by the gov.uk site).

Try not to assume that every LiP you may be contacted by is likely to be difficult or aggressive. However, sometimes a LiP may want to talk to you on the telephone, and sometimes they may persistently call you, or accuse you of being aggressive or may be aggressive or rude to you. These scenarios are considered in Resolution’s **Good Practice Guide on working with litigants in person** and **Complaints Handling Toolkit**. It is critical that you are civil and polite at all times to the LiP, and treat them with respect however tempting it might be to retaliate. Do not shout, threaten, accuse, confront or otherwise act in anything but a professional manner, tempting though it may be.

If the LiP cannot speak to you without being rude and aggressive themselves, then you may explain calmly to them that you feel they are communicating with you in an aggressive manner. Further you can explain that unless they are able to communicate calmly and civilly with you, then you will not be able to speak to them on the telephone and will only correspond with them in writing, since you feel that continuing such telephone conversations will not help them or your client. The same approach may be applied when dealing with the lawyer of your client’s spouse or former partner if they speak to you in a rude and/or aggressive way. Whilst family law issues can generate extremely high emotions, this does not mean that it is acceptable for someone is personally abusive or rude to you. No one should have to put with abuse, whether from the client, LiPs, or the other’s party’s lawyer, regardless of the situation. You have a right to protect yourself from personal abuse.

Audio recording of conversations

One of the reasons why so much of solicitor’s communication is in writing is so that there is a clear record of the advice given or proposals made and the basis of that advice or those proposals. Whilst verbal communication can be more effective, it is still important to avoid problems of misinterpretation or incorrect recall (see also *Effective and formal recording of verbal communications* above).

Therefore, it is advisable to make a written record of conversations, with clients and with the other party or their solicitor, particularly in the circumstances identified in this guide (above). It may also be advisable to provide a note of what was discussed, and any actions points to the client or

the other party so that if there is any disagreement later about the discussion that note can be referred back to.

Alternatively, or additionally, conversations may also be audio recorded. The Telecommunications Regulations 2000 allow recordings (amongst other reasons) to establish the existence of facts, ascertain compliance with regulatory or self-regulatory practices and for monitoring and record keeping. This must be wholly or in part in connection with your business and you should have made all reasonable efforts to inform everyone who uses the telephone system that they may be recorded.

Most companies that conduct business over the telephone have a pre-recorded message played at the beginning of the call to say that the call may be recorded for training or monitoring purposes. It is not necessary to have the other person's consent; it is only necessary to do your best to inform that the calls are being recorded.

Members should bear in mind that the other person may record conversations held via video technologies, on the telephone or in person covertly. Ensure that you have appropriate information and conditions set out in any terms and conditions or in a separate addendum document (template/s available on the Resolution website for mediators and collaborative practitioners).

The audio recording of meetings is happening increasingly. It is not appropriate for members to record meetings without disclosing that to other participants. If a meeting is to be recorded, then it is good practice for everyone to be informed, and to be given the opportunity of objecting. It may also be appropriate to offer other participants a copy of the recording.

Recording meetings can avoid the need for detailed notes to be made during the meeting so that all participants are able to listen better and do not incur the cost of a detailed attendance note being prepared afterwards. All can also refer back to the audio recording of the conversation later if needs be. Such recordings may be particularly beneficial in certain circumstances; for example to evidence the willing engagement of participants, and to prevent potential later allegations of undue pressure or a lack of understanding.

Careful thought does need to be given to the recording of conversations and whether it is appropriate.

The benefits are:

- Less note taking during the discussion and better able to listen.
- Avoids the need for a detailed attendance note.
- If there is a dispute later about the advice there is a clear record of what was said and how the meeting was conducted

There are, however, drawbacks:

- The client may feel uncomfortable being recorded and feel less able to discuss their situation fully, especially if there is information which is sensitive, or they feel embarrassed divulging
- You may be more stilted knowing that what you are saying is being recorded and you may not build the rapport you would normally have with a client.
- An attendance note is usually focused on the key points of the meeting and provides a succinct summary of the discussion. It is easier to refer back to than a lengthy recording.

Communicating where there are domestic abuse and/or safeguarding concerns

Victims of abuse may have very specific issues in communicating their needs and in respect of capacity issues. They may find it difficult to admit or to talk about the abuse that has happened within the relationship and some victims of abuse can be unaware of the abuse that has been perpetrated against them especially if it relates to controlling or coercive behaviour or issues related to specific cultural or community traditions or what has become accepted within the family as 'normal' behaviour.

Members need to be able to talk with individuals about issues of abuse and need to establish a 'safe' environment for client and practitioner to be able to talk about the relationship and how decisions were made, whether the client can readily identify either themselves or their partner as the decision maker within the relationship, who controlled for example, family finances and what happened when there was an argument between them etc.

Individuals who are victims of abuse may lack the capacity to speak or negotiate on their own behalf. They may find it difficult to make decisions and may be very aware of the consequences of doing either (even if they have left the relationship). Resolution's **Domestic Abuse Alert Toolkit** is available to assist members where domestic abuse may have been, is or has been a feature of a relationship and members should also be aware of the **Good Practice Guide on Domestic Abuse Cases**. (Information in respect of domestic abuse and safeguarding matters is set for mediator members in the FMC Code of Practice and the Resolution Mediation Handbook).

Data protection and GDPR

There is extensive guidance generally available in respect of the General Data Protection Regulation and more widely in respect of data protection and individuals' rights to privacy. For example, members are referred to the Law Society's **Advice and guidance on GDPR compliance** and the Information Commissioner's Office **Guide to the General Data Protection Regulation**. (Information for mediator members is set out in the Mediation Handbook).

Note

This good practice guidance does not and cannot affect any obligations in law, specific court orders or rules of professional conduct.

Good practice guidance can inevitably only deal with the generality of situations. It cannot be an absolute rule. The facts of any particular case may justify and/or require a lawyer to depart from these guidelines.

This guidance applies to all family law cases for the better conduct and approach of family breakdown issues, and not just to cases between Resolution's members.