

DIVORCING A LAWYER



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It is generally not good form to start by telling the reader what an article is not, however, despite what the title might suggest, this is not a guide to consciously uncoupling from your divorce lawyer. What it is, is a collection of practical tips which I hope will be useful in situations where your lay client or lay opponent is a legal professional.

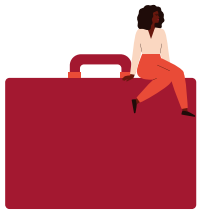
For clients on the receiving end of a legal professional spouse, it can feel daunting and uncomfortable to be entering the legal arena with someone who seemingly has the upper hand or inside knowledge that you may feel you lack. Even in situations where a spouse is a lawyer in a completely different area of practice it can still feel disarming to know that one of you may have a better idea of practice and protocols by virtue of working in the legal industry.

A word of comfort, I hope; family law and practice in England and Wales is hugely different to almost all other areas of specialism and therefore unless a spouse works in a practice area which is family law centric, the knowledge and experience they have from their day job is unlikely to be transferable, nor will they have the ‘inside track’ an opponent may think they do.

The old adage goes “a little bit of knowledge is a dangerous thing” and this can be particularly true for lawyers as clients in their own disputes or litigation. Although doctors often make the worst patients, this is not my experience of representing lawyers in their family law disputes. Rather, the myth that a lay client’s status as a lawyer somehow gives them an advantage is often something that needs to be debunked.

I set out below some issues to look out for which I have come across in cases where I act for or against legal professionals:

What is their role and employment status?



Solicitors are usually divided into Associates and Partners. Associates are employed members of the firm and will

usually have a straightforward income structure of a salary plus bonus with tax paid via PAYE.

There are a few different categories of Partners, some of which are set out below:

- Equity Partners – self-employed, will have rights to share in the profits of the partnership in a certain proportion. The share will vary depending on the firm's profitability during any particular year.
- Fixed Share Partners – self-employed and usually an entitlement to a fixed amount of the partnership profits. They will likely be a party to the firm's partnership agreement.
- Salaried Partners – Partners by title, but subject to an employment contract and therefore employed members of the firm, usually receiving a salary plus bonus in the same way as Associates.

Partners may also have a capital account which holds the funds they have invested in the Partnership and/or any undistributed drawings or profit. It is not unusual for the funds invested in the Partnership to be funded by way of an interest-free (or low interest) loan in the same amount.

Barristers are either self-employed (usually working in chambers) or at the employed bar, working for an organisation as employees and subject to an employment contract.

Barristers at the self-employed bar generate fees by working for lay and professional clients either on an hourly rate basis or in charging a brief fee (for their work considering papers and preparing a case for a court hearing or a conference and attending) and daily refreshers (daily payments made for additional days in court in multi-day hearings).

Self-employed barristers will need to cover certain work-related outgoings such as the rent for their room in chambers and other chambers expenses, clerks' fees, as well as other usual business expenditure such as IT equipment, travel costs and

professional memberships for example. A great number of these will be tax deductible, albeit barristers will be responsible for the initial outlay.

Self-employed barristers will also need to make allowances and put money aside for income tax and VAT. Depending on how quickly a barrister's fees are paid, they may need to pay tax on fees which have been billed, but not yet received. For barristers, work which has been completed and billed to the client but not yet paid is referred to as 'Aged Debt' and should appear as an asset on an asset schedule.

What does their income look like?



Focussing on self-employed lawyers, the starting point for assessing their income will be to look at their detailed tax

returns, however, there are other documents you will need to see, particularly for Partners, in order to piece together an accurate picture of their income.

- The firm's accounts
- Partnership agreement/Deeds to confirm entitlement to profits or profit share
- Confirmation as to whether they receive a fixed share of the profits (i.e. an amount) or is it a percentage? Or is there a 'points-based' system in place, whereby the number of points held determines the share of the profits. How and when are points accrued?
- Does the firm withhold drawings or profit share for tax? Or is that the individual Partner's responsibility?
- Is there any income that is deferred or otherwise withheld for a certain period of time?
- Are there any contingency fee cases on which a Partner or barrister may be entitled to a large profit at a later date, albeit the work was done during the marriage and the date of separation (and any run-off) will become more relevant there.
- Where income/distributions received or earned during the marriage is over and above that needed to meet the family expenditure, should it be treated as income or as accumulated capital which ought to be shared?

Career progression and retirement



Depending on the age of the spouse, you might also be looking at any potential or expected career progression (and

enhanced income) or future retirement, if that is in the foreseeable future. In relation to the former, enquiries about applications for promotion to the partnership or to the equity partnership and maybe even to see copies of recent appraisals in which this may have been discussed may be appropriate.

Similarly with barristers, you could ask questions about applications for Silk and whether this is forthcoming, albeit, it is not uncommon for counsel to see their income take a dip in the couple of years after taking Silk. This is because they can often find that the work available to them as an experienced and well-regarded Senior-Junior is no longer on offer and they must re-establish themselves as a KC.

Retirement can be a little trickier, although a good place to start is to look at the Partnership Agreement, where there may well be a pre-determined age at which Partners must leave the Partnership and retire. Likewise, some roles will be more intense and demanding than others and require Partners to perform at a high level which is not sustainable over a long period of time. The Court may well have sympathy with a spouse who works in a high pressure environment saying they will retire earlier than the Partnership Agreement expects them to, particularly if it has the potential or reality of impacting their health. Some Partners formally retire from the Partnership but continue to work as Consultants thereafter.

Barristers may experience a slowing down or change in their work as they reach retirement age, whether by design or otherwise. Some barristers will make a move towards either private judging or arbitrator work or becoming a full-time salaried judge sitting in courts or tribunals.

Although much will depend on the specific detail of the case, these are a few basic issues to be thinking about as starting points in lawyer-as-client cases. As with all financial remedy cases, the devil will be in the disclosure and therefore questionnaires and a thorough investigation of the resulting documents will be key.