



## Family Department Collaborative Law

This guide is not intended to be comprehensive. It highlights and explains some of the common legal and related issues which might arise within the Collaborative Law process. It should also help you understand some of the steps that we shall take on your behalf and the terms which we, and other professionals, involved in your matter, may use. Please read this guide carefully and contact the lawyer dealing with your matter, if you do not understand anything within it. We shall not repeat advice or information provided in this guide when writing to you, unless we need your specific instructions on some aspect of it.

### What is Collaborative Law?

The primary aim of the Collaborative Law process is to achieve a mutually agreed and fair settlement of the issues which arise when a marriage breaks down, without the need for litigation. In many cases this can reduce distress and potential antagonism, and may assist you and your partner to maintain a more constructive relationship post-divorce or dissolution, which can be so beneficial where there are children involved. In order to engage within the Collaborative Law process, you must instruct a solicitor who is specifically trained to undertake this type of work. Both you and your partner are represented by your own lawyer and **all** parties have a shared commitment to avoid litigation. The process usually comprises a series of informal discussions and joint meetings (which are called Four Way Meetings) for the purpose of settling the issues. At the beginning of the process and at the first meeting each party and his/her lawyer will sign an agreement which will be known as the “Participation Agreement”. This agreement, in general terms, confirms that the lawyers will work jointly together and with both parties with the mutual aim of seeking a fair and equitable settlement.

Obviously, we shall be representing your interests within this process and we can still meet in the traditional sense, outside of any Four Way Meeting, to discuss issues which may arise and for us to provide you with advice. However, the Collaborative Law process is **your** process. You have the right to end the Collaborative Law process at any time, should you wish to pursue the matter through the Court, but in that case we can no longer represent you. You would have to, at that stage, find another lawyer to represent your interests within the Court process.

### What will happen at the first Four Way Meeting?

Prior to the first Four Way Meeting, an agenda will be prepared to which everybody has input. It generally will include items such as:-

- Introductions
- Reasons for choosing Collaborative Law
- Signing the Participation Agreement
- The legal procedure to end your relationship should this be required.
- Financial disclosure

You will see that this includes an item where everybody, including both the lawyers, explains their reasons for wanting to continue within the Collaborative Law process. Some people choose to give their reasons verbally at the meeting and other people choose to write it down. If written, this would be known as an “anchor statement”.

We shall agree to make full disclosure of the nature, extent, value of – and all developments affecting this – your income, assets and liabilities. This will enable each of the parties to put together a schedule of capital and income which will in turn enable everyone to see what is available to be divided. We can then discuss these matters to reach an agreement.

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You will appreciate that the Collaborative Law process depends upon good faith participation by both parties. Obviously we cannot guarantee that your partner will act in good faith, but this is something which we shall discuss. Our commitment to you is that we shall alert you to any suspicion of bad faith and recommend termination of the process if this occurs.

At the end of the first Four Way Meeting, if we have not been able to reach an agreement, as sometimes this can occur, a date will be set for the next Four Way Meeting. We will also draw up a list of tasks so that everybody in the process is aware of what they need to do in readiness for the next meeting.

## **What happens if an agreement is reached?**

If an agreement is reached we shall, with the other lawyer, draft the legal documents (reflecting the terms of that agreement) to be submitted to the Court, for the Judge to approve. You should not need to attend Court unless the Judge specifically requires it. We shall not file a Notice of Acting on the Court file, except to lodge the financial agreement (known as a Consent Order). Usually by the time any agreement is reached, and if applicable, we will have already started the process to end your relationship by way of divorce or dissolution. The financial agreement cannot be submitted to the Court for approval until you have completed the first stage of the legal process required to end your relationship, generally known as Decree Nisi. Both lawyers will assist you throughout this part of the process in order to have the financial agreement approved by the Court without difficulty. The Court will be aware that it has been agreed through the Collaborative Law process and therefore it is highly likely that the Court will simply agree the terms which you have reached and provide you with a sealed Court Order.

## **What if we cannot reach an agreement?**

Obviously no Collaborative Law lawyer can guarantee that this process will be effective in resolving your issues. As we have highlighted, success in the Collaborative Law process is only possible if you and your partner share a commitment to be respectful, honest and efficient and want to achieve direct consensual resolution of all of the issues. It must be understood that this is a team process and therefore both the lawyers will work together to try to ensure that this process does work for both your partner and yourself, enabling you to achieve your common goal – a fair and equitable agreement of all of the issues which exist between the two of you. If your partner declines to proceed within the Collaborative process, then our retainer with you will be null and void and you would need to enter into a new legal retainer with another lawyer to proceed down a conventional route, which would probably include litigation.

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