

APPENDIX 2

Resolution: Code of Practice

[2005]

INTRODUCTION AND CODE OF PRACTICE

What is Resolution?

Resolution is an association of 5,000 lawyers and family justice professionals who believe in a constructive, non-confrontational approach to family law matters. Resolution also seeks to improve the family justice system. We provide education and training for lawyers and mediators to improve their knowledge of the law and their understanding of the emotional and practical issues of family breakdown. Resolution encourages the use of other dispute resolution methods, such as mediation and collaborative law, where appropriate.

Resolution was formerly known as Solicitors Family Law Association but changed its name to Resolution in January 2005 to reflect the approach its members take to family law.

Encouraging good practice

Resolution believes that family law disputes should be dealt with in a way designed to preserve people's dignity and to encourage agreements. The cornerstone of Resolution's membership is adherence to the Code of Practice, which sets out the principles of a non-confrontational approach to family law matters. The principles of the Code are widely recognised and have been adopted by the Law Society as recommended good practice for all family lawyers.

The Code requires lawyers to deal with each other in a civilised way and to encourage their clients to put their differences aside and reach fair agreements. Experience shows that agreed solutions are more likely to work in the long term than any arrangements imposed by a Court. If the family has to resort to the Court to resolve their dispute, it is best for all concerned that any proceedings are conducted in a constructive and realistic way to minimise conflict and distress as far as possible.

The approach that any Resolution member adopts should be firm and fair. The Code does not prevent solicitors from taking immediate and decisive action where necessary.

The Code of Practice

The Code of Practice is designed to establish the principles of a constructive approach to family law matters. The Code is not a straitjacket, but Resolution members must adhere to the Code unless the law, professional rules or clear client instructions contradict it.

The Code should be read in conjunction with the Resolution Guides to Good Practice and other current practice notes. (Guides are available free to members from Resolution's Office.)

General

1. This Code applies to all Resolution members. You should explain to your client at an early stage the approach you adopt to family law work, what the Code of Practice is and provide them with a copy of the Code.
2. You should encourage your clients to see the advantages of a constructive and non-confrontational approach as a way of resolving differences. You should advise, negotiate and conduct matters so as to help settle differences as quickly as possible and reach agreement. You should seek to recognise that your clients may need time to come to terms with their new situation.
3. You should make sure that your clients understand that the best interests of any children should be put first. You should explain that where a child is involved, their attitude to other family members will affect the family as a whole and the child's relationship with his or her parents.
4. You should encourage the search for fair solutions and discourage the attitude that a family dispute is a contest in which there are 'winners' and 'losers'. You should avoid using words or phrases that suggest or cause a dispute where there is none.
5. Emotions are often intense in family disputes. You should avoid inflaming them in any way. You should not express any personal opinions on the behaviour of the other party.
6. Correspondence should be carefully considered for its potential effect on other family members. Letters should be in plain English and avoid jargon and legalistic phrases. Clients may see assertive letters as aggressive. Any communications should aim to resolve issues and settle matters, not antagonise or inflame them. Threats or ultimatums should be avoided.
7. You must stress the need for your clients to be open and honest in all aspects of the case and the consequences of not being open and honest.

Relationship with the client

8. You should always be objective and not allow your own emotions or personal opinions to influence your advice.

9. You should advise your clients on all the options available to them. Your clients should understand the consequences of any decisions they make. You cannot make decisions on your clients' behalf – that is a matter for them, taking your advice into account.
10. You must make your clients aware of the legal costs at all stages, including the risk of costs awards. You must ensure that the benefits of any step to be taken are balanced against the likely costs.
11. You should ensure that your clients are aware of other services that may help them to reach a settlement, including counselling and mediation. Where appropriate, you should explore with your clients the possibility of reconciliation.

Dealing with other solicitors

12. You should be courteous in your dealing with other solicitors and should avoid undermining the other party's solicitors in your clients' or their spouse's eyes.

Dealing with a person who is not represented

13. When dealing with someone who is not represented, you should take even greater care to communicate clearly and try to avoid any technical language or legal jargon. You should strongly recommend that the other party consult a Resolution solicitor, but be sensitive to the fact that they may not be able to afford representation.

Court proceedings

14. You should consider the long-term effects on your clients and other family members of any step in the case and balance those effects against the short term benefits.
15. If a particular step may appear hostile to the other side or is capable of being misunderstood, you should consider explaining the reasons for that step to the other side or their solicitor.
16. Before filing a petition, you should consider with your clients whether to contact the other side in advance to allow agreement on the 'facts' or particulars or to minimise misunderstandings.
17. When a petition or statement of arrangements is received for approval, you must advise your client to give the other side at least 7 days notice of any intention to start their own proceedings, other than in exceptional circumstances.
18. You should discourage your clients from naming a co-respondent, unless there are very good reasons for doing so.

Children

19. You should encourage your clients to put their child's welfare first. You must bear in mind that the interests of the child may not be the same as the interests of either parent. It may be appropriate for the child to be separately represented.
20. You should encourage parents to co-operate on decisions concerning the children and agree arrangements wherever possible. You should advise that it is often better to make arrangements between themselves or through solicitors or mediators, rather than through the courts.
21. You should keep disputes about finances separate to disputes about children. These matters should be covered in separate letters.

When the client is a child

22. You should only accept instructions from a child if you have the appropriate training and experience.