

**Collaborative Family Law****GUIDANCE FOR INTERNATIONAL COLLABORATIVE LAW CASES  
- DIVORCE/MONEY/CHILDREN (CA s.8/Sch.1)**

*Note: this guidance is deliberately a statement of principles which all practitioners should be able to agree apply to all international collaborative family cases regardless of the territories involved. The guidance does not presume or purport to give guidance to practitioners as to how they should conduct themselves in relation to their clients, the spouse(s) of the client(s), or third parties including professional insurers.*

1. Screening clients for suitability for the collaborative process is important in any collaborative case. In an international collaborative case it is even more important because of the implications of the differential court outcomes in different jurisdictions and the possibility of the client changing their mind about the decision not to invoke court process. This is especially so in circumstances where either a juridical disadvantage has already been suffered or where time is absolutely of the essence in order to secure a juridical advantage by means of court proceedings as distinct from the collaborative process.
2. Regardless of whether or not it is proposed that the matter should be dealt with collaboratively, it is the duty of the solicitor to advise the client at the earliest possible opportunity whether it is in the client's interest to issue proceedings in one or other jurisdiction, with or without reference to his or her spouse/civil partner. There are clear negligence/insurance implications of failing so to advise and/or of deciding not to issue first in order to secure jurisdiction, especially in (but not limited to) cases falling within Brussels II Revised.
3. In terms of the collaborative process the starting point, and presumption, is that the question of jurisdiction will be resolved before the collaborative process begins. Any agreement not to issue proceedings will not be enforceable, as between the parties, and will not invalidate any proceedings so issued (including proceedings issued in direct breach of such an agreement). If the client countermands the Participation Agreement and instructs the solicitor to issue proceedings the lawyer will refer the client to the Participation Agreement (and in particular to the disqualification clause in relation to lawyers not litigating a collaborative matter), and will seek to dissuade the client from this course, but ultimately will not accept instructions to breach the Participation Agreement, this position having been made clear in advance and expressly agreed in writing between client and lawyer at the outset of the retainer.
4. The issuing of family proceedings by one party shall not prevent the lawyer acting for the applicant from acting in the case on a collaborative basis, provided that the proceedings are issued before the signing of the Participation Agreement.
5. The consideration of the question whether to issue proceedings in an international case is bound to involve at least some level of comparative advice as to the differing outcomes of Court-litigation in the respective territories involved. This necessary preliminary in the international arena should not be seen or interpreted as inconsistent with the collaborative goal.
6. The Participation Agreement should be translated into the languages of both parties unless one party is sufficiently fluent in the language proposed for the Participation Agreement as to be able effectively to waive the need for such translation.

7. At an early stage a decision should be reached as to which language will be used in meetings or correspondence and consideration given as to the practicalities of how meetings will take place, eg. Skype, video-link, etc.

CFL  
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