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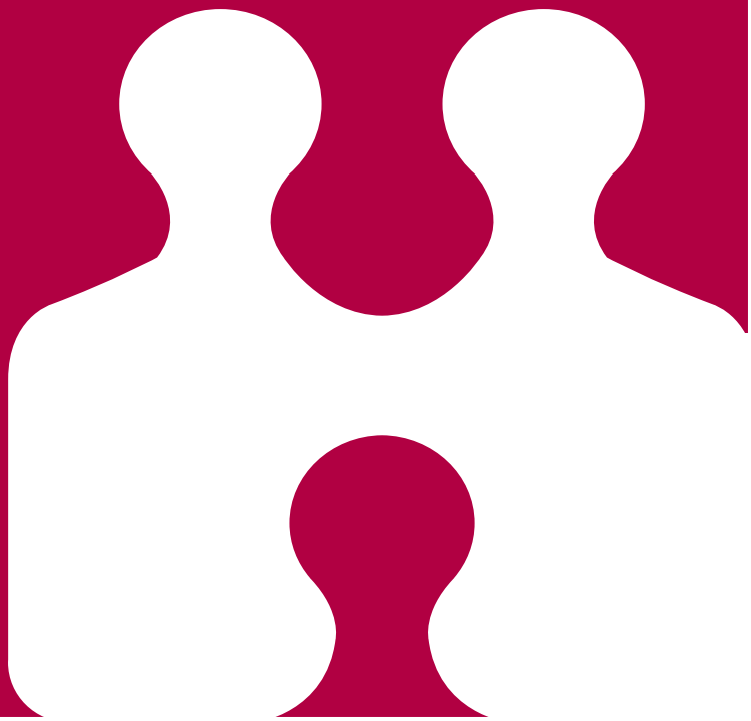
Guide to Good Practice for family lawyers working with clients



This Guidance was reviewed in December 2016. The law or procedure may have changed since that time and members should check the up-to-date position.

Guide to Good Practice for 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.

Due to the sensitive nature of the work, the difficult issues in question, combined with the high emotions the clients are experiencing, you should take additional steps to ensure that your 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 – you are also less likely to receive complaints and likely to increase referrals by providing a high-quality service to clients.

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

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. It is important that appropriate systems are in place so they feel reassured and any enquiry is dealt with as sensitively as possible.

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

Many people will feel anxious at supplying this directly in person (especially in an open reception area), so a simple questionnaire could be handed out, similar to what happens at dentists or doctors. 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.

Initial information to request

1. The nature of the enquiry. This may assist in ensuring that the enquiry is allocated to an appropriate lawyer within the firm and can give an indication of the information to seek in terms of the points set out below.
2. 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, where the other party may be dissipating assets and similar scenarios. Failing to appreciate the urgency of the matter, especially if the client does not have a full understanding of the implications, could have serious long-term consequences.
3. The client's resources. You must assess whether clients are eligible for legal aid. You can check whether a client is eligible for legal aid on gov.uk. 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.
4. Sufficient details to carry out conflict checks. It is worthwhile checking if the other party has been known by any other names, such as a maiden name or previous married names, in order to be thorough in the conflict check. It may also be necessary to check against company names if the other party owns their own business. 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.

It is also important at this stage to set out the charging structure and, if the initial meeting is charged for, on what basis. One of the essential elements in dealings with family clients is managing expectations and this is vital in regards to costs. Transparency and clarity at the outset will start the relationship on the appropriate footing.

When arranging the appointment, it should be explained to the client what information is required in order to comply with the Money Laundering Regulations so they can bring these to the initial appointment.

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 party. 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 in order to protect the client's interim position. You should be cautious when providing such advice without full details from the client. If there are facts that could change the position, this should be made clear.

Meeting the client

If full information has not been provided prior to the meeting, then the warning relating to confidential information should be given early on – especially if the client has brought paperwork to the meeting.

The initial meeting will be the opportunity to find out all of the necessary 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 likely to be experiencing a period of great stress and dealing with significant changes in their personal life. It is important to bear this is 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.

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 – Resolution's website has a host of information that you can pass on to the client

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.

When confidentiality is 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 of 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, you ought to consider the following (if applicable):

1. 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 violence has been a factor in the family relationship with

reference to Resolution's Domestic Abuse Screening Toolkit and Female Genital Mutilation Screening Toolkit. Provide legal advice and referrals to any appropriate referral services if this is the case.

2. With the introduction of obligatory MIAMs, it may become even more common to discuss the various alternative methods of resolving family disputes. Depending on the circumstances, direct discussion, mediation, collaborative law 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.
3. 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 will not conduct the litigation in a confrontational way. If the client has unrealistic expectations of what proceedings may achieve, inform them as early as possible as to what can actually be 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.
4. Let the client know the timescales for completing any work and the potential costs of doing so. It is 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.
5. Consider whether it is worthwhile for the client to seek advice 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.
6. Consider providing documentation immediately that may enable faster progress after the meeting if the client is keen to get matters started. In financial matters, consider providing a blank Form E or Form E1 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.
7. Agree 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.
8. 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 download, such as Separation and Divorce: helping parents to help children, which you can direct your client to as well. 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 may be nervous or emotional when consulting a lawyer and there will be a lot of information to take in and consider. Deciding how to proceed is an important issue and you should try to facilitate this by providing a clear and concise summary of the advice in writing, following the initial meeting.

This is also 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). Consider whether it would be appropriate to provide a copy of the Resolution Code of Practice and explain your obligations to comply with the Code. It is useful to provide them with a copy of 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 also confirm the anticipated costs. 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 may be worthwhile to include details of or reference to the funding options available in the client's circumstances in the initial letter. In particular, it should be clear by this stage if legal aid funding is available to the client and, if so, they will need to be advised how to obtain that funding. Disputes over costs and requests for money on account can be one of the more difficult aspects of the relationship and focusing the client's mind on funding will assist in determining the way forward and managing expectations.

Conduct of the case

Correspondence

Once the client does decide 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 care should therefore be taken when drafting this.

Further information on correspondence is available in the Resolution Guide to Good Practice: Correspondence.

Unless there is good reason not to do so, the client should approve a draft of this 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 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 the majority of clients.

Understandably, for some clients the litigation will become their main focus during that period of time and they may not appreciate that their matter cannot be your main priority all of the time. Managing expectations is essential and, in particular, letting clients know about time away from the office or other court hearings in advance will assist.

Whilst the involvement that the client desires may vary, consideration should be given to asking the client to approve any draft correspondence to be sent to the other party. This will avoid confusion and ensure instructions from the client have been understood correctly. Important correspondence, such as proposals, should not 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. The solicitor must think carefully whether advice is required on the content rather than simply forwarding the correspondence. If not, then it may not be necessary to charge for a short covering letter or email or it may be appropriate for a secretary or junior team member to forward the letter or send it under cover of a compliment slip in order 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 particular 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. 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 face to face, by telephone, by email or by letter. It is important to have an accurate record of the client's instructions. It is advisable to make attendance notes of any oral discussions promptly afterwards. The attendance notes will be held on file and can be invaluable if there are problems or queries later on. 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. It may be a small price to pay if the client is dissatisfied with the outcome and later makes a complaint.

More information on communication can be found within the Guide to Good Practice: Correspondence.

Client expectations must be managed and it is important to give firm advice where necessary, rather than allowing a client to proceed as they wish, only to hear for the first time from another person (and perhaps even the court) that the approach taken has been unreasonable or disproportionate. 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.

If negotiation or mediation etc is not possible and court proceedings become necessary, the client should be informed in writing about the steps involved, the estimated costs and the likely timetable. Clients should appreciate that this is a serious step since, once court proceedings have been issued, the only way to resolve matters is by agreement or a final hearing unless they are willing to withdraw the application at a later date (although this is unlikely to offer a solution to the problems faced).

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. Many judges will want to know why 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. If issuing court proceedings, the pre-action protocol should be followed.

Organisation

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

Some clients may be reassured by a case plan so that they are fully aware of what steps are required and when, and feel involved in the decision-making process. This plan, if prepared, would need to be kept under regular review. Other organisational tips to manage the relationship with the client effectively could include preparing agendas for client meetings,

diarising key dates and regular file reviews to check that even inactive files are being dealt with at a pace that suits the client.

Costs

Whilst it is important to ensure your client understands any advice given and that their concerns are not dismissed, you should also be conscious of the costs. If the 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 complaint about the service that there are receiving.

Another part of managing the client's costs, which is essential if the relationship is going to be successful, is ensuring regular cost estimates or updates are provided. Usually interim billing on a regular basis will be the best way to ensure this takes place. Clients may also want a breakdown of how the costs have been incurred and how the invoice total has been calculated. This could avoid the need to deal with queries and/or complaints once the invoice has been issued. When large sums are required from a client; for example, before a hearing, give the client sufficient notice in order to budget accordingly and perhaps propose staged payments over a few months to build up the money held on account.

Dealings with litigants in person

It will be common for the first letter to be addressed to 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 and state that, if the party wishes to seek legal advice, the time period can be extended. It may be appropriate 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.

Further information is available in Resolution's Guide to Good Practice: Working with Litigants in Person and the Guide to Good Practice: Correspondence

Litigants in person are increasingly common. All lawyers have a duty to deal fairly with litigants in person and will be familiar with what is expected of them in this regard. However, there are also steps required in managing the expectations of your client if the other party acts in person.

Explain at the outset that dealing with a litigant in person may increase your 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. 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.

Your client should also be aware that you have a duty towards the litigant in person and cannot ignore correspondence received, provide tight deadlines to comply with, or take an overly robust approach, even if your client gives instructions to this effect.

In the longer term, the court may be particularly lenient with a litigant in person and before any application is made or any hearings the client will need to be told about this risk. There are instances where litigants in person are specifically favoured. 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", it may be particularly appropriate where the other party is a litigant in person, in order to avoid the further costs and to try to achieve a more level playing field. The court is unlikely to approve if this is purely artificial and it is apparent that you are carrying out all of the work for the client, apart from attending hearings.

Finally, remember too that as a Resolution member you can refer litigants in persons to our website, which has information on representing yourself in court, including video recordings, that may prove to be beneficial to all involved in the case.

Lengthy complex litigation matters

In extremely lengthy litigation matters involving 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. 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

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 a number of 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 petition, 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 of 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.

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, consider whether a waiver letter is required to confirm that the client is acting against advice. If the client refuses to sign, 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.

Once all of 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 you should have the client approve them. In financial matters, it may help to provide clients with schedules of assets, 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. The 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, financial advisors, mediators, actuaries, etc, who may be able to clarify points or advise on the impact on the client.

Whilst from a legal point of view the agreement reached may remain more or less the same, the methods to achieve a particular outcome may have an impact on the client. For example, if one party is to receive a pension sharing order then the costs of sharing different funds or the benefits retained/lost, may affect the decision as to which pension is shared.

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, the client should understand the nature and likely costs of the 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 general steps that should be taken:

- The client should be informed of the date of the hearing as soon as it is received from the court. At this time, inform your client whether their presence is required. 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 the overriding objective and the duty of both the client and the lawyer to further that objective. You should advise on the comprehensive case management powers of the court and, in particular, the possibility of striking out or dismissing an application or making an adverse costs order (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 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 have copies of all correspondence, but if at all possible they should also have the opportunity to consider and approve documents that are to be lodged at court on their behalf. This includes position statements, for example. 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 barrister. It is helpful for the client to know why a barrister is considered necessary and why that particular person is deemed appropriate for their case. It may be helpful, where resources allow, for the client to have a conference with the barrister in advance of the hearing so they have the opportunity to meet, discuss the case and receive advice in advance of the hearing.
- If counsel is instructed, then an estimate 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 or not 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. 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 is 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. 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.

- Occasionally, for costs reasons and particularly 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 the barrister 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 the barrister.
- 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.

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

Clients should be aware of the possibility of negotiating at every hearing and the expectation that they will be prepared to do so at the FDR appointment. Where possible, exchange proposals in advance of the FDR appointment and explain the cost benefits of putting proposals forward. You might want to warn you client that instructions will be required in a relatively short space of time and that thought should be given to the issues beforehand, so they can consider what they would be willing to settle on outside of the court environment.

Take care to avoid the client feeling pressurised on the day. They should understand the mechanics of the process and the options available to them. You should offer support and assistance to ensure they can make an informed decision on the day. Ask your client regularly how they are feeling and suggest short breaks, fresh air or refreshments as and when required.

Note negotiations and any attempts to relieve the pressure the client may be feeling. Clients who leave court dissatisfied with a negotiated settlement may be keen to complain about your actions, even when they provided very clear instructions. A detailed attendance note will assist you and/or barrister in dealing with any complaints.

You have a very important role to play in negotiations, even if counsel is instructed. You will have a (hopefully good) working relationship with the client and a better understanding of the dynamics of the case. Although counsel will be instructed for their expertise, you must intervene if counsel is giving advice that is not appropriate for that client or in a way that the client may have difficulty understanding. If your client is not taking sensible advice from counsel, you need to take an active role, as it may be that the client is more willing to take advice from you as the person with day-to-day conduct.

Clients should be aware that an agreement endorsed by the court will be binding and enforceable. Furthermore, heads of agreement are also likely to be binding and enforceable. The client must be certain before they commit to any agreement at court. If there are any doubts in this regard, advise the client that there is always the possibility of settling matters. A high proportion of cases will settle shortly after a negotiation hearing if an agreement is not reached on the day. It is therefore better for the client to have more time than rush into a decision.

If a draft order is prepared at court, review it carefully. The client should be guided through the order step by step, bearing in mind that they will be unfamiliar with the language and concepts used. Only once it is confirmed that the client understands the meaning and effect of the order should it be placed before the court. The consent order must be comprehensive and deal with all points.

If the client wishes to act against advice and conclude an agreement at court, consider a waiver letter in the same way as if the negotiations were not taking place at court. If you have any concerns about the wording of such waiver letters and what is required, it may be advisable to take a template letter to court for each hearing.

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

First Hearing Dispute Resolution Appointment (FHDRA)

In relation to private law children proceedings, the client should be informed that the FHDRA is not privileged. That is to say that what is said at this hearing may be referred to at later court hearings. The client should further be informed that the Children and Family Advisory and Support Service Officer (Cafcass Officer) or Welsh Family Proceedings Officer (WFPO) shall attend the FHDRA and, where practicable, shall speak separately to each party

at court before the hearing, particularly where it has not been possible to conduct a risk identification interview with either party prior to the hearing.

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.

Final hearings

Where the client is to give 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 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.

It will usually be 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 can obviously not extend to preparation of their oral evidence, 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.

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.

When sending any final letter closing the file, avoid giving your personal 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.

Inform your client on how long you will keep their file of papers in storage and if these will then be destroyed. 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.

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.

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.

It may not be acceptable for you 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 the guidance above in relation to dealings with the client will hopefully avoid such situations arising. If it does, 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

An application to come off 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 to come off the court record on the client and not the other party. If you anticipate problems that could lead to you wishing to come off the court record (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 retain on the file and explain its purpose to the client.

Family lawyers and personal relationships with clients

The SRA Code of Conduct does not preclude personal relationships between lawyers and clients but if you have another regulator you should consider what its stance is on this type of relationship. However, given the vulnerable position of the majority of 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.

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 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 course of 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 their 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.

Guidance should be sought from your Regulator concerning this.