

# **FAMILY LAW PROTOCOL**

**Second Edition**

The Law Society with Resolution,  
Legal Services Commission and the Department  
for Constitutional Affairs



The Law Society

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## Foreword to the second edition

Since the first edition of the Law Society's *Family Law Protocol* in 2002 there have been a significant number of changes to the family justice system. With an almost indigestible amount of primary and secondary legislation, government white papers and consultation documents of all kinds, and a proliferation of rule-making and policy bodies, matters can become somewhat confusing. Happily, the Protocol distils the important elements of practice and procedure, and provides clear and helpful guidance to family practitioners.

As court workloads increase and the Legal Aid budget remains capped, the role of the solicitor becomes more and more important in the drive to divert disputes from the court system. I commend the Protocol's emphasis on attempting to achieve resolution by means of ADR and its insistence that court proceedings should be a last resort.

I recommend this good practice guide to all who work within the field of family law.

**Sir Mark Potter**

President of the Family Division and Head of Family Justice  
23 November 2005

## Preface to the second edition

The publication of the first edition of the *Family Law Protocol* in 2002 broke new ground. It was a bold attempt to provide an overall view of good practice in family law matters. Although specifically referring to solicitors, it was designed to offer guidance to all family practitioners working in solicitors' firms, whether they are legal executives, paralegals or clerks. It was pleasing to find that its publication was almost universally applauded. The width of the endorsements received for it was impressive, and the lectures around the country that accompanied its launch were well received.

At the time of its launch, the Law Society confirmed its intention to update the Protocol regularly to accommodate the changes in law and practice that took place. On reading through the Protocol to update it, it is clear that a significant number of changes have already taken place over the last two years and a significant number of changes are still pending. It is also fair to note that despite the comprehensive nature of the first Protocol, it quickly became apparent that there are many areas of family law that were still not covered.

The redrafting of the Protocol has enabled many amendments to be made. Some are amendments arising out of experience. Others come from significant changes to the law that have been enacted. Some of the main changes are:

- inclusion of a section on the Child Support Agency following the implementation of the Child Support, Pensions and Social Security Act 2000 which was implemented on 3rd March 2003;
- significant redrafting of the sections on pensions under financial relief;
- the addition of a section on the Inheritance (Provisions for Family and Dependants) Act 1975 applications;
- a detailed and full addition under the Domestic Abuse section in respect of the enforcement of orders.

Further appendices have been added. With so much new information that comes out, it has been difficult to be selective as to which ones are important enough to be annexed and various documents have been included:

- the advice regarding use of Expert Witnesses issued by the President's Ancillary Relief Advisory Group;
- the leaflet on forced marriages issued by the Law Society;
- some advice regarding the effect of the Proceeds of Crime Act 2002 for family lawyers following the decision in the case of *Bowman v. Fels*.

The Law Society has recently published a general guidance as to the effect of the Proceeds of Crime Act 2002 and work is being carried out by the Law Society's Money Laundering Working Party on sector-specific advice.

This Protocol has been drafted at a time when a significant number of changes are on the horizon. These include:

- (a) civil registration of relationships for same sex couples (although, sadly, legislation to give rights to cohabitants generally seems some years away);
- (b) a fundamental change in the Cost Rules in respect of financial division;
- (c) the amendment of certain forms, including a Form C1A in respect of Private Children Law Applications (to draw out any allegations of domestic abuse), and possibly a redraft of a number of the financial forms, including the Form E and Form H as well as some new Pension forms.

Where appropriate reference has been made to these potential changes within the Protocol, but it is possible to give full advice on the effect of the changes as in many cases the precise details of the proposed changes are not yet settled.

Finally, questions have been raised about the force of the Protocol. The Protocol is the standard by which the Law Society's and Resolution's panel members are judged. It is the standard to which Legal Aid practitioners are expected to practise. There may be reasons why solicitors are not complying with the Protocol, but it is hoped that notes of the reasons for a departure (for example, direct instructions from the client to act contrary to the Protocol) are recorded on the client's file in some form.

PREFACE TO THE SECOND EDITION

The second edition of the Family Law Protocol has been produced by the Law Society, with the close involvement of Resolution, the Legal Services Commission and the Department for Constitutional Affairs. The aims and scope of this Protocol remain as they did for the first edition.

# Acknowledgements

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The Protocol was endorsed by:

The Rt Hon The Lord Falconer of Thoroton, *The Lord Chancellor*  
The Rt Hon Sir Mark Potter, *President of the Family Division*  
The Rt Hon Lord Justice Matthew Thorpe, *Deputy Head of Family Justice and Head of International Family Law*  
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# Abbreviations

ADR	alternative dispute resolution
CAFCASS	Children and Family Court Advisory and Support Service
CSA	Child Support Agency
CPR 1998	Civil Procedure Rules 1998
CPS	Crown Prosecution Service
DCA	Department for Constitutional Affairs
FDR	Financial Dispute Resolution
FPCR 1991	Family Proceedings Courts (Children Act 1989) Rules 1991
FPR 1991	Family Proceedings Rules 1991
IHT	inheritance tax
Inheritance Act 1975	Inheritance (Provision for Family and Dependants) Act 1975
LSC	Legal Services Commission
NACCC	National Association of Child Contact Centres
PARAG	President's Ancillary Relief Advisory Group
Trusts of Land Act 1996	Trusts of Land and Appointment of Trustees Act 1996