

IMPORTANT INFORMATION IN RELATION TO YOUR CASE

This guide gives an overview of the key information that we have to provide to clients under The Family Law Protocol. The Family Law Protocol is guidance set out by the Solicitors Regulation Authority (a division of The Law Society that regulates solicitors) that states the procedure that should be followed by Solicitors. We adhere to The Family Law Protocol in all cases.

The Family Law Protocol is a lengthy document and it would be impossible to deal with every aspect of it here. If you wish to view the full Family Law Protocol we can provide you with this. Alternatively, you can view this at www.lawsociety.org.uk.

Urgent issues that need to be considered under the Family Law Protocol

At the initial stage we will need to consider any urgent issues that need to be dealt with. These issues could include whether any Orders such as an injunction need to be applied for, whether there is a risk of a child being removed from their home, whether a person's interest in a property needs to be registered, whether the joint tenancy should be severed, whether there are any welfare benefits, housing or asylum issues, whether a Will needs to be made or revised, whether a joint account needs to be closed or frozen or access to joint credit cards limited, whether a referral to the CSA should be made OR whether interim maintenance needs to be considered.

Other issues

Amongst other issues it is also necessary for solicitors to consider practical issues such as whether the client requires an interpreter, whether any support services may be required (such as the Citizens Advice Bureau) and must establish a client's identity under Money Laundering regulations. Solicitors must always be aware of the possibility of domestic abuse and if necessary advise on the legal remedies available.

Another factor a solicitor should discuss under the protocol is whether there is any chance of the relationship being saved and whether relationship counselling may be required.

Methods of resolving issues on separation, divorce or dissolution

If the parties do wish to separate or divorce then issues such as property and finances and children need to be resolved.

There are five main ways that these issues will be resolved:

- By agreement between the parties directly;
- By negotiation through solicitors
- By Alternative Dispute Resolution (see below)
- Court based conciliation (for instance CAFCASS)
- By Order of the Court

We will deal with each of these below:

1. Agreement between the parties

If a prior agreement has been made between the parties, solicitors must ensure that the agreement is in the best interests of their client and that their client is aware that upon a marriage or civil partnership being dissolved, **any agreement should be recorded in a legally binding Court Order called a Consent Order as a Decree Absolute does not automatically dismiss all financial claims made now, in the future or upon death.**

2. Negotiation through Solicitors

This can include meetings with the other parties, making representing in writing and advising the client on what decision a Court would take on particular issues that may be in dispute. In the case of financial matters, voluntary disclosure of both parties savings, income, assets, pensions and other financial information is preferable and any subsequent agreement should be recorded in a legally binding Court Order called a Consent Order in order to dismiss all financial claims made now, in the future or upon death.

3. Alternative Dispute Resolution (ADR)

This is a method of dealing with family law cases without Court proceedings. If there is a financial settlement then eventually there must be a Final Consent Order recording the settlement.

The following types of Alternative Dispute Resolution are available:

- **Mediation**

This approach is where both couples attend a trained mediation practitioner and try and reach an agreement together. A mediator is unable to provide legal advice as to the fairness of any settlement. This approach can be beneficial in terms of costs but again, may not be suitable for everyone if there are disagreements or if one party is more dominant than the other.

- **Collaborative Law**

This cannot be used in publicly funded work. The Collaborative Law process requires lawyers to practice in a way that permits a "team" approach.

The requirement of Collaborative Law is that all four parties (the clients and their lawyers) sign up to an agreement called a "participation agreement" which permits them all to co-operating with each other in a series of meetings to reach negotiated agreement that addresses both parties interests and concerns. Collaborative Law could be used in childcare cases. However it is far more likely to be used in Ancillary Relief work. There is a website for the UK group www.collabfamilylaw.org.uk.

We are Collaborative Lawyers and therefore if you require any further information please contact us.

- **Family or Community Assistance**

Although this may be fairly obvious we do draw your attention to the fact that family or friends or your community may be able to provide some assistance in resolving disputes and you should certainly look for assistance if you consider it appropriate.

As well as advising you at the beginning of the case about the above methods of ADR, we have to consider throughout the case whether or not ADR should be used. If you at any time wish to consider ADR please let us know.

4. Court Based Conciliation

In child cases if the matter goes to Court the role of CAFCASS may assist in negotiation and resolving the dispute between the parties. The Children & Family Court Advisory and Support Service (CAFCASS) look after the interests of the child or children involved in family proceedings. They work with the child(ren) and parents and have to inform the Courts as to what action which they believe is in the best interests of the child(ren). If an application is issued to the Court in relation to a child then it is likely that CAFCASS will become involved.

5. Court Proceedings & Costs Orders

We are required to advise about costs in Court proceedings whether these are divorce proceedings, Children Act Proceedings or proceedings dealing with property and finances (Ancillary Relief Proceedings). It is particularly important that we advise of the circumstances when the court may order that you pay the other party's costs. These are known as "Costs Orders". These are dealt with below:

Getting costs orders against the other party for divorce proceedings:

One of the most common questions we are asked is get the other party to pay for my divorce costs? The following principles generally tend to apply although not in every case:

- a) Issuing on grounds of Adultery
In this case it would be expected that the party against whom the Divorce was being obtained would pay all or part of the costs of the Divorce. This ground does not apply in the case of Civil Partners.
- b) Issuing on grounds of Unreasonable Behaviour
It would be expected that the party against whom the Divorce or Dissolution was obtained would pay all or part of the costs.
- c) Issuing on grounds of Desertion (Two years separation with no consent)
This ground is extremely rare and complex and there is no set guidance.
- d) Issuing on grounds of Two Years Separation by Consent
There would have to be an arrangement as to the costs as part of the agreement for Divorce or Dissolution.
- e) Issuing on grounds of Five Years Separation
The person applying would be expected to pay.

Costs Orders in financial proceedings

A Decree Absolute does not dismiss financial claims in the future or upon death and therefore if financial matters cannot be agreed it may become necessary for court proceedings known as Ancillary Relief proceedings to be issued. If Court proceedings are issued then we are required to advise about costs implications and in particular circumstances that could result in Costs Orders being made against you by the Court:

- The Family Law Protocol states that in general terms you would not expect Cost Orders either in your favour or against you so long as you and the other party conducted the case properly.
- **However if you conduct the case in an inappropriate way you may get a costs order against you.** Therefore, you must ensure that you provide sufficient disclosure in relation to your financial situation and that you make reasonable offers to settle the finances if you are in a position to do so.
- In addition you need to be aware that you are unlikely to recover costs in financial proceedings against the other party unless they fail to conduct the case properly.
- If you fail to deal with disclosure properly or fail to make proper efforts to settle when we have full disclosure from the other side you will be paying out more in the way of costs

than otherwise. If you raise arguments without merit or do not agree to an Alternative Dispute Resolution without justification you could be penalised.

- If you are publicly funded the costs under your statutory charge will rise and you run the risk of having your certificate discharged for requiring the case to be conducted unreasonably.
- Proceedings that are dealt with under the Children Act are not subject to the same rules and in particular it is unlikely except in quite exceptional circumstances that there would be an order for costs against either party. However we must draw your attention to the warnings which we have given above which applies also to childcare cases.