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Family law

Working with your
solicitor on your
family law case

scottish legal
complaints commission **slcc**

Contents

Top tips	4
Before the first meeting	6
The first meeting	8
Costs	10
Timescales	12
Communication	16
If you don't understand...	18
Be open and honest	20
Court	22
Legal aid	24
Complaints	26

Top tips

Our ten key tips for ensuring that your relationship with your lawyer goes smoothly.



The outcome

Think about the outcome you want and ask if this is achievable



Prepare

Prepare for the first meeting with your solicitor



Costs

Talk about likely costs, payment methods and ask to be notified when the case is reaching the initial estimate



Timescales

Get an idea of how long the process might take

Top tips

5

Receiving updates

Discuss and agree how and how often you will receive updates on your case

6

Ask

And if you don't understand - ask again!

7

Be honest

You need to be completely open and honest with your lawyer

8

Court

Find out what to expect if your case goes to court

9

Legal aid

Be clear about the benefits and limitations of legal aid

10

If things go wrong

Remember that you have the right to challenge or complain



1. What do you want?

Before you see a solicitor for the first time, it is a good idea to think about what you want.

Family law cases are stressful and emotional for everyone involved. With emotions running high, you might feel that you want to air what happened in court.

However, the legal process in Scotland - especially in family law cases - is focused on solutions that avoid court. The aim is on trying to get both sides to agree as much as possible.

At your first meeting with your solicitor, you will probably discuss different outcomes which might be possible.

For that reason, it is worth considering - and if possible discussing with the other side - what issues can be agreed upon and what cannot. Sometimes, because emotions are running high, that won't be possible.

But remember - the more things that need to be agreed through your lawyers, the more expensive your legal bill will be.

No matter how much you and the other side may be in agreement, the same solicitor will not be able to act for both of you due to a potential conflict of interest arising.

Your solicitor may question what you want to do and suggest a different way of approaching things. This can feel upsetting but remember that they are doing this to give you their best professional advice.

If you do not get the exact outcome you want, this does not necessarily mean that your solicitor is wrong or is not on your side. Your solicitor will be entitled to charge you for the work done on your behalf regardless of the outcome.

"The more that needs to be agreed through a legal process, the more expensive your legal bill is likely to be."

What do you want?

Remember

- Think about what you want in advance
- Consider what you might be able to agree on
- Choose a solicitor who's right for you



2. The first meeting

Try to get an idea of what you'll discuss at your first meeting with a solicitor. If possible, prepare for this in advance.

You are unlikely to get an instant solution from a single meeting with a solicitor. Normally, the solicitor will use the first meeting to gather information to decide the best way forward.

Don't assume that the first meeting is free. Check if you will be charged for this.

If you think you may be eligible for legal aid, you should ask if the firm does legal aid work. If it doesn't you may be charged for the meeting. At the first meeting the solicitor is likely to talk to you about:

- Your finances, e.g. income/benefits and outgoings
- Contact/residence arrangements for any children
- The financial support that you, a partner or children may be entitled to
- Savings or property
- Separation and/or divorce-related issues

Think about these in advance and, if possible, take along any relevant paperwork such as proof of income.

At the end of the first meeting, the solicitor may decide not to take on your case. They are entitled to do this. It can be for a variety of reasons. For example, they may have a lot of other cases or they may feel that they don't have the right expertise for your case. If that happens, ask if they can recommend someone else.

On the other hand, you may feel that you do not want to work with that solicitor. If so, you can go away and think about it, or discuss things with your partner/ ex partner and try to come to your own agreement.

If you and the solicitor agree to work together, you should talk about the likely costs and timescales. We look at these in more detail in the next sections.

Once you have chosen and met with your solicitor, you should expect to receive a Terms of Business letter (sometimes referred to as Letter of Engagement/ Terms of Engagement).

The letter will set out;

- an outline of the work that is to be done
- an estimate and/or details of how fees will be charged
- details of Legal Aid (if you are entitled to Legal Aid)

-who should be contacted in the event that you are unhappy with the firm.

It is important that you understand the Terms of Business letter.

If you don't understand the written information given to you, then always ask for an explanation

The first meeting

Remember

- Get a clear idea of what will be discussed
- Prepare for the first meeting
- The solicitor can choose not to work for you - and you can choose a different solicitor

"Your costs will include the time the solicitor spends dealing with you on the telephone."

3. Costs

Remember

- It is likely that you will be charged an hourly rate
- Ask at the beginning for an indication of likely costs
- Particularly in family law, costs can be unpredictable



Costs

Every family law case is different. For that reason, your solicitor will probably not be able to tell you exactly how much the work will cost.

Some types of family law work can be covered by a fixed fee. But, it is more likely that your solicitor will charge you on an hourly rate.

That means that you will be charged for the time spent on your case. This will include the time the solicitor spends dealing with you on the telephone and replying to emails or letters from you and the other side.

Even when not in direct contact with you, your solicitor will be working on your case. You will be expected to pay for that time, even if it is “invisible” to you.

You may also have to pay additional costs known as 'outlays'. These can include expert reports, court fees and travel expenses.

This is why it is a good idea to ask for an estimate of the costs at the beginning. But remember that, at best, this is only going to be an estimate.

If you think you may be entitled to legal aid and wish to explore that possibility, talk to your solicitor about this. Not all solicitors provide legal aid and it may mean that you have to go to a different solicitor.

Section 9 of this guide looks at legal aid in more detail.



Costs

The work your solicitor will need to do will depend on things which are unknown - for example, the way the other side deals with matters and whether the case goes to court. There are, however, ways to keep an eye on costs.

Paying by instalments

It may be easier for you to pay by instalments rather than pay the full bill at the end. If so, ask your solicitor whether they offer this method of payment.

Interim accounts

Interim accounts can help you keep an eye on costs. If you agree to receive interim accounts and you do not receive one, it is your responsibility to ask for an update.

Agreeing a limit

Another way of managing costs is to agree an initial limit at the start and ask your solicitor to let you know when that amount has been—or is about to be—reached. Ask your solicitor to let you know as quickly as possible if costs have gone over this figure.

Understanding accounts

Sometimes you may find terms that you are not familiar with in the bill. If there is something in your bill which you don't understand or are not sure about, ask.

Changes

Remember to keep your solicitor up-to-date with any changes in your financial position. For example, if there are changes to any benefits you may be getting, you need to let your solicitor know.

"...update your solicitor if you start to live with someone else."

Costs

Remember

- Your firm may offer the option of paying in instalments
- Keep an eye on costs as the case progresses
- Update your lawyer if there are changes in your circumstances



4. Timescales

It is hard to predict how long your case will last. This will depend on many things, for example, how complicated your case is and how much agreement there is between the different parties.

If there are children involved, or if there is income, property or other capital which need to be agreed on, your case may take longer to resolve.

Your solicitor should be able to give a rough idea, from their experience, of the time a case like yours is likely to take. However, some things will be outside their control and will depend on how quickly the other side and their solicitor deal with things.

It is also worth remembering that even if you have agreed things with the other side at the start, and your case may seem straightforward, people can change their mind.

Again, this will be outside the control of your solicitor and may have an impact on how long your case will last.

If you have been given an estimate of how long things might take, ask your solicitor to let you know as soon as possible if that timescale changes.

If you need to go to court, timescales will be set by the court process. While your solicitor may be able to ask the court for more time, or for dates to be changed, much of the process will be out of your solicitor's control.

We cover that in more detail at Section 8.

"If you need to go to court, timescales will be set by the court process."

Timescales

Remember

- Get an idea of timescales at the start - but be aware that these can change
- Agree how you want to receive updates and how often
- Sometimes timescales will be outside your solicitor's control



5. Communication

Most of the complaints which we receive are about communication. However, simple steps can improve communication.

Agree from the start how often and what way you will receive updates (e.g. email/ letter/ phone call). If for example, your preferred method is face-to-face meetings make sure to talk to your lawyer about this.

There may also be times when you feel you need to contact your solicitor in addition to arranged meetings or updates.

Though your instinct might be to pick up the phone to your solicitor for an instant response, remember that you will be charged for their time.

If you do decide that you need to get in touch with your solicitor, email may be a good way to contact them. This can make communications quicker.

Your solicitor is likely to be dealing with other cases apart from your own so you should not expect an immediate response. This also applies to returning telephone calls.

Ask your solicitor who you should contact if something happens and your solicitor isn't available.

At the beginning of your case you will have provided your solicitor with a lot of information about your circumstances.

Your solicitor will be working on your case based on that information. It is very important that you let them know as soon as anything changes. Be as open and honest as you can.

If your solicitor asks you for information you should always try to provide this as quickly as possible to prevent delays.

Finally, remember that communication is a two-way street, and in family law cases this is especially important.

Communication

Remember

- Agree who to contact if your solicitor is unavailable
- If you're asked for information try to provide this quickly
- You may not always get an immediate reply



6. Ask and ask again!

The legal system is complex and is not always easy to understand. If you don't understand - ask.

When we are feeling stressed and emotional—which is natural in family law cases—it can be difficult to take in everything that your solicitor is telling you. Your solicitor will understand that and should take time to explain things as clearly as possible.

Sometimes your solicitor may use legal terms that you don't understand. Many people feel uncomfortable asking for explanations as they don't want to seem stupid.

But remember that—while these terms may be second nature for your solicitor—most people will be just as unfamiliar with them as you are.

So don't be afraid to ask what they mean....and if it is still not clear, ask again!

Most solicitors welcome questions because they want you to understand.

Sometimes your solicitor may have to give you a lot of information at one time. It can be hard to take it all in. It is a good idea therefore to take notes so that you can read them in your own time and take the information in at your own pace.

It might be a good idea to bring someone to the meeting with you for support and to take notes for you.

Solicitors often have leaflets with useful information which you can take away with you. If you find that something is particularly difficult to understand, ask if they have any information leaflets available.

You can also ask your solicitor to confirm the main points in writing - but remember that you may be charged for that.

“ ...don't be afraid to ask what they mean...and if it is still not clear, ask again. ”

Ask and ask again!

Remember

- Don't be afraid to ask if you don't understand
- Try to take notes of important information
- Consider asking for a summary in writing from the solicitor



7. Be open and honest

Being open and honest with your solicitor gives your case the best possible chance of success.

In cases involving family law, the personal details which need to be discussed, and the questions you may be asked, can feel uncomfortable. For that reason it is important that you have a solicitor that you can be completely open with.

Remember that your solicitor has a duty to keep any personal information you share with them confidential.

There may be details which you may not think are important but which can affect the way that your solicitor decides to approach the case.

It is very important that you are completely open about your financial situation with your solicitor – even about finances the other side may not know about.

As part of the process, either party can call on the other side to make a full disclosure (release of all information relevant to the case). If a request for full disclosure is made, your solicitor is legally required to supply that information.

If, at a later date, it is discovered that you were not totally open from the beginning, this can have a negative effect on your case. Your solicitor may also stop acting for you.

“ ..it is very important that you are completely open about your financial position. ”

Be open and honest

Remember

- Be honest with your solicitor about your circumstances
- If things change, let them know
- Your solicitor has a duty to keep your personal information confidential



8. Court

Your solicitor will work hard to reach an agreement with the other side so that your case does not have to go to court.

This may include family mediation or a formal agreement with the other side. These can be good (and less expensive) ways to resolve things.

However, in some cases court is unavoidable. If this happens to you, there are some things you should be aware of.

It could take longer if your case goes to court. The process, including the speed with which things happen, will be decided by the court.

There may be times when your own solicitor is not able to attend court because of other work. This is normal and you shouldn't be surprised if another solicitor – usually (but not always) from the same firm – turns up at court to represent you. The solicitor will have been given enough information about your case to deal with the hearing.

If your case goes to court your case will cost more.

The court will decide how many hearings your case will have and what will be required at each of these. You will have to pay for the cost of your solicitor's time at court, travel time to and from the court, and also for the work they need to do before each hearing. Other costs may arise from the court process.

If there are children involved, for example, the court may decide that a report into the welfare of the children is needed. The court may ask for a report from a psychiatrist or psychologist. You are likely to have to pay for these reports.

Depending on the result of the court case, you may find that you not only have to pay for your own solicitor's work but also the expenses of the other side's solicitor and/or their court costs.

A final thing to bear in mind is that no matter how bad the relationship is between you and the other side, this will not be reflected in the court process.

If your solicitor is being friendly towards the solicitor who is acting for the other side, it can feel as if they are being disloyal and aren't on your side.

However, when solicitors appear in court they will always behave in a professional and civil manner towards each other and it does not mean that they are no longer acting in your best interest.

"There may be times when your own solicitor cannot attend court..."

Court

Remember

- If the case goes to court, your case will cost more
- There may be times when your solicitor can't attend court - this is normal
- Depending on the result of the court case, you may have to pay the legal expenses for the other side as well as your own



9. Legal aid

There are different types of legal aid available, so be sure to ask your lawyer to explain if you are (a) entitled to legal aid and (b) what type of legal aid you may be entitled to.

It is important to understand this fully, as even if you are entitled to legal aid, you still may have to pay some money towards your case at the time, or at a later date.

If you are required to pay a monthly contribution, it is important that you keep making the payments. If these stop, legal aid may be withdrawn and your lawyer will either have to stop working on your case or charge you privately. You may still be liable for payment of the contribution or the amount SLAB pays your solicitor plus costs SLAB incurs in collecting this from you.

Private fees will be more expensive than the legal aid fees charged to the Scottish Legal Aid Board (SLAB). If you are not clear, do not be afraid to ask questions.

Because public money is involved, your lawyer and SLAB have to follow strict rules in terms of how much work can be done on a case. Your lawyer will only be paid for work which is considered necessary. This means that they

may not always be able to do exactly what you ask them to do.

As your case progresses, your lawyer may need to ask SLAB whether they can employ an expert or counsel or do unusual or expensive work. SLAB will need to consider this request and whether the work is necessary, which takes time.

Your lawyer also has certain duties to SLAB. For example, if you ask for work to be done which is considered unreasonable, or if your lawyer discovers that you were not completely open about your financial circumstances, they must report it to SLAB. This can result in your legal aid being withdrawn and you having to repay the costs of your case. If you have made a false statement or held back information about your case or circumstances, legal aid could be withdrawn. You could also face criminal charges.

Financial eligibility for legal aid is measured over at least a year and for some aspects, for the lifetime of the case, so it is important that you tell SLAB about any changes to your circumstances such as a new partner, a new job or an inheritance windfall.

Another point to bear in mind is that legal aid is not always free. Sometimes you will need to make a contribution towards your legal costs.

At the end of the case, the law says that the legal aid fund should only pay for the case if there is no money available from expenses recovered from your opponent, any contribution you have had to pay or any property you win or keep in the case. You should check with your lawyer whether this applies to you.

Legal aid only covers your legal costs. If you have to pay any of your opponents costs this is not covered by legal aid and you will have to pay it, although as an assisted person you can ask the court to reduce the amount you have to pay.

To find out more about legal aid, you can leave a message on SLAB's legal aid information line [0845 122 8686] open Monday to Friday 8.30 am to 5 pm] or visit www.slab.org.uk.

Legal aid

Remember

- Legal aid is not always free - you may need to make a contribution
- Because public money is involved, your lawyer and SLAB will have to follow strict rules in terms of how much can be done on the case
- Your lawyer will only be paid for work which is considered 'necessary'
- If you haven't been honest or have held back information about your circumstances, legal aid could be withdrawn



10. Complaints

If you are unhappy with the service a solicitor has provided to you, or feel that a solicitor's conduct is unprofessional, we are here to help.

There are certain things which you need to be aware of before you make your complaint.

We can normally only look at a complaint if the lawyer has already had the opportunity to put things right. Complaints can often be completely resolved at this stage.

However, in very exceptional circumstances we may look at your complaint even if your lawyer hasn't had the opportunity to resolve it.

Allow your solicitor 28 days to deal with your complaint.

If, after having done this, you are still not happy with the outcome, you can make a formal complaint to us. It is best to make your complaint as soon as possible.

The sooner you make the complaint, the more clearly you will remember the circumstances around it.

We can only consider complaints made within the time limits which are set out on our [website](#).

If your complaint is not made within these time limits, we may not be able to accept it.

For contact details, see back page. If you want to find out more about us and what we do, please visit <http://www.scottishlegalcomplaints.com>

We are open from 9am until 5pm, Monday to Friday, apart from Tuesday when we close for staff training between 10am and 11am.

If you need information in another language or in large print or on audio CD, please let us know.

"We can normally only look at a complaint if the lawyer has already had the opportunity to put things right"

Complaints

Remember

- Normally, you should contact the firm first to give them the opportunity to put things right
- In exceptional circumstances we can look at a complaint even if the lawyer hasn't had the opportunity to resolve it
- Allow the firm or lawyer 28 days to respond
- Be aware of our time limits



0131 201 2130

If you require this information in an alternative format (such as audio, large print or braille) please contact us.

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