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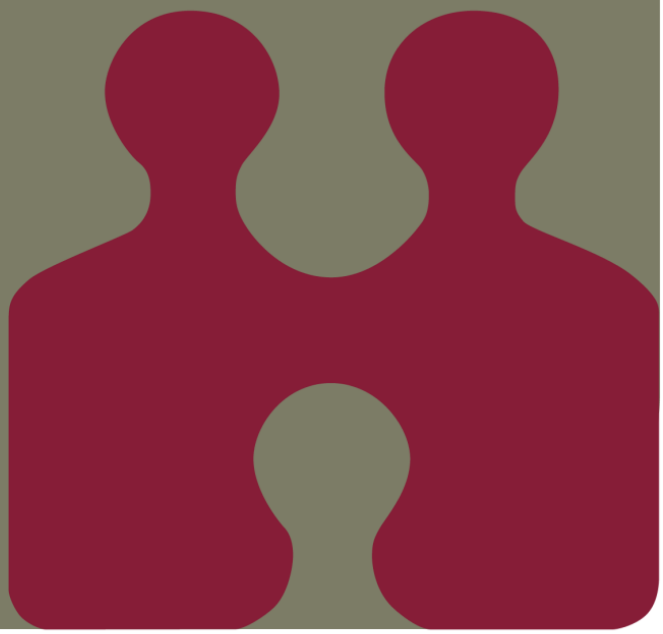
Guides to Good Practice 2012

Guide to Good Practice for Collaborative Professionals



Good Practice Guide for Collaborative Professionals

The committee of the Cambridge Collaborative Family Law Group has drafted the following good practice guide as a means of encouraging best practice within the POD, and Resolution's ADR committee is delighted to adopt it as national good practice advice. It is not meant to be a straightjacket, but to encourage members where possible to approach our collaborative cases with a consistent approach that meets the highest standard of collaborative practice.

1. Involvement of third parties

Resolution feels that it is best practice for collaborative lawyers to consider, at the outset, and as the case progresses, whether it would be appropriate for one or both of the parties to seek the assistance of a family consultant, whether solely or jointly and if so, to encourage the parties actively to consider this involvement as a means to improving communication, and providing emotional support and practical advice in developing the co-parenting relationship.

As part of ensuring that financial disclosure is dealt with as efficiently and cost effectively as possible, and that the disclosure is as complete as possible, the use of financial experts should be encouraged, with the collaborative lawyers communicating, at an early stage, as to what financial involvement may be needed, for example:

- to assist with the collation of financial disclosure and budgets;
- to value assets, eg businesses, and consider discrete points such as liquidity;
- to assist with discussions about the financial options; and
- to advise on and investigate any particular points, such as pension sharing.

2. Before the first four-way meeting

Our experience shows that the better prepared the clients (and the collaborative lawyers) are for the collaborative process, the more successful the process is likely to be. Before the first four-way each client should have had a copy of, and be familiar with, the participation agreement.

3. Timeline for each four-way meeting

The timelines for each of our four-way meetings should be:

1. A pre-meeting between collaborative lawyers. (Collaborative lawyers should be encouraged for this to take place face to face wherever practical and in any event at least 24 hours before the four-way meeting. The lawyers should consider what the agenda is going to be for the meeting, together with practicalities, such as dynamics of the room and who addresses which item on the agenda.)

2. A pre-meeting between each collaborative lawyer and their client (best practice is for this not to take place immediately before the four-way).

3. The four-way meeting.

4. Debrief meeting between collaborative lawyers, ideally face to face if possible, immediately after meeting and in any event within 24 hours of the meeting.

5. Debrief meeting between each collaborative lawyer and their own client, again ideally face to face and shortly after the meeting.

6. Minutes prepared, ideally within 48 hours of the meeting, or in any event within seven days.

4. The first and subsequent four-way meetings

Resolution believes that it is best practice:

- For the participation agreement to be signed within the first meeting, even if it is towards the end of that meeting. In exceptional circumstances, it may be appropriate for the signing of the participation agreement to be held over to the next meeting, but if a case is to be conducted collaboratively it should be signed by the start of the second four-way meeting at the latest.

- For the minutes of four-way meetings to be prepared by the collaborative lawyers on a shared basis (often alternating) and for those minutes to be prepared and circulated to all parties within 48 hours of the four-way meeting if practical, and in any event, no longer than one week after the meeting.

- To consider whether, if agreed between all parties, it would be appropriate for a junior solicitor/ trainee from one of the solicitors' firms, or a less experienced collaborative lawyer within the POD, to attend four-way meetings and to prepare the note of the meeting. (The junior solicitor/ trainee/collaborative lawyer is to be present as note-taker and not as a contributor to the discussions.) For the avoidance of doubt, the responsibility for the accuracy of the minutes remains with the collaborative lawyers.

- In the first four-way meeting, for each of the parties to share their "anchor statement". Whether the anchor statement is verbal or in writing would be discussed between the collaborative lawyers at the pre-meeting.

- For no four-way meeting to last longer than two to three hours, as energy levels and concentration start to wane beyond this point; on occasions a four-way meeting may be much shorter than this (eg a first four-way).

- At the beginning of any four-way meeting, for there to be a dialogue as to how long that meeting should last and what practical implications there are on this, eg the need to collect children from school.
- For "creature comforts" to be met at the meeting - so for food and drink to be provided.
- For a series of four-way meetings to be fixed during the course of the first four-way, but if this is not practical, then at least for the next four-way meeting to be fixed.
- For the agenda for the subsequent four-way meeting to be agreed, at least in broad terms, at the conclusion of each meeting.
- Unless there is a particular reason not to, on circulating the minutes of the meeting, for the minutes to be circulated to everyone at the meeting at the same time once approved by the two lawyers.
- For minutes of meetings to reflect the ebb and flow of the discussions, with headings and summaries being used to make the minutes more client-friendly. There is no need for the minutes to be a verbatim note.
- If a client or one of the collaborative lawyers has comments on the minutes of a particular four-way meeting, for these to be dealt with at the start of the next meeting and for the minutes to be agreed and then signed by all parties.
- Best practice is for there not to be correspondence but for all communication to take place verbally whether by way of preparation for a meeting or within the four-way meeting itself. Communication between meetings in email or in correspondence should be limited to administrative matters, such as the timing of subsequent meetings, the circulation of minutes and perhaps, if agreed during a four-way meeting, the circulation of financial information or paperwork.

5. Financial disclosure

The collaborative process is not an excuse for a lower standard of financial disclosure. The following may be regarded as best practice:

- Financial disclosure should be as full as possible, but there should be flexibility on the form the financial disclosure takes.
- The preference is for a form E to be used (up to and including the summary and schedule of outgoings, but not section 4) and if a form E is not to be used, the reasons for this and the agreement to it by both clients should be minuted.
- It should be specifically agreed (and minuted) whether a form E is to be sworn or unsworn.
- The timetabling of financial disclosure should be discussed as early as possible. It may be appropriate, in certain circumstances, for the financial disclosure to be collated before the first four-way meeting and brought to that meeting for discussion.

- When timetabling financial disclosure consider, for example, the amount of time needed to obtain certain financial information (eg CEs of pensions) and manage the timetabling of disclosure so that, if at all possible, the process is not held up whilst information from third parties is awaited.

6. Discussing options and possible outcomes in the collaborative process

This can be one of the most difficult aspects of a collaborative case. Resolution believes that best practice is:

For the collaborative lawyers during their pre-meeting:

- To discuss and agree what legal information needs to be given and to "agree" the communication of this information; collaborative lawyers should not give legal advice away from the four-way meeting that they would not be prepared to share within the meeting.
- To discuss their own views as to the parameters for the particular set of circumstances. If the collaborative lawyers do not agree on the brackets, then in the pre-meeting they should discuss and agree how they are going to address their differences and present it to the clients in the four-way meeting.

During the "crunchy" four-way:

- For clients' expectations to be managed at an early stage as to what it is likely to be possible to achieve so that a client appreciates, for example, that it may not be realistic to negotiate a financial outcome in one meeting.
- To acknowledge at the start of a meeting at which options are going to be considered that the meeting is likely to be difficult, recognise the progress that has been made thus far and, if appropriate, revisit the anchor statements.
- For clients to be reminded that any differing legal views are to be respected.
- For all of the possible options to be discussed with the clients, even if they are options the collaborative lawyers have thought of, not the clients.
- For consideration to be given to the use of flip charts, excel spreadsheets, "parking" ideas and breaks to ensure that as many options are looked at as possible.
- If a second meeting to discuss options is needed, for the minutes of the first meeting to summarise the broad areas of consensus, the areas of uncertainty and the areas which are not discussed so that when considering the minutes of the meeting, the clients can reflect on and review the discussions thus far.

If it is possible to reach consensus, then at the end of the meeting there should be a summary of the points that have been agreed. It is important to consider other issues, eg divorce (including timetable and basis for divorce) and how the consensus is going to be implemented.

The parties should agree a timeframe within which the clients have the opportunity to reflect on the consensus reached. Best practice would be for this to be seven days from when the minutes of the meeting are received.

In a financial case, for one of the collaborative lawyers to prepare the minutes of the meeting in which consensus was reached, and for there then to be an agreed timeframe, to start after the minutes of the meeting have been produced for (a) the period of reflection and (b) the minutes of the consent order to be clarified, together with the statements of information for a consent order.

It is good practice for there to be a meeting to discuss the consensus reached and any points arising after the period of reflection and consideration, together with the minutes of the consent order.

The minutes of the consent order should be sent to the collaborative lawyers and to clients no less than four days before the meeting to allow a pre-meeting between the collaborative lawyers to discuss the detail of the minutes of the consent order and agree what, if any, substantive or drafting issues need to be discussed with the clients.

The minutes of the consent order should not refer to "husband" and "wife" (following the recent indications from the courts on this) but "Petitioner" and "Respondent".

At a meeting to discuss the minutes of the consent order, there should be careful exploration of the order, with legal information being given as to the meaning of each clause. This explanation will need to include the meaning of "without prejudice" and "open" agreements and a discussion as to when the without prejudice agreement becomes open.

The minutes of the consent order should be signed at the conclusion of the meeting, provided any handwritten amendments to the document are minimal, and also provided there has been an opportunity for the clients to have had a period of reflection on the agreement reached. If the minutes of the consent order are signed then a copy should be given to both clients and the collaborative lawyers to take away. (If the amendments required are substantial then a further meeting is not required to sign a clean/amended copy.)

Statements of information should be discussed at the same time as the minutes of the consent order and preferably be a joint document.

The discussions should remain without prejudice until the minutes of the consent order have been signed.

7. Action to be taken following the conclusion of an agreement

In what is likely to be the last four-way meeting, best practice would be for agenda items to include:

- an acknowledgment of the hard work that all parties have put in;
- dealing with any other issues, for example how the interim situation is going to be dealt with, pending implementation of an order, eg sale of house; and
- if there are children, consideration as to any practical implications of the agreement for the children, eg how they are going to be told about the financial outcome.

At the end of a collaborative case it is best practice for there to be an opportunity for both clients and collaborative professionals independently, but ideally together, to have a debrief on how the process has gone. Between the collaborative professionals there should be a frank and constructive dialogue as to how the collaborative process has gone. This debrief should take place within 48 hours of the final meeting and clients should not normally be charged for such a debrief.

Ideally during the debrief, agreement should be reached between the collaborative professionals as to how to complete the Resolution form, which is required to be completed at the conclusion of a collaborative case.

8. Action to be taken if the collaborative process breaks down

If the collaborative process breaks down:

8.1 We must adhere to the fundamental principle of the process and the collaborative lawyers will cease to act and not advise the client in any other process.

8.2 The collaborative lawyers will write a joint letter to any other collaborative professional who has been involved explaining that the process has broken down and come to an end.

8.3 The collaborative lawyers will send their respective clients a joint letter explaining the consequences of the breakdown of the process and the status of the discussions during the process; the financial disclosure and information given; and the minutes of the four-way meetings.

8.4 The collaborative lawyers will discuss with their clients and then with each other (and any other professionals involved) the reasons why the process broke down and any lessons that can be learned.