

Good Practice Guide to Family Lawyers Working with Clients

Client care is an essential part of a lawyer's role and is the very first topic dealt with in the SRA Code of Conduct. It is subject to regulatory control due to the importance of the relationship for the client, who may not have had any reason to consult a lawyer in the past.

This Guidance was revised in September 2024. The law or procedure may have changed since that time and members should check the up-to-date position.

Due to the sensitive nature of the work, the often difficult and complex issues in question, combined with the high emotion family clients are most likely experiencing, additional steps should be taken to ensure that the relationship with the client remains professional and inspires a high degree of confidence in the service. This is not solely of benefit to the client – lawyers are also less likely to receive complaints and likely to increase referrals to them by providing a high-quality service to clients.

In addition to other practice guidance provided by Resolution, the Family Law Protocol and, of course, the **SRA Code of Conduct**, this Good Practice Guide will ensure dealings with clients are as productive and cost-effective as possible.

Equality, Diversity and Inclusion

When dealing with clients, it is important to have regards to your firm's Equality, Diversity and Inclusion policy (EDI).

With regards to EDI factors for clients, you should always try to ensure that you have a good understanding of the relevant legislation but also at a more personal level, how we can try to make access to legal advice available for all prospective clients.

An awareness of EDI factors is not limited to one thing but may include understanding how bias (conscious and unconscious) arises and presents; cultural, religious and societal factors that can impact a client and their case and

how to manage (and avoid) discrimination or limiting you being able to do the very best you can for your client.

Ensuring equality and inclusion may be in relation to, but not limited to, someone's physical ability, their mental health, neurodiversity, language, religion, culture and gender. No one size fits all human beings.

It may be something as simple as ensuring a meeting room has a suitable climate for someone or using a specific format for communications. It may be far more subtle and complicated.

Bear in mind clients will not always tell you if they have a particular difficulty or factor as they may not feel comfortable sharing that information.

First contact with a client

The first contact with your firm will usually take place by telephone or a face-to-face meeting with your reception team.

Family law clients may have taken some time to take this first step of arranging an appointment with a lawyer and may be anxious. It is therefore important that appropriate systems are in place so clients feel reassured and any enquiry is dealt with as sensitively as possible.

It would be helpful if when arranging a telephone or video call appointment with your client to reassure them that

your discussions are private and no one else should be present or be able to be overheard – and to ask them that if privacy where they will hold the call with you will present a difficulty for them, to let you know as soon as possible so that any alternative steps can be considered and taken to ensure their privacy is maintained.

Although each firm will have its own procedures in place, it is recommended that the some initial information, outlined below, is obtained before any appointment is fixed, to ensure the most appropriate person is appointed to deal with the case.

Many people will feel anxious at supplying information directly (especially in an open reception area), so a simple questionnaire could be handed out or sent in advance to a secure email, similar to what often happens at a dentist or doctor's practice. Most people would feel comfortable with this approach. You can make a simple request such as: "Are you happy to complete a short questionnaire so that I can appoint the most suitable person for you?" They might refuse for any number of reasons, such as them not being able to understand written questions. But it is worth a try.

If the client's first contact with your firm is by telephone, a questionnaire can be sent via email to the client to complete prior their appointment.

It is worth asking the client if the email address they give you is secure because many couples share email accounts via their various devices. If in doubt, consider agreeing on the telephone a password you will use to protect any documents sent to them.

Initial information to request

The nature of the enquiry

This may assist in ensuring that the enquiry is allocated to an appropriate lawyer within the firm and can often give an indication of further information to seek as set out in the points.

Whether or not an appointment is needed urgently

This may be needed for situations such as where the client or someone else may be at risk of harm; where a child may be removed from the jurisdiction; and where the other party may be dissipating assets and similar scenarios.

A simple question such as "are you safe (today/now)" may help you identify the level of urgency in potential cases where domestic abuse is a feature.

Failing to appreciate the urgency of the matter, especially if the client does not have a full understanding of the implications, may have serious long-term consequences for the client and the solicitor.

The client's resources

Is the client eligible for legal aid? The client may ask you about legal aid funding directly. You should not presume they are not eligible just because they do not ask though. You can

check whether a client is eligible for legal aid at www.gov.uk/check-legal-aid. If the client is eligible for legal aid and it is not offered by your firm, you have an obligation to inform them that such assistance may be provided via another firm.

Sufficient details to carry out conflict checks

It is worthwhile checking if your client and/or the other party has been known by any other names, such as a maiden name or previous married names, to ensure the conflict check is thorough. It may also be necessary to check against company names if the other party owns their own business(es). It is much better to identify any problems at this stage. If there is a conflict, then you should consider if there are any other Resolution members you can recommend to the client.

Consider how the appointment will be conducted

Many firms now offer a range of meeting options including face to face in the office, remotely by telephone or video call and even at venues of the client's choosing (where safe to do so).

It is also important at this stage to set out the charging structure and, whether the initial meeting is charged for and if so on what basis. One of the most essential elements for family clients is managing their expectations which includes how much it will cost them to instruct you and proceed with their case. Transparency and clarity at the outset will start the relationship on the appropriate footing. It is a regulatory condition too.

When arranging any appointment, it should be explained to the client what initial information/documentation is required to comply with the Money Laundering Regulations so they can bring these to the initial appointment. This will avoid delay in accepting instructions.

It may not be possible for clients to provide their original identity documents, for example they are unable to attend your offices for whatever reason. Should this be case, you should check with your firm as to what forms of identity documents are acceptable, and how they can be verified.

As an alternative to face-to-face documentary verification, you/your firm may adopt or further utilise electronic means of identity and verification where appropriate. For example, using live and/or recorded digital video of the client showing their face and original photo identification documents so that the lawyer can compare them to a scanned copy of the same document (eg valid passport or driving licence).

If appropriate, it is worthwhile at this stage to explain, at least briefly, the obligations of the client and the lawyer regarding confidentiality and to warn the client not to access confidential information belonging to the other person/people involved. This should prevent the client arriving at the initial meeting with documentation that you then have to explain you cannot deal with and will also, hopefully, avoid the client committing any breach of the other party's rights or committing a criminal offence.

It may be that urgent advice is required by telephone to protect the client's interim position. You should be cautious ►

when providing such advice without full details from the client that enable you to carry out, at least, a conflict check. If there are facts that could change the position, this should be made clear. Always take a detailed note of any discussions you have on the telephone in this regard because you can be held liable for that advice even if the client does not go on to fully instruct the firm.

Bear in mind that clients may not always tell you everything you need to know about them before you meet them, or even once you do. It is very important to try and understand how any issues of equality, diversity and inclusivity apply to your clients especially as not all additional needs are obvious but also because lots of clients will not tell you if they have additional needs to start with (or indeed, at all). It can take a client some time to feel they can trust you with information about themselves that goes beyond their public face. It can also be the case that the client's specific requirements change rather than remaining static.

Meeting the client

If full information has not been provided prior to the meeting, then the warning relating to confidential information should be given at this meeting especially if the client is providing paperwork at the meeting. It is important to remember that the client may still be living at the property with their partner in respect of whom they would like advice. As many people work from home, it is important to bear that their privacy options in mind when arranging a remote meeting with the client.

At the start of the remote meeting, you should check with the client that there isn't anyone else in the room/ vicinity who can overhear the discussion, for example, their partner/spouse or children, and if necessary, to rearrange the meeting to another time when the client is alone/can speak freely. The client may elect to have a friend or family member present to support them who will need to be provided with the same information about confidentiality.

Any initial meeting will be an opportunity to obtain all the necessary and most relevant background information. It is important to remember that clients will not always know what is relevant and it is therefore important to ask probing questions and to elicit as much detail as possible.

Family clients are often going through a period of great stress and dealing with significant changes in their personal life. It is important to bear this in mind and maintain a calm and objective approach whilst offering understanding, practical advice and support. You must keep in mind, however, that the client is there for legal assistance and try not to allow the client to lead the meeting. You are not there to be a friend offering support or to be their "revenge angel".

The client will likely want to tell you everything, relevant or not to their legal matter, and you will need to manage that sensitively but whilst trying to maintain your professional position and be cost-effective for the client. However, some clients are also very reticent to discuss their most sensitive

of issues which might include neurodiversity factors, physical limitations and domestic abuse.

If the client does stray into areas that it would be more appropriate to deal with via counsellors, family therapists, parenting courses, etc, you can recommend using those services and signpost them to agencies that can help. The Resolution website has a host of information that you can pass on to the client which avoid you providing a personal recommendation about a particular service (as that can cause difficulty in your working relationship if the client is then unhappy with that specific service).

It can be difficult to address potential inconsistencies in a client's account of facts at a first meeting when the lawyer/client relationship has not had the chance to develop. If there are any concerns, explain the duty of confidentiality owed to the client and the importance of being open and honest when providing instructions. Explain the likely consequences of providing false and misleading information and that you have a duty to the court not to mislead it too.

Do bear in mind though, that initially, a client may not feel comfortable telling you everything as they may be embarrassed. It is alright to come back to a topic and explore it further if you get a sense there is more, but it is the wrong time to explore it. Also remember that there can be things a client will not wish to discuss, and you may have to rely on other non-verbal cues to help you assess the situation. This can be more prevalent in situations where they feel bound by social and/or cultural expectations.

While confidentiality is being discussed it is important to explain the exceptions, notably where there are concerns regarding money laundering, or if there is a risk of significant physical or mental harm to a child and/or others, and to explain your duty not to withhold relevant information or to mislead the court either by actions or omissions.

If a client is unwilling to disclose information, then you must emphasise the likelihood of any non-disclosure being discovered in due course, the risk of adverse inference and costs orders as a result, the potential for incorrect advice if all the information is not available and the obstacles to settlement if non-disclosure becomes an issue in the case.

In addition to dealing with substantive issues and offering the legal advice sought by the client, there should be consideration of the following.

The possibility of a reconciliation. Separating parties may wish to find out where they stand but commencing proceedings or taking any steps may not be appropriate if they are not yet certain that the relationship is over.

If there is any doubt, an open discussion of this point may assist the client when considering the options.

Assess whether there is a possibility that domestic abuse has been a factor in the family relationship with reference to the Resolution **Domestic Abuse Screening Information**

and **Female Genital Mutilation Screening Information**. Remember that domestic abuse is not always just between the couple directly but can be within the wider family setting. This is something you may need to continuously assess as the client comes to trust you further.

Provide legal advice and referrals to any appropriate referral services if this is the case. Be aware that even when the domestic abuse may be very obvious to you, it may still take the client time to accept it for themselves and more time again before they feel confident to take any steps for a remedy.

Non-Court Dispute Resolution (NCDR)

As most lawyers will be aware by now there is a very strong emphasis on NCDR options being explored before, during and after family law matters. Part 3 of the Family Procedure Rules has been updated to make this very clear.

With the introduction of obligatory MIAMs (mediation information and assessment meetings), it will become even more common to discuss the various alternative methods of resolving family disputes. Depending upon on the circumstances, direct discussion, mediation, collaborative law, early neutral evaluation and arbitration can all offer advantages for clients and should be discussed at the outset, so they are aware of the full range of options available.

It is therefore crucial that you consider with all clients whether some form of NCDR might be suitable for them at every point of their case, not just the beginning.

A failure to properly consider NCDR options or engage in them before an application is made to the court can result in cost sanctions against your client and a complaint against you if you have not advised them fully.

The courts also have the power to refuse to allow a case to progress until some form of NCDR has been considered/ taken place or to reject an application altogether for want of NCDR.

Not all cases are suitable for NCDR. Not all cases are suitable for NCDR at the very beginning. It needs to be kept under careful review.

You need to be familiar enough with NCDR options to be able to explain these to your client and to consider them with and for your client as you go through the case. If you are not entirely sure why not ask your local Resolution group to set up some training?

Progressing the case

Explain the approach you will take and manage expectations. It is worthwhile to explain early on that, whilst a robust approach may be adopted, you will comply with the Resolution **Code of Practice** and that you will not conduct the litigation in any confrontational way. Explain the benefits of working in this way. If the client has unrealistic

expectations of what the proceedings may achieve, inform them as early as possible as to what may be realistically achieved by the legal process. This may be linked with the discussion of alternative dispute resolution procedures, which offer greater flexibility in finding tailored solutions.

Let the client know the timescales for completing any work and the potential costs of doing so. It is often difficult to provide an estimate of costs at the outset, but it is essential that the client can make an informed decision regarding the risks of litigation and can consider proportionality. It is also important to explain the potential risks of a costs award being made against a party within proceedings.

Consider whether it is worthwhile the client seeking advice or support services from third parties at this stage or to take further advice on specific points; for example, on tax or estate planning issues. If so, try to make a recommendation based on the client's needs and personality. Resolution's website provides a wealth of information about third party services including a directory of members who can often assist.

Consider providing documentation immediately that may enable speedier progress if the client is keen to get matters started. In financial matters, consider providing a blank Form E or Form E1 and perhaps a separate spreadsheet for common monthly outgoings so the client can start collating the relevant information. Clients are likely to be a little intimidated by such forms and may require a considerable amount of time to complete a first draft. Questions such as expenditure are worthwhile considering at a very early stage since the client can start to monitor their spending and give the point some thought before they are required to provide definitive answers.

Consider a "to do" list so that you each know what is expected of you. If the client does not wish to take things further or would prefer to take time to reflect on the advice received, you should be understanding and suggest the best way to make contact in future as and when they decide to do so.

Finally, as a Resolution member, remember you have at your disposal a whole range of free leaflets that you can hand to your client. Clients often feel reassured by receiving these. There are also a whole range of items that you can purchase, such as the **Parenting Through Separation guide** which you can direct your client to as well (The guide is also available as a **digital download** for you to purchase and supply to all your clients) It is worthwhile recording which leaflets you have handed to your client as this will help with any later discussions or management of the case.

First letter

Clients are often nervous or emotional when first consulting a lawyer and there will be a lot of information and advice for them to take in and consider. Deciding how to proceed is one of the important issues for them to make and you should try to facilitate their understanding by providing a clear and concise summary of the advice in writing, following the initial meeting.

This is an appropriate time to send the terms of business and to provide all information required by the **SRA Code of Conduct** (or any other regulatory body you are a member of, such as CILEX). Provide a copy of the Resolution **Code of Practice** and explain your obligations to comply with the Code so that if the client expects action to be taken in breach of the Code at a later date, it is possible to refer back to it. You can **order copies of our Code for free on our website**.

The initial letter should confirm the anticipated costs for the solicitor as well as other anticipated disbursements such as court fees, experts' reports and counsel's fees. As noted above, it can be very difficult to estimate costs and it is much better to provide a range or to provide a higher estimate of costs than to carry out unanticipated work and raise the estimate later.

Make it clear that you are happy to discuss any queries or concerns about costs, as it is important for the relationship that the issue of costs is dealt with clearly and transparently.

It is often worthwhile to include details of or reference to any funding options that may be available. It should be clear by now whether any legal aid funding is available and, if so, how that funding can be obtained. Disputes over costs and requests for money on account can be difficult aspects to discuss as clients often then believe you are more interested in money than their situation. However, focusing the client's mind on funding will assist in determining the way forward managing expectations and will prevent complaints at a later stage.

Conduct of the case

Correspondence

Once the client decides to proceed, the first step is likely to be correspondence with the other party or, if they are represented, their lawyer. The first letter will help to set the tone of dealings with the other party and every care should therefore be taken when drafting this.

Always think about the person you are writing the letter to and who else might see it (such as the judge).

Further information on correspondence is available in the Resolution **Good Practice Guide to Correspondence**. The client should approve a draft of this initial letter or, at the very least, the contents should be discussed with them in some detail.

As the case proceeds, it is essential that clients are kept informed of the progress. It is reasonable for clients to expect that their enquiries will be dealt with promptly.

If a response is not possible within, say, 24 hours, then either a simple acknowledgement of their email/call with a brief "holding message" or a secretary or junior team member making a courtesy call to the client to inform them that there may be a delay is likely to satisfy most clients.

Understandably, for some clients the litigation process will become their focus and they may not appreciate that their matter cannot be your main priority all the time. Managing expectations is essential and letting clients know about any absence from the office in advance will assist. If you are taking an extended period of absence inform your client who will be managing your files and who they can contact.

Whilst the level of involvement of clients may vary, consideration should always be given to asking them to approve any draft correspondence being sent to the other party because you must not act contrary to their instructions.

This will avoid confusion and ensure instructions from the client have been understood correctly. Important correspondence, such as proposals, should never be sent without the prior approval of the client.

Any correspondence received should be communicated to the client. This will usually involve forwarding a copy of any letter or email received but think whether that letter is likely to cause distress. If so, then consider just informing them that a letter has been received and ask that they contact you before you send a copy by itself.

The lawyer must think carefully whether advice is required on its content rather than simply forwarding any correspondence. We are not there just to be a post box service. If no advice is necessary, then consider whether your letter is progressing matters – if not should you be making a charge to send it a client? It may be more appropriate for a secretary or junior team member to forward the email/letter or send it under cover of a compliment slip to limit the costs incurred.

Sometimes it may be preferable to forward the correspondence even if you need more time to consider the advice. This may be relevant, for example, if the parties are living together or speak often and the client is likely to know that you have received correspondence and will be expecting an update. When passing on correspondence or information from the other side, you should also bear in mind the impact on the client. Every individual will react differently and if the content is likely to be upsetting for the client for any reason, then it may be sensible to paraphrase what has been said rather than sending a copy.

It is always worth bearing in mind the time of day you communicate with your client about correspondence too. If you receive a substantive email or letter from the other person late in the day, especially on a Friday afternoon, you may choose to wait until the following day to consider it and send it to your client so that they have time to speak to you once they have received it rather than not being able to contact you and being worried overnight or over the weekend, especially if you do not have time to fully consider it and advise when sending onwards first.

Some clients may ask not to be sent correspondence if they struggle to deal with the emotions caused by this, particularly if the other party makes allegations or personal comments or the tone is hostile.

Communications

Communications with your client may be through various mediums whether it be face to face, by telephone, by email or by letter. It is important to have an accurate record of any instructions or advice given. An attendance note of any oral discussions should be prepared promptly during/after the interaction with the client. The attendance notes will be held on file and can be invaluable if there are problems or queries later. Any significant advice or action agreed upon should also be confirmed in writing to the client. A client may not wish to pay for such correspondence, but if this is the case, consider if this can be carried out as non-chargeable time to ensure accuracy of recording instructions.

It may be a small price to pay if the client is later dissatisfied with the outcome and makes a complaint. More information on communication can be found within Resolution's **Good Practice Guide to Correspondence** and **Good Practice Guide to Communication**.

Client expectations must be managed, and it is important to give firm advice where necessary even when it is the opposite of what the client would like to hear, rather than allowing a client to proceed as they wish, only for them to hear, for the first time from another person (and perhaps even the court), that the approach taken has been unreasonable or disproportionate and even face cost-sanctions as a result. This will inevitably damage the confidence your client has placed in you and they are likely to feel disappointed and frustrated, which may lead to complaints. It will certainly undermine the working relationship between lawyer and client.

It is important to remember that family law is a "grudge" purchase in many ways, ie something that no one wants to have to pay for but may need to. This can feed into a client's feeling of dissatisfaction with your advice and service levels even if that is an unfair reflection of the work you have carried out for them.

If negotiation or forms of non-court resolution etc are not possible and contested court proceedings become necessary, the client should be informed in writing about the updated steps involved, the estimated costs and the likely timetable. Clients should appreciate that this is a serious process since, once court proceedings have been issued, the only way to resolve matters is by consent or a judicial determination usually at a final hearing unless they are willing to withdraw the application.

Clients must be given information about MIAM sessions and that they are compulsory in all cases unless one of the limited exceptions apply. If a client is unwilling to attend a MIAM they cannot be forced to do so, but they should be aware of the risk of the court adjourning the proceedings and directing that alternative dispute resolution is attempted before the case continues.

Clients should also be advised that throughout any court proceedings, the court will continue to consider whether issues can safely be resolved by means of non-court

resolution and whether parties have reasonably agreed or refused to engage in such non-court resolution options too.

Many judges will want to know why a form of non-court resolution (such as mediation) hasn't been attempted and may ask your client to explain their position: it could be embarrassing if the client tells the Judge that their lawyer didn't think it appropriate or did not tell them about it at all. If issuing court proceedings, the pre-action protocol and all relevant Practice Rules and Directions should be followed.

Organisation

Organisation is a key tool in managing the relationship with a client. Files should be kept in good order and be easy to follow enabling another colleague to quickly assimilate what the case is about should you be absent from the office. It is helpful to have a file management structure within a firm so that, if the lawyer with conduct is unavailable, another member of staff can assist a client with queries. It could follow a simple structure of one section of the file holding all the application forms; another any orders made, or statements/reports prepared and then a section for correspondence and funding arrangements.

Many firms no longer have physical files or only keep limited documents in a paper format. It is very important to make sure digital documents are filed correctly as well.

Some clients may be reassured by being given a case plan so that they are fully aware of what steps are required and timescales which will help them to feel more involved in the decision-making process. This type of plan would need to be kept under regular review.

Other organisational tips to manage the relationship with a client could include preparing agendas for client meetings, ensuring key dates are diarised; regular file reviews and regular meetings with the rest of your team to discuss cases to ensure that even inactive files are dealt with at a pace that suits the client. This will help towards risk management processes too and help to avoid complaints.

Costs

Whilst it is important to ensure clients understands any advice given and that their concerns are not being dismissed, you should also be conscious of the costs involved. If a client regularly makes lengthy telephone calls or bombards you with emails you need to address this since the client may not realise that certain tasks or conversations are chargeable. Overzealous clients having unmanaged expectations are those that then tend to complain about the service that they are receiving.

Another part of managing expectations and costs, is ensuring regular cost estimates or updates are provided to clients. Interim billing on a regular basis is often the best way to address this but also updating a client, perhaps not less than six-monthly, on their general costs and updating any cost estimates you have provided to them too.

Clients often request a breakdown of how their costs have arisen. Providing such a breakdown on a regular basis will avoid the need to deal with queries and/or complaints once the invoice has been issued.

When large sums on account are requested; for example, before a hearing, it is good practice to give the client sufficient notice in order to budget accordingly and perhaps even propose staged payments over a few months to build up the money held on account.

Dealing with litigants in person

Often the first letter to the other party will mean that that person is unrepresented and hence a litigant in person. It is important to bear this in mind when considering the tone of the letter and the language used. If a response or an acknowledgment is requested within a certain period of time, ensure that this is sufficient period. You should inform that if they wish to seek legal advice, the time period can be extended. It is good practice to refer the other party to a reputable local solicitor or, more generally, provide the details of Resolution so that they can locate an appropriate family law specialist. In addition, consideration should be given as to providing Resolution leaflet with this first letter.

Further information is available in Resolution's **Good Practice Guide to Working with Litigants in Person** and the **Good Practice Guide to Correspondence**. Resolution also provides advice for members: **Top Tips for members working with Litigants in Person**.

Litigants in person are becoming increasingly common. All lawyers have a duty to deal fairly with litigants in person and should be familiar with what is expected of them as lawyers. There are also steps required in managing the expectations of your own client if the other party acts in person: often your own client will feel frustrated that it is them that are paying costs for legal representation and that the litigant in person is taking advantage of this. There are Practice Directions that govern how a represented party is required to handle a case such as the provision of bundles to the court. Explaining this at an early stage and explaining the benefits will help to reduce any tension your client feels however unfair it may feel to them. Explain at the outset that dealing with a litigant in person may increase the client's costs, as points may be challenged, or questions asked due to a lack of understanding of the procedure or the law. It is also possible that a litigant in person, who is aware the other party is incurring costs, will contact you regularly to deliberately increase those costs. You might find our

Top Tips for representing yourself in court as a Litigant in Person useful to supply to a client or to form advice to them.

There is less incentive for a litigant in person to deal with matters in a proportionate and cost-effective way. They may be less inclined to negotiate as there is no cost (other than the emotional cost) to the litigant in person of pursuing matters. Handing leaflets and providing information about support services to a litigant in person may help to reduce these types of issues and benefit your client too.

Your client will need to be aware that you have a duty towards the litigant in person that is imposed on you by regulation and court procedure rules/practice directions and that you cannot ignore correspondence received; provide unrealistic deadlines for the litigant to comply with, or take an overly robust approach, even if your client gives instructions to this effect.

In the longer term, it may feel to your client that the court is being particularly lenient with a litigant in person and the client should be told about this risk. For example, an unrepresented applicant will not usually be required to produce a court bundle and the responsibility will fall to the first represented party. This is another instance where the costs of the client will be increased, and the client should be fully aware of this.

Although there are various reasons why a client may choose to use a lawyer only "in the background", or who is providing unbundled services care must be taken whether you are at risk of compromising your own position as the court or a regulator may have differing views on whether you are acting for the litigant. Consideration should be given to any practice rules governing such unbundled services and help sought from a regulator where appropriate (see information below too).

Finally, remember that as a Resolution member you can refer family clients and litigants in person to our website, which has much information that can be useful to both parties including pamphlets that can be downloaded free of charge such as the parenting booklet helping parents to help children.

Dealing with other professionals

In a family law matter you may have reason to work alongside other professionals such as Barristers, judges, magistrates but also a wider variety of legal and non-legal specialists such as mediators, arbitrators, financial advisors, social workers, doctors and therapists.

When you are responsible for the communication with another professional try to make sure the information you provide is clear and concise but also includes any documents they need to have. Put yourself in their shoes and see if you would understand what is being asked.

Your client and you may not always agree with what the relevant professional has to say, depending upon the role they are playing in the case, but it is crucial that you do your best to remain professional when corresponding with them directly but also when discussing their role/recommendations with your client.

You will need to explain to your client about the role each professional is to play within their matter and also about how their costs may be met (whether it is a single or joint instruction for example).

Clients do not always understand that their lawyer has a duty to the court too so it can be helpful to explain how

that works such as not being able to mislead the court even if the client does not wish to tell the truth or assisting with abusive litigation. That may lead to you being unable to continue to act for your client.

You should also ensure that when you are communicating with a jointly instructed expert that you include the other person (or their lawyer if they have one) in those communications to ensure transparency.

Lengthy complex litigation matters

In lengthy litigation situations, involving many years of conflict, a member is likely to become the focus of the matter; either from their own client or from a concern that the member is influencing and colluding with a client.

Some lawyers appear to delight in deliberately trying to undermine the other person's lawyer through their correspondence too. It is important not to react to that behaviour at a personal level though.

In these types of complex and lengthy proceedings it should be considered whether there is merit in passing the file to another person in the member's practice.

Unbundling services

As indicated previously care needs to be taken in this type of arrangement with a client. This is the term that the Law Society has adopted in relation to partial retainers. It could otherwise be described as 'acting in the background', since the lawyer will not usually accept service of documents, communicate with third parties, incur any disbursements or go on the court record. Further information in this regard is available in the Law's Society Practice Note: **Unbundling Civil Legal Services**.

When providing unbundled family services there are several ways you can assist a client. This ranges from the provision of self-help packs (perhaps following an initial meeting), providing advice about a particular task or stage in proceedings, reviewing or drafting documents or advocacy.

You may find that you are able to offer such services in relation to for example drafting a divorce application, advising on the Form E or other disclosure, and drafting a consent order. If you agree to complete one or more of these tasks, it is vital that your client understands the scope of what has been agreed and that this is not a full retainer.

This will hopefully avoid the client seeking additional advice, which will incur further and unexpected costs.

The client should also be aware of the limitations in giving advice where you are not involved throughout. You should make clear that, without access to all the information, the advice must be subject to caveats. You may require the client to send copies of all documentation or correspondence to you. The difficulty is that there is likely to be a charge for reviewing that information. You must consider carefully whether, if the client refuses to pay

for this, you are prepared to advise in relation to discrete issues. The client could be asked to sign a waiver letter if the advice is requested in circumstances where you have not been kept updated.

Bear in mind though that a waiver, however thorough, may not be considered sufficient to protect you from professional negligence particularly where it is deemed that the risk to the client could have been quantified more clearly/specifically.

As a Resolution member, you must also bear in mind that, even under a partial retainer, you have an obligation to further the aims and objectives of the Code of Practice. The client should therefore be discouraged from taking steps that are contrary to the Code, even if the correspondence and documents will not be submitted by you.

Settlement

You should always consider settlement at the earliest opportunity. In financial matters this will usually be after sufficient disclosure has been obtained. If the client wishes to make proposals without disclosure, serious consideration needs to be given as to whether a waiver letter is required to confirm that the client is acting against advice.

If the client refuses to sign such a waiver, you may need to consider carefully whether to put the proposal forward. It is important to deal with the issue of a waiver letter in a sensitive manner. It may be an opportunity to reinforce how important you consider the missing information to be or emphasise the inequality of any proposals, but make sure that you do not appear to be avoiding any responsibility. As noted above, be wary of waivers as a catch-all solution though.

Once all the information is available, make your client aware of the importance of putting forward proposals and the merits of making an offer in terms of saving future costs, concluding matters more quickly and limiting the emotional impact on the client, the other party and any children involved. This remains the case throughout and even when financial proceedings are issued it is important to remind the client regularly that matters can be resolved by agreement at any time.

The costs position must be kept under review. The client should be aware of the costs incurred on their behalf, but also the risk of any adverse costs orders. Provide them with estimates of the future costs at the relevant stages in the matter to enable them to make an informed, commercial decision about the possibility of settlement.

Costs can have a serious impact on the likelihood, or, in smaller money cases, the practicalities of reaching an agreement. There is little that can be done to effectively prevent the other party running up disproportionate costs, but the client needs to be advised about the impact of this.

When proposals are to be made ensure that your client has approve them. In financial matters, it may help to provide

clients with schedules of assets and liabilities together with income/outgoings, schedules of net effect or other tables. Always consider how to make the proposal as simple and digestible as possible. If a client struggles to take in information, consider whether they would benefit from a face-to-face meeting instead. Once the client has approved any proposals, these should be put to the other party and the client's instructions, preferably received in writing, should be retained on file.

All offers received should be forwarded to the client promptly. A covering letter needs to set out in clear terms the advantages and disadvantages of accepting the offer. Whilst you need to advise on the offer, it is ultimately the client's decision. If their judgement may be clouded by emotional issues, you need to deal with this as sensitively as possible. As hard as it may be, they should be encouraged to consider the practical effects of the proposals as objectively as possible and discouraged from focusing on 'points of principle'.

At the time of considering settlement, it is particularly important to refer the client to any third parties, such as accountants, tax advisers, financial advisers, mediators, actuaries, etc, who may be able to clarify points or advise on the impact on the client.

Whilst any informal agreement reached may remain more or less the same as that eventually ordered, the methods and pathways employed to achieve a particular outcome may have a further impact on the client. For example, if one party is to receive a pension sharing order then have the costs implementing that being considered?

Counsel can be a useful resource, and it is worthwhile considering whether a second opinion from counsel is required when drafting proposals.

Hearings

Family proceedings are diverse and before any application is made, clients should be given clear advice so that they can understand the nature and likely costs of any application. The type of application will lead to different types of hearings, which can be difficult for the client to understand as they will be unfamiliar with the procedural steps.

Before each hearing there are also general steps that should be taken:

- Consider whether there is a need for the court to make any special arrangements for your client, such as appointing an interpreter or arranging any other assistance (eg sign language or access difficulties) or a separate waiting room. You should make the request either in the application, in a covering letter enclosing the application or by contacting the court as soon as you receive notice of the hearing. Different local courts may have different requirements (ie a formal D11/C2 application may be required or simply an emailed request may suffice) so always check if you are unfamiliar with

the court you are dealing with to ensure your approach is the most cost-proportionate one for your client.

- The client should be informed of the date and venue of the hearing as soon as it is received from the court. At this time, inform your client whether their presence is required physically or remotely.

The client should also understand the purpose of the hearing and the potential outcomes, since many clients have the mistaken belief that the court will make a binding decision as early as the first hearing.

- The client should be aware of any overriding objective and the duty of both them and the lawyer to further that objective. You should advise on the comprehensive case management powers of the court and the possibility of striking out or dismissing an application or making an adverse costs order against them (if applicable).
- The client is likely to feel daunted by the experience of attending court and could find it very stressful and emotional. You should take steps to allay any fears they have. Often, it can be helpful to ensure the client understands the sequence of events, what the courtroom is likely to look like, how they should dress and how they should behave in court. Many clients will be reassured to know that, at most hearings, they will not be required to speak unless asked a specific question and, if this is the case, they should be prepared about giving evidence. If consideration of special measures was not given within the application (or your client is the responding party), then address these as early as possible with your client and the court.
- If there is any possibility that the hearing will be held in open court, the client must be made aware. It may be appropriate to consider an application to exclude the media.
- The client should be made aware that in some courts accredited media representatives and duly authorised lawyers ("legal bloggers") are already able to report on certain cases in family proceedings as part of the Transparency pilot for the courts in Leeds, Carlisle and Cardiff. For up to date details of the pilot including guidance for reports, see <https://www.judiciary.uk/courts-and-tribunals/familylaw-courts/reporting-pilot/>
- The client should have copies of all relevant correspondence/pleadings, but if at all possible, they should also have sufficient time and opportunity to consider and approve documents that are to be lodged at court on their behalf. This includes position statements. If there is a court bundle and the client is likely to want a copy, then it should be offered to the client. Many are unlikely to want to bear the costs of this when they will have a copy of the documentation in any event. However, this might be particularly relevant if the client is attending court without a solicitor and may wish to follow the proceedings and any references to the bundle.

- If counsel is instructed, the client should be given the name and preferably a link to a website profile of the relevant counsel. It is helpful for the client to know why counsel is considered necessary and why that person is deemed appropriate for their case. It may be helpful, depending upon the type of hearing and where resources allow, for the client to have a conference with counsel in advance of the hearing so they can meet, discuss the case and receive advice early.
- If counsel is instructed, then a fee estimate or any fixed amount of fees should be provided to the client early on. This will hopefully avoid complaints at a later date in relation to the costs incurred. Counsel's fees will be the responsibility of the instructing solicitor, regardless of whether the client pays. It is therefore good practice to ensure that privately funded clients pay money on account to cover at least counsel's fees, and that they are informed of the date that counsel's fee is deemed delivered, if applicable in publicly funded cases, it is important to check whether this disbursement is within the limitation of costs. Otherwise, an extension to the costs limit should be applied for in good time.
- If you as the lawyer with conduct of the case are unable to attend court due to other commitments, explain this to your client. If another representative of the firm will be attending the client should be offered the opportunity to meet that person prior to the hearing. If you are involved in two cases being heard in the same court on the same day, it is courteous to warn the client about this and explain how this may impact on their case or simply to explain you are there with another client so that they do not consider you rude if you do not have time to speak to them. If you have any reservations about the support that can be offered to the client, it would be preferable to arrange for another representative of the firm to attend either in addition to, or instead of, the lawyer with conduct for at least one of the hearings.
- For various reasons and particularly in respect of costs and in publicly funded cases, the client may attend court without a representative of the firm and meet counsel only. Both counsel and the client should be made aware of this in good time, and you should discuss any concerns with the client, so that by the time of the hearing, they feel comfortable with the arrangement. It will be helpful to reassure the client that you will be available by telephone if required.
- Upon arriving at court, the client will need to be introduced to counsel if they have not met before. If possible, obtain a room to allow for private discussions. It is advisable to meet in advance of the hearing to allow the client to ask any questions of you or counsel.
- Before going before the judge, provide the client with writing materials so that instructions can be given in court. The client should be advised not to interrupt the legal representatives, the judge or the other party and not to make comments or cause any disruption during the proceedings.

If the hearing is remote, then agree beforehand how the client will communicate with you/counsel during the hearing such as setting up a text group or similar.

More specific points may need to be considered when preparing the client for hearings.

First hearings and First Hearing Dispute Resolution Appointment

A first hearing, of any kind, will probably be the first time your client has ever had to deal with a court appointment or the court generally and they will be nervous. It is important to help them feel prepared and not to expect a scene from a TV show.

Children law proceedings

Before the first Court hearing your client should have heard from Cafcass or Cafcass Cymru as part of the initial checks they are ordered to carry out.

There are now two types of private (children) law court systems: the original CAP programme and the newer Pathfinder (Investigative Approach) which is being rolled out across the UK one step at a time. You should be aware of which you are operating within as it will determine the running order of the court process for your client's matter.

The Pathfinder system is now in place in Dorset and North Wales and, as of April 2024, in South Wales and Birmingham.

There are also critical **Family Procedure Rules updates regarding non-court resolution practices** which lawyers should be alert to when advising clients.

In relation to private law children proceedings, the client should be informed that the hearings are not privileged which means what is said at any hearing may be referred to at later court hearings.

Some courts, such as the Family Court sitting at the Central Family Court, require children over the age of eight (unless the court has directed otherwise), to attend the FHDRA with their parents. This is because they will usually meet with a Cafcass officer and many cases can be resolved in this way. Clients should be informed, particularly those clients with care of the children, so that arrangements can be made with the school for them to attend court or to make representation to the other party and to the court if the children are unable to attend on the listed date.

If you are unsure whether a court has a practice direction requiring the attendance at the FHDRA, you should check with your local court, court user group or with other Resolution members.

Clients will need to understand the type of hearing they are attending and the range of outcomes for each hearing likely in their particular case, eg will a FHDRA lead to a DRA, Fact Finding and/or final hearing.

If they are attending a First Hearing and Dispute Resolution Appointment (FHDRA) they need to be made aware that there should be a representative of CAFCASS of Cymru present to attempt in-court conciliation.

If they are attending a Dispute Resolution Appointment then ensure the client understands the court's role in that particular hearing and that a final determination can still be made.

Fact Finding hearing

The client should be made aware of how their evidence will be given to the court and the impact on their position if findings are or are not made against them/the other person.

Consideration may need to be given to how any findings are dealt with such as whether permission may be sought to release the outcome to another person (such as a medical professional, the police and the local authority).

Final hearings

The lawyer should ensure the client understands what it will mean to have a determination at a final hearing and the binding effect of that order.

Consideration should be given after any final hearing as to a period of waiting for judgment/giving of judgment, the implementation of an order, a period of time for the order to be tested (if one or both are not happy with it), variations by agreement/new order and appeals where appropriate.

After any hearing, but especially one where they have given evidence, a client will be physically and emotionally exhausted so you may need to consider what other information they can actually take on board on the same day or whether they need time to go away and recover before you get into any details. Do always try to make sure they understand anything that immediately impacts on them or their family though.

Financial hearings

There are three main types of hearing in the financial remedy system: first directions appointment, financial dispute resolution hearings and final hearings. You should be able to explain each type of hearing and its general layout for your client.

First appointments

Ensure the client understands, before you get to the hearing date itself, that it is unlikely there will be a conclusion to the entire case at the first hearing because more information is usually still needed.

This might be the first time they have seen the other person for quite some time so it can be a very emotional occasion for lots of reasons beyond the simple stress of a court hearing.

Do remind clients about appropriate behaviour before, during and after the hearings have taken place.

Negotiation hearings present challenges for the client and, although dealt with under the heading of Financial Dispute Resolution (FDR) appointments below, the advice is equally applicable to any negotiations at court.

FDR appointments

Resolution has produced very useful guidance notes which you should refer to in conducting First Appointments and FDR Proceedings

See the **Guidance Note: Dealing with FDR appointments** for further information.

Final hearings

Where the client is to give oral evidence, it will be useful for them to know the anticipated order of proceedings and which of the days they are likely to be required to give that evidence on, and whether it is expected to be in the morning or the afternoon. Giving evidence is likely to be an intimidating experience for many clients and this may help them to prepare mentally for when they will be called upon.

Please also refer them to the series of video recordings on our website as detailed below which may help to reassure them.

It is useful to have a meeting, or at least a telephone call, to advise the client about what is expected of them when giving their evidence. This should not extend to preparation of their oral evidence, and advising them what to say but helpful reminders to try to stay calm, to try to avoid giving extended monologues, not to be afraid of asking for clarification of questions they do not understand and general pointers on how to prepare for the oral evidence (such as ensuring they actually read the witness statements before the hearing), will all be reassuring for a client who has never experienced court proceedings before.

Explain to your client that if there are any breaks whilst they are in the middle of evidence it will not be possible to discuss the case during that break. If there is a possibility that a judgment will be delivered in writing or it will be necessary to return to court at a later date for an oral judgment, make sure the client is aware of this in advance. The client will be expecting the hearing to bring an end to matters and could be very disappointed and frustrated if this turns out not to be the case and there has been no mention of this beforehand.

Take time at the end of a hearing to explain the outcome if a judgment is given, as well as the reasons for the decision and any steps that need to be taken to implement the order.

It may also be necessary to consider whether an appeal is appropriate.

Following the hearing, provide your client with a copy of the order and give advice on the terms and any action required, ►

including timescales. If an appeal is appropriate, the client needs to be advised of this as a matter of urgency, given the usual timescales involved. It may be helpful for the client to have an attendance note taken of at least parts of the hearing (eg the judge's reasoning). You must provide your client with a sealed copy of the order and remind them to keep it safe in case it is required in future.

Remote hearings/Hybrid hearings

During the Covid-19 pandemic, most hearings were conducted remotely (by telephone and by video link), with lawyers and judges working from home, and post Covid-19, this practice continues for many types of hearing.

As well as remote hearings, courts are also conducting hybrid hearings (where one-party attend court in person, and the other party join the hearing remotely by video link or telephone). Clients should be informed of these hearings, of the advantages and disadvantages of such hearings compared with in-person hearings, how these hearings will be conducted and what they should and should not do during the hearings.

HMCTS produced a guidance: What to expect when joining a telephone or video hearing.

Resolution produced 'Guidance for litigants in person on remote hearings in the family court'. While the guidance is for litigations in person, the guidance can also be provided to clients.

File closure

Once matters have been resolved or the retainer has ended, you must provide your client with all of the documents and information they may require for future reference. All original documents should be returned to the client. It is good practice to provide them with an opportunity to feed back on the service they have received.

If your client obtained a Pension Sharing Order, the Pension Advisory Group advise that you do not close the file until you are certain that the order has been implemented or the client has given clear instructions to retain responsibility for implementation. (Please see **A Guide to The Treatment of Pensions on Divorce** by the Pension Advisory Group.

When sending any final letter closing the file, avoid giving your opinion on how the case developed. It isn't necessary to repeat all the nuances of the case. Doing so can lead to further distress to the client, especially if they were criticised for any misconduct during the process.

Avoid criticising the actions of others especially the other professionals involved in the case. The case has ended, and you may find that your client will now want you to help them to action a complaint. Difficulties should have been addressed throughout the proceedings and appropriate action taken at that time.

Resolution has a Member-to-Member complaint procedure which can be accessed where members have concerns about another member.

Inform your client on how long their file will be stored for and that it is likely to be destroyed after that time. If any order provides for ongoing obligations or there are children, then consider how long a file is retained and whether there is reason to keep the file for a longer period than usual.

Client terminates the retainer

Ask the client to complete a notice of acting in person and to provide written confirmation that you are no longer instructed and request the transfer of the client's file of papers. Explain that without this the court or others may continue to write to you directly instead of them.

If there are fees outstanding, you are normally entitled to retain the client's file of papers until those costs are paid. Consider the stage of proceedings and if such action is likely to cause serious prejudice to the client's case.

For guidance on what parts of the file are owned by the client and which are owned by your firm, please see the Law Society's Practice Note: **Who Owns the File?**

In respect of a legal aid client, on receiving notification that legal aid has been transferred into another lawyer's name, you are required to send the client's file of papers to that lawyer. Before transfer of the papers, the newly instructed lawyer should provide a signed form of authority from the client and undertake to include the previous lawyer's costs in the assessment of costs at the end of the case.

Please also refer to the **SRA Code of Conduct**.

Lawyer terminates retainer with client

Instructions should be terminated if a conflict of interest arises at any stage.

If the client requires you to act unprofessionally or illegally, then you must consider terminating the retainer and speak with your compliance officer or ethics department of your regulator to inform them of your concerns. This could include your client asking you to act in a way that is not compliant with your Resolution obligations. Consider whether any report needs to be made to third party authorities (please also refer to the comments above in relation to the duty of confidentiality).

You should never place yourself in a position which would in any way compromise your professional reputation or threaten your safety. If such a case arose, you should terminate the retainer immediately.

Where the client insists, against all advice given on the case being conducted in a manner that could result in an adverse

costs order, you should encourage your client to assess the merits of continuing with the instruction. However, it is unlikely that you would be entitled to terminate the retainer unless the reason that the client would not take advice was that the working relationship between you had broken down irretrievably. Remind them of the obligation you must adhere to our Code of Practice.

It may be unacceptable to threaten to terminate the retainer in some circumstances; for example, where payments on account of costs have not been made and where such non-payment is justified. This may be because the requested payments are in excess of costs estimates or the timescales for payment are unreasonably short.

Following this guidance on dealings with your client will hopefully avoid complaints arising. If complaints do arise, then you will need to consider what steps can be taken to resolve the situation and whether it is possible to refuse to carry out further work and/or terminate the retainer.

Consider the stage in the proceedings and whether this is likely to be a reasonable and proportionate course of action in the circumstances.

If necessary, guidance can be sought from the ethics department of your regulator; for example, [Law Society Practice Advice Service](#) or the [SRA Professional Ethics helpline](#) for solicitors, [CILEX](#) or the [Bar Council](#) also has useful information and toolkits available on complaint handling for members.

An application to be removed from the court record will be necessary if there are ongoing court proceedings and the client refuses to sign an application to act in person.

Remember to serve your application on the client and not the other party

If you anticipate problems (most likely to be where the client has a poor record of paying invoices), consider whether it would be appropriate to ask for a signed, but undated notice of acting to be retained on the client's file and explain its purpose to the client but you must be careful about filing it with the court and must ensure you have notified your client prior to the time of its use to give them time to consider their position

Family lawyers and personal relationships with clients

The [SRA Code of Conduct](#) does not always preclude personal relationships between lawyers and clients but another regulator might and you should consider this when taking instructions from any person that there is a relationship with however tenuous. Given the vulnerable position of many family clients and the nature of the relationship between a lawyer and the client, you should be careful to avoid instigating a personal (non-professional) relationship as you will be at particular risk of allegations of having exploited a position of trust and confidence. Your own firm will probably have a very clear policy on how any such situations must be managed.

You should not have sexual relationships with your clients. If such a relationship exists or develops during the course of the retainer, then you should immediately explain that you can no longer act and, on the client's instructions, either transfer the case over to a colleague and have no further involvement in the case or cease to act entirely and allow the client to instruct another firm. Members are referred to court's concerns generally, and the potential "grave difficulties" in particular, articulated in [K v D \(Parental Conflict\) \[2015\] EWFC 49](#) in continuing to act.

If the relationship between you and a client becomes intimate, but non-sexual, during the retainer, the question arises whether or not you can maintain your objectivity and continue to act in the client's best interests. If the professional relationship with the client is or is likely to be affected to the detriment of the client, you should cease to act as above.

If you and the client are relatives, close friends or have other personal links (for example if your children are close friends), or the client is a member of your own practice or a fellow partner, especially if you are an equity partner who may be impacted by any financial settlement, you should give careful consideration to the question of whether or not you can maintain their professional objectivity.

Resolution recommends that you avoid acting for anyone where your professional objectivity may be compromised or brought into question.

Guidance should also be sought from your firm's own Risk Department and the Regulator concerning this.