

Good Practice Guide to Working with Litigants in Person

Subject to the rules on vexatious litigants, anyone is entitled to act in person. However, there has been a tendency to treat people who do so as a nuisance. With the reforms to family justice, cut backs on legal aid and changes in behaviour in relation to the ways in which people approach family relationship breakdown, there has been a significant increase in the number of litigants in person and you should consider how your dealings with litigants in person will differ from those with another lawyer.

This Guidance was revised in March 2023. The law or procedure may have changed since that time and members should check the up-to-date position.

First contact

Your first contact with your client's spouse or partner may set the tone for the way in which the whole case is dealt with. Therefore, it is vitally important to have the Resolution **Code of Practice** and the ethos behind it at the forefront of your mind.

The Code does not only apply to your dealings with your client, it applies to everything you do in connection with your family law work. By becoming a member of Resolution, you have committed yourself to adhering to the Code. Resolution can and does deal with complaints from the client's spouse or partner or, indeed, anyone else involved in the matter, such as a judge, barrister or Cafcass officer.

Spend a little time thinking about why this person is not instructing a lawyer. It could be because they:

1. cannot afford to;
2. think that matters are agreed or very straightforward so that there is no need;
3. believe that lawyers are only interested in making money out of their misery, or
4. believe that they are capable of dealing with the matter as well as any lawyer.

If the reason should be from (1)–(3) above, it is possible that the person will start off feeling at a disadvantage. They may be very distressed, angry and/or confused and finding it very difficult to come to terms with and understand what is happening. They are likely to be totally unfamiliar with the law, procedure and language involved. They may be particularly sensitive to anything they receive from you and be on the defensive from the beginning.

When you write your first letter to this person, you may not know what the reasons are for them not instructing a lawyer, so you should be sensitive to all the above. Your thinking may also be affected by what you have heard from your client as to the reasons for what has happened and how they view the behaviour or actions of their former spouse or partner. Remember that your client will always have shaped what they say to you based on their own feelings, what they think you want to hear and perhaps so you also understand that they are not seen by you to be the person "in the wrong".

You may not know anything about the other person: their emotional state, the effect of the separation or dispute on them, or their ability to express their feelings or wishes. We are encouraged to consider the stages our client may be going through: shock, grief, anger etc, and we are able to do that by observing and talking to them. We cannot do that with the spouse or partner. We are either forming a view and making judgements based on our client's instructions or, if we are able to stand back and take an objective

view, acting in the dark. Your first letter might be the first indication the recipient has that the situation is serious. When you write, be aware of the influence of your client's instructions and try to be sensitive to whatever state the recipient might be in, whatever level of communication they might have or any cultural issues that might affect them.

Although the latest edition of the Law Society's **Family Law Protocol** is silent on the matter, the previous edition contained useful guidance: the initial letter should briefly address the issues and avoid protracted, clearly one-sided and unnecessary arguments or assertions. In drafting the first letter, solicitors must:

- where practicable, obtain approval from clients in advance; and
- when writing to unrepresented parties, recommend that they seek independent legal advice, and enclose a second copy of the letter to be passed to any solicitor instructed.

You should recommend that the other party consults a Resolution member, but be sensitive to the fact that they may not be able to afford representation. Many people say that they find such a recommendation threatening and aggressive. If they thought matters were agreed with their spouse or partner, they can construe this recommendation as implying that matters are no longer agreed and that some advantage could be taken of them if they do not seek advice. Therefore, it is important to explain why it might be helpful for them to consult a lawyer and/or refer to this suggestion as being recommended good practice. You could suggest other advice agencies and, if appropriate to do so, consider with your client suggesting mediation as, for various reasons, this could be a more effective or appropriate option in certain cases. You could explain that the court office can give some help on procedures and refer them to **Represent yourself in court** on *Gov.uk* or the **HM Courts & Tribunals Service website**.

Resolution has prepared a letter template for a first letter to a litigant in person here, incorporating this guidance. This should be sent with a copy of Resolution's **Code of Practice** and the **Top Tips for Litigants in Person**.

You should advise, negotiate and conduct matters so as to help settle differences as quickly as is reasonable for the parties. You should recognise that your client may need time to come to terms with their new situation and so also may their spouse or partner, who will be trying to do so without professional help and support.

Many people say that they feel pressured into responding quickly when time limits for replies or actions are imposed at an early stage. Clearly there may be reasons for speedy action in certain circumstances, but you should advise your client to be sensitive to the time the spouse or partner needs and to allow scope for agreement to be reached. It can be helpful to explain that sometimes matters take time to resolve.

Communications generally

See the Resolution **Good Practice Guide on Correspondence** and the Resolution **Complaints Handling Toolkit**.

When dealing with someone who is not represented, you should take even greater care to communicate clearly and try to avoid any technical language or legal jargon. Reference should be made to the excellent Family Solutions Group paper **Language Matters** which calls for a fresh look at the way family law is framed and delivered to those who need it. It sets out five core principles for language change in family law:

- **Plain English** – avoid legal jargon and use words which can easily be understood.
- **Personal** – use family names rather than legal labels.
- **Proportionate** – use language which is proportionate to the family issues being considered.
- **Problem-solving** – use constructive problem-solving language rather than battle language. The move from combative to co-operative language reflects a move from the language of parental rights to the language of parental responsibility, so issues can be approached in a child-focussed and problem-solving way
- **Positive futures** – the emphasis is not on past recriminations but on building positive futures in which children can thrive.

It is very easy to use language that we are very familiar with, without thinking about whether the recipient will understand it. Application, Petition, applicant, petitioner, respondent, Conditional Order, Final Order (or Decree Nisi and Decree Absolute), injunctions, periodical payments etc are not words in everyday use. A litigant in person, who is already feeling at a disadvantage, may be further intimidated and antagonised by the use of such language. Take care not to give unsolicited legal advice to the litigant in person but think about what information might be helpful for them, including providing links to websites or organisations that may be able to offer them help or explanations about the law or procedures.

The Code of Practice says: 'Reduce or manage any conflict and confrontation; for example: by not using inflammatory language'

You should avoid using words or phrases that suggest or cause a dispute where there is none. Emotions are often intense in family disputes. You should avoid inflaming them in any way. You should not express any personal opinions on the behaviour of the other party.

Correspondence should be carefully considered for its potential effect on other family members, including any children.

Any communications should aim to resolve issues and settle matters, not antagonise or inflame them. Threats or ultimatums should be avoided.

Paragraph 1.10.3 of the Family Law Protocol Part 1 says “patience, courtesy, good humour and an effort to understand why the person is not instructing a lawyer will get you off on the right foot”.

Many complaints to Resolution concern the giving of personal opinions and comment. It is easy to be drawn into your client’s case and to feel that you are acting in your client’s best interests by being assertive and criticising the spouse or partner. However, it is unprofessional and does nothing to further the case. It may simply make you and/or your client feel better temporarily. If any comment is absolutely necessary, preface it with “I understand from [X] that”.

Also, bear in mind, especially when raising a matter for the first time, that your client’s version of events, given to you as fact, may not necessarily be accurate.

The Code of Practice says that you should encourage clients to put the best interests of the children first. You should keep disputes about finances separate from disputes about children. These matters should be covered in separate letters because children are not bargaining tools and, by dealing with finance and children in the same letter, it may appear that they are being used as such. It can also make each aspect more difficult to resolve.

The stock answer to complaints that child and money matters have been dealt with in the same letter is that the client is a private client and costs are being kept to a minimum. If a member has explained to their client at the outset, the approach to be taken in the case, the client cannot complain about any additional costs incurred in dealing with such matters in separate letters.

Care needs to be taken with email correspondence as it is not a secure medium. It is also important to take care, if asked to communicate by fax or email, that the recipient is aware, agrees and can receive faxes or emails in a confidential environment. Complaints have been received that communications were sent to the recipient’s place of work without prior consent and were seen by numerous other people first.

The divorce application or other proceedings

Paragraph 1.11.1 of the Family Law Protocol Part 1 says: “Prior to the issue of proceedings of any nature, solicitors acting for applicants should notify those acting for respondents (or respondents themselves where unrepresented) of the intention to commence proceedings at least seven days in advance, unless there is good reason not to do so.”

Although under the Divorce Dissolution and Separation Act (DDSA) 2020 there is no longer fault based divorce, it remains good practice to send a draft divorce application to the proposed respondent in advance. Failure to do so could result in a complaint.

The Code of Practice says you should:

- take into account the long-term consequences of actions and communications as well as the short-term implications;
- ensure that consideration is given to balancing the benefits of any steps against the likely costs – financial or emotional; and
- make clients aware of the benefits of behaving in a civilised way.

If a particular step may appear hostile or is capable of being misunderstood, you should consider explaining the reasons for that step to the other party.

Do not lightly/routinely seek costs. Pay particular attention to claims for costs in divorce applications, given the provisions of the DDSA 2020. Explain what other claims, eg for a financial order, may be about and why it is necessary to include them in the application. These are often seen as hostile acts.

Try to achieve consensus before issuing any application.

Paragraph 10.2.1 of the Family Law Protocol Part 2 says that you should provide the respondent’s solicitors (or respondent where unrepresented) with the fact or facts on which the petition is to be based and the particulars, with a view to coming to an agreement. Although this may be less relevant given the DDSA 2020, it is important to communicate about the divorce application itself, so that it is not a shock. It may be the case that far fewer clients instruct a solicitor to deal with the divorce application itself, and so you may encounter many more litigants in person at a later stage of their separation.

Remember that the benefits of achieving consensus at this early stage could affect the progress of the whole matter. It will show respect to the spouse or partner, allow them some dignity and encourage working together to find solutions, rather than an ‘us and them’ culture. If the couple can work together at this stage, they are more likely to be able to work together later when you drop out of the picture. Remember that mediation may also be an appropriate and cost-effective means for people to agree together the particulars of the petition.

Domestic abuse

The relationship with the spouse or partner can be difficult if there are allegations of domestic abuse. It is essential that such allegations are treated seriously, but it is also important to remain objective and to allow for the possibility that they may be untrue or exaggerated. After advice you may be instructed to write to the spouse or partner to record the incident, demand cessation of the abuse and indicate further action might or will be taken if it does not cease. Many people say that letters demanding cessation feel threatening and raise the temperature, so

it is important to be sure that such a statement is truly warranted in the circumstances.

See Resolution's [Good Practice Guide to Domestic Abuse Cases](#) and [Domestic abuse alert toolkit](#).

Service of proceedings

See the Resolution [Guidance Note on Service of Documents](#). If you do not have a private address for service of proceedings on the spouse or partner, it may be tempting to serve them at their place of work or when they collect their children from their former spouse or partner, or as they have arranged. You should, at all costs, avoid serving them in front of the children because of the potential impact on them. You should consider the impact of serving them at their place of work and whether arrangements can be made for service in a neutral, private place.

Children disputes

The Code of Practice says: Encourage clients to put the best interests of children first.

Many complaints to Resolution concern disputes about arrangements for children. Spouses or partners have alleged that members have conspired with the parent with care to deny them arrangements to be with their children and/or that their actions amount to child abuse. It is to be hoped that the government's early intervention initiatives will reduce the number of disputes about children's arrangements, but in the meantime it is important to remain objective and to do as much as possible to ensure that the best interests of the child really are being put first. We should aim to do better than simply trumpet the complaints of clients in relation to the child or children's other parent. So often children do not achieve a voice in the processes that resolve the issues that concern them. It is important that practitioner members assist parents to consider the needs and interests of their children, and the importance of making arrangements for their separated parenting that ensure the future security and happiness of their children wherever it is possible, practicable and safe to do so. Please also consider, at all stages of a case, whether a non-court based solution would be more appropriate, such as mediation, so that the children can be heard.

Practitioners should consider the services, support and sources of guidance that parents and children may need. Most lawyers will want to direct their clients to Resolution's [Parenting Through Separation Guide](#), the [Resolution website](#) or services such as the [AdviceNow](#). The Parenting Plan, which helps parents to think about what needs to be considered in relation to their future parenting, can be found on the [Cafcass website](#).

Such resources may be particularly helpful for the client's former partner as forming the basis for a common set of principles / norms. Parents who want to take matters further may want to be referred to books such as Christina McGhee's

[Parenting Apart: How separated and divorced parents can raise happy and secure kids](#) (London, Penguin, 2011).

Paragraph 4.9.1 of the Family Law Protocol Part 4 says that forms **C100** (and **C1A**) or other documents should be simply worded using factual, rather than emotive language setting out clearly the order sought. Solicitors should avoid drafting statements using emotive or inflammatory language, or expressing subjective opinions. A complaint to Resolution involved a C1 alleging violence against the child and stating that the child was on the At Risk Register. Both allegations were false and caused considerable damage. It is accepted that there is a limit to how much cross-checking can be done, but registration is relatively easy to check.

Agreements and consent orders

Some litigants in person complain that they have reached agreement with their spouse or partner, but then when the solicitor is instructed the solicitor insists on full and frank disclosure and/or advises the client that the agreement is unfair and the whole thing falls apart.

Obviously, you could be found negligent if you do not advise on the dangers of incomplete disclosure and the consequences of financial orders, or on whether the agreement is in the client's best interests and what other options are available. You need to bear in mind all the implications, including the benefits attached to settling on an amicable basis and the cost, risks and time involved in further negotiations, mediation or litigation (especially if the agreement is within the range that the court might order).

Your client should be given the options and advised on the implications of each option so that they can make an informed decision. If they accept your advice that disclosure or more disclosure is required before an assessment of the reasonableness of the agreement can be made, then recommend to the spouse or partner that they obtain independent legal advice and explain why you are seeking that disclosure.

Contact at court

You will need to use your own judgement about whether to speak to the litigant in person outside court. It is possible that they will be feeling extremely nervous. Your duty is to represent your client as effectively as you can. You should, however, speak to the litigant in person in such a way as to ensure that you do not give them the opportunity to allege that you have intimidated them. It may be helpful and useful to speak to your client about your speaking with their former partner so as to reassure them that it is a matter of remaining courteous and polite and in line with your commitment to behave at all time in a conciliatory way.

If the litigant in person is willing and comfortable talking to you then you may negotiate, but take care to avoid abusing a position of superior knowledge of the law and practice of the courts. For example, it would be acceptable to say

“Are you prepared/content to agree to one overnight stay a fortnight?” but not acceptable to say, for example “The courts in this situation would never award more than one overnight stay a fortnight so I suggest you agree. If you insist on fighting it out then the court could award costs against you.” Please also bear in mind that many court orders are couched in jargon, so take time to explain the terms to the litigant in person.

If you feel that the litigant in person might allege that you have acted improperly, consider whether it would be appropriate to speak to them in the presence of, for example, a trainee from your firm who has accompanied you to court. However, also bear in mind that litigants in person have complained about feeling intimidated by the represented party’s legal team (barrister, solicitor and trainee).

Constant harassment

Sometimes a spouse or former partner may want to talk to you on the telephone or email you several times a day and, at various stages, accuse you of being aggressive, taking your client’s word on everything without checking, not considering the best interests of the children and increasing the costs unnecessarily. Eventually they are personal and abusive or even threatening. What do you do?

Resolution has also received complaints that a member has refused to speak to them on the telephone or in person or to answer their letters, faxes or emails, or has told them that they do not have to speak to them because they are not their client.

- Try to be calm, civil and polite at all times – however tempting it might be to retaliate.
- Do not shout, threaten, accuse, confront or otherwise act in anything but a calm and professional manner.
- Explain verbally, and confirm in writing, that you have a responsibility to consider the costs of your work, that costs are dependent on your instructions from your client and that may dictate the extent to which you can respond.
- Keep a file note of every discussion and confirm any agreements reached or important discussions in writing.
- If the spouse or partner instructs a lawyer, explain that you can no longer discuss matters directly. Make sure that you are clear about the extent of that lawyer’s retainer. If they are only instructed to deal with financial matters, you may still need to deal with the person directly on other issues.
- If a step has been taken which has increased the costs, explain why that step was considered necessary.
- If the litigant in person cannot speak to you without being rude and aggressive, explain that unless they

cease that behaviour you will refuse to speak on the telephone and will only correspond with them. Confirm that warning in writing. (See also Resolution’s **Complaints Handling Toolkit** for dealing with direct contact in relation to complaints.)

- Discuss the problem confidentially with a colleague or use the Resolution **121 mentoring scheme**.

Dealing with lay advisers

The spouse or partner may seek the assistance of an organisation such as **Families Need Fathers**, the **Equal Parenting Council** or a McKenzie Friend (fee-paid or otherwise) and ask you to deal with them. Resolution has received complaints that members refuse to deal with such organisations.

Discuss with your client whether they are happy for you to deal with a lay adviser taking account of the following factors:

- they are not officers of the court;
- they may lack objectivity;
- they may not belong to any professional organisation that regulates their conduct;
- they may not have any professional indemnity; and
- they may not be bound by rules of confidentiality.

If your client is content for you to deal with a lay adviser, ensure that you have clear instructions as to which issues you can talk to them about and which documents you can disclose to them.

The right to disclose information to a lay adviser

In **Re O (Children): Re W-R (A child): Re W (Children) [2005] EWCA Civ 759** the court held that:

“whilst good practice requires the litigant in person to identify and obtain the court’s agreement to his use of a particular McKenzie friend, it should not be considered a contempt of court for a litigant in person to seek advice prior to any application to the court from a proposed McKenzie friend, in the same way that it will be legitimate for a litigant in person to consult an organisation such as the Citizens’ Advice Bureau, or Families Need Fathers, or a particular mediation service. In seeking that advice, we are of the opinion that it is not a contempt if the litigant in person shows court documents to the person from whom the advice is being sought. The critical point is that those to whom the documents are shown appreciate that they are being shown the documents for the purpose of giving advice, and that wider dissemination of the documents is not permissible.”

The Family Procedure Rules 2010 provide that a party may communicate any information relating to the proceedings

to any person where necessary to enable that party, by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings.

The judiciary has provided practice guidance on McKenzie Friends in the civil and family courts [here](#).

Practice Direction 27A

All parties involved in family law must be aware of **Practice Direction PD27A** in relation to court bundles. It is comprehensive and applies to both private and public law. It is essential reading. Even though the duty to prepare a bundle falls upon the first-named represented party, some litigants in person may wish to prepare their own bundle for the Court.

The Child Arrangements Programme

Details of the Child Arrangements Programme (CAP) are set out in **Practice Direction 12B** and must be complied with by both parties in children cases, whether or not they are legally represented.

The Children and Families Act 2014

Section 10 of the Children and Families Act requires that all applicants seeking to issue proceedings (where there is a dispute in relation to arrangements for their children or in relation to their finances) must, unless they meet the stated exemptions, attend a Mediation Information and Assessment Meeting (MIAM) with a mediator for the purposes of finding out about mediation and other forms of family non-court solutions that may be appropriate and suitable for their circumstances. Following a change in the guidelines, only FMC accredited mediators are able to carry out a statutory MIAM, and in many cases they are obliged to contact the other party. Family mediation remains a voluntary choice for each and both parties.

An unrepresented person may not know or understand that is the case and may also struggle to understand if or when their former partner, having met with a mediator, decides that mediation is not an appropriate choice and they may believe that the solicitor has persuaded their former spouse or partner not to mediate. Wherever possible, it is useful to signpost litigants in person to sources of help and information in regard to pre-court requirements and court processes so that they can access appropriate information.

Useful information

There are numerous sources of information available generally to people who wish to represent themselves. Set out below are details of helpful publications for both litigants in person and Resolution members alike and a number of useful links to various organisations. This list is not intended to be exhaustive and will be updated from time to time.

Publications

A Handbook for Litigants in Person
(HMCTS, October 2013)

A guide to proceedings in the Supreme Court for those without a legal representative
(February 2014)

Interim Applications in the Chancery Division – A guide for Litigants in Person
(July 2013)

Litigants in person in private family law cases
Trinder et al (2014, Ministry of Justice)

Litigants in Person: the rise of the self-represented litigant in civil and family cases
(House of Commons Briefing Paper, 2016)

The Family Court without a Lawyer
by Lucy Reed (fourth edition, updated August 2022)

The Law Society's Litigants in Person: Guidelines for Lawyers
(June 2015 (joint with Bar Council and Cilex))

Case law

- *H (A Child)* [2014] EWCA Civ 271
- *Q v Q, Re B (A Child), Re C (A Child)* [2014] EWFC 31
- *Agarwala v Agarwala* [2016] EWCA Civ 1252
- *Re B (Litigants in person: Timely service of documents)* [2016] EWHC 2365 (Fam)
- *Iqbal v Iqbal* [2017] EWCA Civ 19
- *Barton v Wright Hassall LLP* [2018] UKSC 12

Useful websites

Bar Council Ethics and Practice Hub's Litigants in Persons: Guidelines for Lawyers

Guidelines relevant to the civil and family courts and tribunals. The guidelines discuss how far lawyers can help unrepresented people without this conflicting with their duties to their own clients. Lawyers are advised to communicate clearly and avoid technical language or legal jargon, or to explain jargon to the unrepresented party where it cannot be avoided. Also contains guidelines for litigants in person

Gov.uk – Represent Yourself in Court

A government information website providing information across a range of subjects, including how to represent yourself in family legal matters and at court. The site includes links to downloadable forms.

Ministry of Justice – Forms

Ministry of Justice (MoJ) downloadable forms and guidance.

Advice Now

Advice Now is an independent advice organisation. Its website includes downloadable guidance covering a range of issues, including relationship breakdown. It also provides information about legal aid.

Advice Guide (Citizen's Advice)

Advice Guide is the information and advice website of the Citizens Advice. You can find information about the legal issues relating to divorce and separation as well as your local office.

Cafcass

Cafcass is the Children and Family Court Advisory and Support Service. Its site provides information and guidance for parents and for children and young people.

Support Through Court

Support Through Court (previously Personal Support Unit (PSU) provide practical and emotional help and support to people representing themselves at court. At present, they are available in fifteen major court centres; go to the website for further information about locations and services.

Gingerbread

Gingerbread provides expert advice and support for single parents, including tailored online advice and a helpline on 0808 802 0925.

Kinship

Kinship provides information and support for all kinship carers – the grandparents and siblings, the aunts, uncles, and family friends who step up to raise children when their parents can't.

Family Mediation Council

Information about mediation, Mediation Information and Assessment Meetings (MIAMs) and a directory of mediators.

Families Need Fathers

Information, advice and support for parents to help achieve positive outcomes for their children. Their site includes information about the law and legal processes and their helpline is available on 0300 0300 363.

Rights of Women

Legal advice and information for women. The website provides access to factsheets and its helpline is available on 020 7251 6577.

OnlyMums and OnlyDads

Both OnlyMums and OnlyDads provide information, advice and support to single parents. In addition to their online information a Family Law Panel is available to answer email enquiries.

Money Helper (was Money Advice Service)

Advice and information about dealing with financial matters, including the particular issues you might face following a relationship breakdown.

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 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 members.