

DRAFT PROPOSED FAMILY SOLICITOR ENGAGEMENT AGREEMENT

The Family solicitor in the Compass 'supported mediation' model

Date

Name

Address

Private and Confidential

Introduction

It is recommended that Family Solicitors who are also mediators and/or collaboratively trained practitioners be instructed to assist clients engaged in this model of dispute resolution because of the nature of this model of dispute resolution and the need for training, skills and experience, in facilitation.

It is also recommended that the family solicitor instructed should be a member of Resolution and ideally on their panel of experts or the Law Society panel of experts.

Furthermore, if the mediation primarily involves complex finances it is recommended that the family solicitor be a member of the Resolution or Law Society advanced panel of experts in this area of law.

Aim of the process

General role

The role of the family solicitor is to assist and advise a client in mediation in a way that informs and empowers them to negotiate for themselves in mediation and reach outcomes that meet the needs of the children and as many needs and interests common to their client and their partner/spouse, as possible

Role

The role of the family solicitor will partly be determined by the stage of the process in which the client is involved. There are 6 main stages;

- 1. assessment for mediation (scoping context of case),**
- 2. 'convening' the professional team,**
- 3. gathering information and documentation,**
- 4. exploring ideas and options to meet needs and interests**
- 5. creating solutions,**
- 6. implementing the solutions (this could involve obtaining a consent order).**

The role may involved some or all of the following

Stage 1

The family solicitor is under a duty to discuss with the client all available process options and recommend mediation where suitable.

Stage 2

The Family solicitor is not part of the neutral team in mediation but, if instructed to do so by both clients, could be included in the first convening meeting.

The mediator will send a copy of the post convening letter to the solicitors informing them of the agreed action plan (see process timeline) including who is gathering information, timeframes, communication guidelines, confidentiality etc.

Stage 3

Generally, the Family solicitor is not required at this stage for this model because most of information gathering will be carried out by the financial planner, accountant, actuary, property valuer, all working in a neutral and integrated way according to agreed guidelines setting out how and when they communicate and matters such as confidentiality (see separate communication and confidentiality guidance notes).

They are to liaise directly with the clients with regard to information and documentation required to prepare their disclosure reports for the mediation stage 4. However, each client retains the option of involving their solicitor where there is an issue or verification and the other party is not prepared to co-operate with the financial experts.

At this stage, the clients will be reminded by the mediator of their duty to make a full and frank disclosure of all documentation and information relevant to the issues and options the clients wish to discuss. They may also be reminded of the court's powers in this regard.

Stage 4

At this stage of this model the family solicitor may be instructed to become more involved together with other consultant financial experts (as opposed to neutrals) involved in assisting their client. If so, and to assist their client in the mediation process their role may include to;

- Assist the client in identifying their goals, interests and needs
- Assist the client in expressing their needs, goals, and interests
- Listen to the client to hear what the client, at his or her best self, truly wants for the future
- Ensure that the client's voice is heard in the process, if they feel that it is not
- Ensure that the client is made aware when the client's actions deviate from their stated needs, goals, and interests
- Guide and enforce the structure of the MMM process and assists the professional team in promoting the process
- Refrain from positional arguments
- Facilitate a shift of focus from client's 'rights and entitlements' to client's needs and interests (principled and interest based negotiations)
- Encourage the client to look at multiple reference points/perspectives for decision-making
- Ensure that their client has adequate information to make interim and final decisions
- Assist their client and professional team in problem-solving, to resolve conflict and answer the clients' questions in a way which meets the needs and interest of both clients and their family(children)

- Assist the client in making his or her decisions, in generating options for resolving issues, in interest based negotiating, and in reaching solutions that meet the needs of both client and their family

Stage 5

- Ensure that the settlement proposals make sense for the client and to the client
- Ensure that the settlement meets court requirements
- Assist the client in assessing whether a settlement option meets his/her needs
- Draft a settlement agreement and orders necessary to effect the settlement
- Represent the client in uncontested divorce proceedings
- Educate the client about the law and the role the law plays in the process
- With the other solicitor, jointly present information to the clients about the law and the role the law plays in the process

Providing advice- The options

A family solicitor has the duty to advise his or her client on the law and the role of the law in the process.

Some practitioners take the view that legal advice should only be provided in meetings where both clients and solicitors are present.

Other practitioners take the view that a lawyer may also provide legal advice privately to his or her client provided that the lawyer promptly informs the other solicitor of the substance of the advice.

Other practitioners have concluded that they may privately discuss with their clients the law and the role of the law in the process, but that they should first work out with the other solicitors how this should be done in a way to further the MMM process.

For example, the two solicitors might discuss their joint view of the legal issues in the case and agree on what advice each will give to his or her client and how the law will be presented.

Other practitioners have used a combination of the choices above.

In any event, it is critical that the two solicitors discuss and agree how they will handle their obligation to give legal advice.

What are the obligations and responsibilities of the family solicitors towards the professional team throughout the MMM process

Amongst other things, the solicitors are to;

- support their clients and the other team members as needed.
- monitor the progress of the parallel or successive processes as well as the commitment and participation level of their respective clients.
- exchange information with the other team members as to how best to facilitate the process and meet the needs of the clients.

Fees

A project fee

Hourly rate