Managing Direct Contact with People who want to Complain

At some point in every complaint, it is very likely that you will need to talk directly with the person who is going to or has made a complaint or who has expressed a concern.

Thinking through the issues that are important both for you and for the person who is complaining ahead of time will pay dividends and may make the difference between an early resolution and a full-blown complaint.

Resolution members are all committed to working in a conciliatory way and adhering to the Code of Practice. This means that you should ensure that even when you are faced with a complaint (and possibly a very angry person), that your commitment does not vary from your normal professional approach.

Why do people complain?

A complaint can often be a symptom masking the true cause. When you work at the edges of human emotional upset which very often involve a life-changing event, it is very likely that you will see a lot of the 'symptoms' that speak rather more to the emotional and psychological upset of a person's situation. Family relationship breakdown is very closely related to bereavement. The process of grieving involves a pattern of anger, denial, sadness and depression long before individuals reach a place of recovery. You are most often dealing with the stages before recovery – you may contribute toward clients reaching it, but it is unlikely that you see that recovery happening as by then; you will have completed your work.

Often, you may also be dealing with people in long-standing conflicts. This means that the natural default position can have become one of seeing the whole world as hostile, that they can only deal with things by 'fighting back'. Their experience may be one of living in a heightened state of anxiety, fear and hostility and they are therefore 'primed' for battle.

You are commonly dealing with major negative emotions and trauma and people who are more likely to be struggling to be rational and remain in control – and often, failing to do so.

This means that you are working with people who may have a need or are 'triggered' to speak out or lash out, who are likely to be hyper-sensitive and confused and you may find yourself caught in the cross-fire of emotions that are not about you or your practice but that become a convenient target for everything that is happening for the person you are working with – or their former partner or family members.

Very often, complaints can arise from misunderstanding or miscommunication. What is familiar procedure to you is not to clients. As they are often in a heightened state of anxiety, they will struggle a great deal to hear and understand what you have to say. Misunderstanding and miscommunication can also occur because although you may have listened, you may not have heard. Very often, because you are busy and because of your professional knowledge and experience, you can 'get ahead' of the client - the 'I know what this is about' syndrome. The downside to this is that your assumption or assessment might be wrong. You and the other person are then working to different understanding of the same situation.

What can you do?

Firstly, find out about good complaints handling and make sure you know how to handle a complaint properly and effectively. This isn't just something that your complaints officer does –
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you should know how to handle complaints too. There are lots of resources available and good, reasonably low cost courses available. Make sure complaints handling remains a priority for your training budget – and it should be a priority for the firm. A badly handled complaint can do immense damage to your firm’s reputation – and reduce your income.

Always give people permission and encourage them to raise a concern with you right from the start of your contact with them. A client care letter is not enough – many will not read it, lots will read it and not take in what it says.

Taking the time simply to say to someone ‘I want to make sure that I’m providing you with a service that you can value, it is really important to me that if you have a concern about anything that I am doing or have done, that you feel able to raise it with me straightaway.’

If you are beginning to get a sense that something is wrong, trust your instincts and ask. 'I'm just concerned that you may be worried/unhappy about what is happening/has happened/what I've done – is there anything you would like to raise with me because it is really important that I get this right for you?'

What do you do if someone complains?
The word/s ‘complaint’ or ‘complain’ can go off like a bomb in your head. The danger is that you are not then in the right place to hear what someone has to say. It is important therefore to feel confident and calm about how you can respond and what you can do in any conversation with someone who wants to complain – or might be thinking about complaining.

Firstly, acknowledge that they have made a complaint. In the first instance, if they have spoken to you and told you that they are going to or are considering making a complaint, acknowledge that, don’t downplay it, don’t minimise it and don't ignore it. Thank them for bringing their concern to your attention.

Phrases such as:

'I am very sorry that you feel you need to make a complaint and I'm really sorry for any distress/unhappiness that has been caused to you. Thank you for telling me. Can you tell me about what it is that you want to complain about so I can consider how best we can deal with it?'

'I'm really sorry to hear that, it's very important to me to understand what has gone wrong, can you tell me . . .'

'I'm very sorry that you are so upset/angry/distressed. Could you tell me what you think hasn't been dealt with properly?'

It is really critical to LISTEN very carefully to what someone has/needs to say – and not to interrupt unnecessarily – and especially not to justify your actions or to be defensive.

Once you have heard what it is they want to complain about, think through whether:
• It might be something that could be resolved without going any further down the complaint route – but don’t try to talk someone out of making a complaint, rather explain what could be done to put things right.
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- If you can identify in what you’ve heard that there has been a misunderstanding or miscommunication of any kind, ask if you might take a moment to explain what you think might have been a misunderstanding (and apologise that it has happened)
- If you can identify that you have done something that has justified their complaint, say so straightaway and apologise

If they would still like to complain, don't try to talk them out of it, don't be defensive or hostile (that can be perceived as aggressive and/or guilt). Simply talk them through how your complaints procedure works and check whether they need any further help or information from you.

If they are going to be referred to/need to speak to someone else, say who that person is – by name – and ask whether they would give you permission to outline the complaint to that person. Give a timescale for when that person will contact them – and make sure your complaints officer can meet that.

There is often a lot of information to provide to someone when they complain – at first stage, you want to ensure that the person complaining has a clear ‘next step’, so identify that and explain that you will also make sure that they have information about how your complaints procedure works, other organisations that deal with complaints and may be relevant to their situation – and information about who may be able to support them.

DON'T PULL UP THE DRAWBRIDGE against someone because they have made a complaint. Don’t act like a litigator, act collaboratively if at all possible, you need to keep the dialogue going to see if there is a way of resolving things. Remember that every example of good complaints handling reflects on the ability of the complained about to continue to talk and work with the person who has complained.

If you show a genuine interest and concern to understand what has gone wrong and to try to resolve things, it is far more likely that people will be willing to work with you and not against you. Providing an apology is a very powerful tool – you are not admitting liability or that you have done anything wrong, simply that they have been upset by what has happened. Being clear that it is important to you to know about what has happened so that you can improve what you do is also valuable information for someone who complains.

In clinical negligence cases it has been found that what people or relatives want most is to understand what happened and for someone to acknowledge what happened. This is more important to them than legal action and compensation

Don't fob people off, don't delay responding to them and don't put your more junior colleagues or administrative staff in the firing line. Nothing is more likely to anger someone who wants to complain or who has complained (and your colleagues) than you not dealing with someone directly.

However, think about whether it would be helpful to make sure that your administrative and support staff have information about and preferably training in good customer service and complaints handling.

Dealing with difficult phone calls
It can often take a lot for someone to get to a point of complaining to you. They may have been thinking about, rehearsing and building up to talking with you. As a result, they may be close to
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losing control when you speak to them – they may be very angry, very distressed or even abusive. When someone loses control it is embarrassing for them (and for you). They may subsequently feel really very ashamed or embarrassed that they did lose control. How you handle people who are close to losing control of their emotions is very important.

Firstly – don’t lose control of your emotions because they have lost control. Stay calm, think calm. LISTEN to what they have to say.

**Acknowledge their emotion:**
- I can hear that you are very upset/angry/distressed...
- I can appreciate that this is very upsetting for you...
- I am sorry that clearly you are very angry/upset...

**Dealing with high emotion and distress**
Acknowledge the emotion/s expressed. Normalise if that is appropriate; but do not minimise or be tempted to normalise if that isn't appropriate (e.g. threats to harm themselves, suicidal ideation).

LISTEN carefully and if possible without interrupting. Find out what it is all about.

Talk to the person about who is supporting them and encourage them to think about who may be able to support them (e.g. family, friends, GP, counsellor, voluntary organisations such as the Samaritans)

"Do you have anyone supporting/helping you at the moment?"

If you are concerned about what someone has said, think about how you might be able to refer to a senior colleague and (if necessary to breach client confidentiality) your Head of Risk Management or COLP. Work out ahead of the situation arising how you can/will do that and what policy or protocol you should have in place so everyone knows what to do.

Assess whether anyone else is at risk (e.g. a child, if the person is the main carer) - ensure that you consider the impact of any of your responses or actions on them.

Where you have a concern that a child or young person is at risk, or that an adult may be similarly vulnerable or at risk, if necessary, and after discussion with your Head of Risk Management or COLP, refer to the duty social worker in the relevant local Children's Services/Adult Services Team and/or police. It is important that usually and preferably you do this having explained to the person that you are going to do so (unless to do so would put a child at further and immediate risk of significant harm).

Be alert to whether or not they have capacity.

**Angry/Abusive callers**
Angry people are very difficult to deal with because they have, at least in part, lost control of their emotions. It may very hard indeed for them to hear anything you have to say. Interrupting them may make them angrier and they may struggle with being articulate.

Some may simply need to ‘get things off their chest' and will then be able to hear what you have to say. They are people who commonly apologise for having been so angry or rude.
Some may be in such total meltdown that very little you can do is going to help. There are a number of ways you can try to assess whether it is going to be possible to have a conversation with that person straightaway.

Acknowledge their anger (see above). Let them say what they have to say (subject to ensuring that you do not allow them to become personally abusive to you) and LISTEN carefully for clues about what has or might have fired their anger. Has something been said to them by or something has happened with their former partner? Has something been said or has something happened in the family? Has something happened to them personally? (Lost their job, letter from CMEC etc.)

If their anger continues to escalate rather than to run out, ask whether it would be best that you ring them back.

- 'Can I suggest that we both take a break and come back to this in half an hour or so?'
- 'I'm concerned that this is very difficult at the moment as I can appreciate that you are very angry. Can I suggest that I phone you back in an hour or so when we've both had chance to collect our thoughts?'

You can also consider talking to them about how they would like to progress things:

- 'Would it be best if I call you back once I've had chance to put together some answers to what you have raised?'
- 'Would you prefer to write to me about what has happened?'
- 'Would it be best for us to meet to discuss this?'
- 'Would it be best if I explain how I can deal with your complaint?'

If someone is personally abusive or rude to you, remember that no-one should have to put up with abuse regardless of the situation. You have the right to protect yourself from personal abuse. You could consider the following responses:

- "I am trying to understand what your concerns are, so that I can make sure the best person deals with it for you. I appreciate that you are very angry; please would you not raise your voice to me /use that language so that I can do my best to help you?
- I am finding the way you are speaking to me unacceptable/offensive and I will not be able to continue with this call unless we can find a way to discuss this more appropriately. Would you prefer for me to call you back when you feel less upset/angry?"
- I'm sorry but I cannot continue with this conversation if you continue to be rude/abusive.

**Threats and threatening behaviour**

If someone makes a threat, remember that it is usually powerless people who make threats and powerful people who act – for the most part.

If someone is feeling powerless, they may also be very fearful – of not being heard, taken seriously or about losing control. However, it is important even so to take any and all threats seriously and to act appropriately.

Be clear with the person about what you think they've said and how you understood it.
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- ‘What you've just said sounds like/is a threat. Can I be clear with you whether that is what you intended it to be?’
- ‘I’m concerned that you’ve just threatened me/the firm/your former partner. Is that the case?’

If the threat is towards you or the practice, notify your Head of Risk Management or COLP or senior partner. If you are concerned that the threat is/was serious, call the police. If a threat has been made against another person – former partner, child or another vulnerable adult and you are concerned that someone may be at immediate risk of significant harm then follow the same steps referred to above and refer to the appropriate agency/ies.

Make a careful note of what each of you has said immediately afterwards.

Issues of Mental and Emotional Health and capacity
Just as in any life-changing event, people caught in relationship breakdown or family conflict can suffer short to medium term disruption to their mental or emotional health. Such disturbances can also affect their capacity to manage difficult or distressing situations. It is also known that separating people can struggle with short term emotional trauma which may or may not prompt uncharacteristic behaviour (including episodes of violence between them prompted by the trauma of separation). The incidence of mental health issues is very high generally and much of it stems from dealing with life change, difficult or distressing situations as well as that which is prompted by a pre-existing mental health condition.

If you are concerned about someone's mental or emotional health, then it is best to explore with them, if you can and in a sensitive way, whether they have any support for themselves and who may be able to assist them (see 'Dealing with high emotion and distress' above). If you are concerned that someone is vulnerable or at risk of harm or you are concerned for their children, you should refer to an appropriate agency/ies.

Essentially, practitioners should weigh their duties and responsibilities to preserve any confidentiality with their duty and responsibility to safeguard from harm. The safety and well-being of a child or vulnerable adult should always be given precedence.

Dealing with 'third party' complaints and Litigants in Person
It is easy to consider that you have little or no duty or responsibility toward someone who is not your client. However, a complaint by a third party can be just as damaging to your reputation as a client complaint. Don’t ignore it; it is very unlikely to go away.

It is worth considering some form of letter or guide to provide to someone who is unrepresented at the outset of the case. This can set out what you will and can do. For example, you can let them know you will write to them directly, (and ask for confirmation as to the address to send correspondence to) and that you will do your best to provide information to help them. You can also include information that sets out that you have a professional duty towards your client and that that you will be acting on instructions and must keep certain information confidential.

You can also add a paragraph such as:

*I am a member of Resolution which means that I am required to comply with a Code of Practice a copy of which is enclosed. When family matters and disputes are resolved in the constructive and non-confrontational way promoted by our Code the outcome can be much better, both financially and emotionally, and especially, if you are a parent, for your children. I will have explained this to*
your former partner and it is important to me that I act in a conciliatory and constructive way with you both.

This can help to ‘set the scene’ for any working relationship between you all. It is always helpful to provide useful links to information to assist a Litigant in Person, for example: https://www.gov.uk/represent-yourself-in-court/divorce-and-separation-involving-children

To help you, The Law Society publishes a Practice Note for solicitors dealing with litigants in person.

If you receive a third party complaint, you should utilise the same good complaints handling with that person as you would with your own client. Be polite, acknowledge the expressed concerns, and consider asking what they would like you to do.

Explain (in language that is clear and not technical) the professional duty you have to your client (being alert to client confidentiality)

Explain who may be able to deal with a third party complaint. This may include LeO (where there is a lot of helpful information about what they can and can’t take complaints about) and Resolution (make sure you are familiar with the Resolution complaints procedure).

If your practice does not take third party complaints, explain that is the case and explain that as they are not a client of the firm, there isn’t a requirement that you will or should. Do say you will look into whether there is anything that you can or should do to adjust your practice as a result of their comments.

Invite them to/suggest that they put their concerns in writing – but be aware that this can sometimes prompt further anger or frustration, so acknowledge that if so.

Refer to your Head of Risk Management or COLP.

If they are angry or abusive, employ the same strategies as you would with a client (and as detailed above). Ensure that you consider the impact of any of your actions on your own client and any children/other relevant family members.

Be alert to whether they have capacity.
Responses glossary

What follows is a selection of comments made to practitioners and potential responses. These are not 'scripts' but ideas as it is also important that you say things in a way that is authentic to your speech and therefore for anyone you are speaking to. Remember to:

- **Acknowledge** – their emotion, what they have said
- **LISTEN** – so you understand what their concerns are and so you can assess what might lie at the base of the complaint
- **Respond** – always consider the power of apology. You are not apologising because you've done something wrong (you probably haven't) but for the distress or anger they feel.
- **Inform** – give people clear and straightforward information and where you can, an explanation (not a defence, not an excuse and not apportioning blame in their direction or blaming others)

1. **"I'm sorry but I've looked through your terms of business and I just can't understand it. How do I make a complaint? Do you realise how intimidating it is trying to read all that stuff...?"**

Try something like:

- "I'm sorry that it has been so difficult for you, I appreciate it can look quite daunting/complicated. Would it be helpful if we went through it together and I'll talk you through what is needed? If you could tell me a little more about what you want to make a complaint about . . . ‘

[inherent in this is that you need to think about whether your complaints procedure is simple, straightforward and easy to understand!]

2. **"You're all the same, you're not going to do anything are you? You lawyers, you just all stick together..."**

Try the following responses:

- "I'm sorry that you are clearly really angry and frustrated. What is it that you would like me to do?"
- **What do you think/Is there anything I can do to help?**
- **How can I help best?**
- **Would you be able to put your concerns in writing to me so that I can look at what I can do?...**

(If a third party)

- **As you know, I am acting for your ex-wife/partner, so I will need to discuss this with her/him before I can come back to you. ...**
- **It is really important that you feel supported and have some advice; may I give you the names of some solicitors who may be able to give you some legal advice?"**

Or/and
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- "I'm sorry; I appreciate that this may all may make you feel very angry and frustrated. However, your ex-wife/partner has asked me not to incur any further costs/keep costs down as much as possible, which is important for both of you, so the best thing to do at this stage is to let me have your points in writing I will make sure that I get back to you within X/by Y"

3. ..."Look, I haven't seen my kids for weeks because of you. Tell me what you're going to do about this, or I'm going to come down to your office and, well, I don't even want to think about what might happen next..."
- "I am sorry; this must be very difficult for you. I'm not in a position to change that at the moment/I'm not able to do anything immediately because [explain if appropriate - assess the response, and if the threat is repeated...]. I'm concerned that you are making a threat, is that the case?"

(Depending on the response, and your perception of the risk, consider informing your Head of Risk Management/COLP/client partner/other senior colleague and/or if necessary inform the police and ensure that person is unable to access the office – see also 'Threats and threatening behaviour' above).

4. ..."This has been the worst experience of my life. I'm so upset about everything, I can't think straight. Please just tell me what to do....."

Try something like

- 'I am sorry to hear that you're really distressed/upset and it isn't unusual to find it difficult to make decisions/ lots of us/ people struggle with making decisions when things are distressing or difficult. Could we try to break it down a little? What is the most important thing to deal with first? / What is your biggest worry?'
- 'What's the most important thing to deal with?'
- 'Could we try and think through what it is that has to be decided on?'

Help them assess/think through what needs to be done right now, if anything.

Encourage them to think about who can help and support them from within their network of family members or friends, or whether some kind of professional support – counselling or family consultancy might help or if necessary or appropriate medical help.

Suggest a meeting in the near future to help them assess their options and make decisions; preferably with someone from their support network (friends or family) to help them.

5. ..."I'm sorry, I want to make a formal complaint. You're just not listening to me. I want to speak to [the partner]; the organ grinder, not the monkey..."

Always acknowledge anger and/or frustration – it helps people to know that you have heard what they have said. Try a response such as:

- "I'm really sorry that you are angry/upset/ (as appropriate) I'm also really sorry to hear that you would like to make a formal complaint. Of course I will pass this on to [client partner/complaints officer] and ask them to look into it. Could you tell me a little more about
what you are concerned about/want to complaint about? If you prefer you can write /email (name of complaints officer) .........

- Would you like [name] to call you back, or would you prefer to hear from us in writing to start with? ...........

- OK. I'll make sure [name] calls you back today/tomorrow, or if there is any reason why they can't, then someone will come back to you to let you know when they will call you. Is that OK? ......

- Is there anything else you'd like to raise with me now?"

6. ..."I've had enough of trying to deal with you. Don't fob me of with excuses; you don't sound as though you are competent to deal with this. I want to speak to someone more senior..."

Consider:

- 'I'm sorry that you are so frustrated and angry. I am your solicitor and I am responsible for the management/conduct of your case. I can hear that that isn't working for you right now and if you think it would help to speak to someone else, I can ask [complaints partner/senior partner, by name] to call you, perhaps that would help us both to work out what needs to happen/what we can do to resolve things

For third party/litigant in person. How about:

- "I'm sorry that you are so frustrated and angry. I am the solicitor who is acting for your ex-partner/wife/husband and so I am the person who is handling the case/working with your ex-partner. If you think it would help to speak to someone else, I can ask [complaints partner/senior partner] to call you, perhaps that would help us both to work out what needs to happen/what we can do to resolve things.

It is worth considering suggesting that you ask the client partner/senior colleague to call the person back if needs be. Sometimes the intervention of a third person helps to clarify exactly what the person needs to understand or resolve. In relation to third parties/litigants in person, you are under no obligation to refer them to someone different, but you are under a duty to act in your client’s best interests (and what is in their best interests will depend on the circumstances of course) and you are also under a duty to uphold the Resolution Code of Practice or risk a complaint to Resolution.

7. ..."I'm really at the end of my tether and I can't go on, all of this has made me feel really suicidal"...

Start by acknowledging the emotion expressed use words that invite them to say more about their situation

- "I am very concerned to hear how upset/low/desperate you feel. Please could you say a little bit more about what has happened and why you feel as you do? Perhaps that will help us to work out what to do straight away"

- "I'm really sorry to hear that you feel so desperately upset. Please would you tell me what's troubling you most right now?...

- ....and do you have family or a friend who you can talk to about this?
- …or have you considered talking to your GP about how you feel? Or another organisation such as the Samaritans?
- I am very concerned that I/we help you as much as we can. Can we think together about how best to get you some support straightaway?

Try to work out (as far as you are able – this is not about making a 'diagnosis') how real these expressed suicidal thoughts are; actual plans as to how the person will end their life can be an indicator of how serious they are about it. However, all individuals are unique and behaviour will vary. Your responsibility is to do what you can to ensure that person's safety if you feel that they may be of risk of harming themselves.

If it is possible, discuss with another (senior) member of your team/firm.

Consider whether it is necessary to breach client confidentiality if you assess that the person is at immediate risk of significant harm and remember that protecting someone from harm should always take precedence.

**Useful Resources:**
Legal Ombudsman – Listen, Inform, Respond A guide to Good Complaints Handling

Institute of Customer Service – Handling Complaints

Valuing Complaints – Complaints Standards Authority website