GUIDANCE FOR LITIGATION PROFESSIONALS

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Mindful Business Charter

Explanatory Notes

This guidance has been prepared by a taskforce of representatives of MBC signatories whose details are listed on the next page. Thanks go to each of those individuals for their valuable and thoughtful work in producing it.

The Mindful Business Charter is deliberately a permissive framework, as opposed to a prescriptive rulebook, to guide individuals and organisations to work in more mindful ways so as to reduce the unnecessary stress experienced in work, and to promote healthier and more effective ways of working.

This guidance follows that same approach and is focussed specifically upon, and provides guidance as to the application of MBC principles to, the conduct of litigation. While the guidance takes account of the professional obligations of practitioners, it must be read in the context of those wider obligations which of course (in the event of any conflict) take precedence over this guidance.

To the extent to which it is jurisdiction specific, the guidance has been prepared with the professional obligations of practitioners in England and Wales in mind, but we believe that it will be applicable (with necessary adaptation to take account of relevant obligations) to other jurisdictions. We will happily assist with adapting the guidance for other jurisdictions where this is felt to be helpful.

The guidance consists of eight statements of principle for practitioners to keep in mind, and a series of example scenarios which explore the application of those principles to a range of commonly experienced circumstances in litigation. It does not seek to proscribe or prescribe particular actions or behaviours but rather to encourage mindful consideration and good practice.

We recognise that at times we will need to work long hours and to communicate with fellow professionals at unsocial hours and that some level of stress is inherent in the litigation process. We also recognise that stress can diminish the quality of our cognitive functioning and so our work and, particularly where it is persistent, be a major cause of illness, both physical and mental. The purpose of MBC is to reduce the unnecessary elements of that stress as far as possible, and this guidance is produced with that aim firmly in mind.

While most of this guidance is equally applicable to private practice and in house litigators alike, we recognise that there are some limited circumstances in which the perspectives vary. Where that is the case, we have sought to set that out.

The guidance is intended to be a living document and we invite feedback from users so that we can continue to develop and improve the guidance.

It is our hope that in time all litigation practitioners will have regard to the content of this guidance, and the best practice it seeks to set out, in their work. We also invite those responsible for the training of the next generations of litigators, and the judiciary, to play their part in reinforcing that best practice.

We are grateful to Leigh-Ann Mulcahy KC and his Honour Judge Richard Hacon who have kindly reviewed this guidance and given it their support and approval.

Last updated March 2023

MB Mindful Business Charter

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Statements of Principle

1. The nature of litigation
Litigation is necessarily contentious and adversarial. However, this need not preclude cooperation. In fact, in some jurisdictions (including England and Wales) there are specific obligations placed on parties to co-operate and to assist the Court. Even so, as a process ultimately controlled by a Court or Tribunal, practitioners should recognise that parts of the process (for example as to timetabling) are not always within their control, but are ultimately for the Court or Tribunal to decide, and that it is not the fault of their opponent when those aspects do not go the way the practitioner would have liked.

2. Our role and duties
Our role as practitioners is to understand the issues in dispute, identify those which are capable of resolution through litigation and assist in that resolution. Alongside our duties to our client, we will also owe duties to the Court or Tribunal (including to uphold the rule of law and the proper administration of justice). We should conduct ourselves at all times with these different duties in mind.[1]

3.Objectivity and dispassion
Disputes can be emotionally charged between the parties, which can inhibit their resolution. Part of our role is to seek to address the dispute in a dispassionate and objective manner, to aid its successful resolution, and not to contribute to the emotional charge. For those in private practice it is helpful to keep in mind that the dispute belongs to your client - and that how you report to your client on the conduct of your professional counterparts may unintentionally create and/or escalate the emotional charge.

4. Humanity and respect
Our opponent(s), are human beings with feelings and personal lives outside work, just like us. They are worthy of our respect. Advancing our client's case robustly does not require us to act disrespectfully or harmfully towards them. Just as we are seeking to act and carry out our client's instructions in accordance with our professional responsibilities, we should start from an assumption that (i) our opponents are doing the same, and (ii) that their actions are well intentioned. Direct criticism of an individual, and/or calling into question their professionalism, should be done only extraordinarily and after careful thought and consideration, and with a proper basis.

5. Intent versus impact
There is a difference between intent and impact. We should be mindful of the impact of our own actions regardless of our good intent. Equally, we should be mindful that our opponent may not have intended the impact upon us of their actions.

6. Strategy versus conduct
Aggressive or robust strategy to resolve a dispute does not require us to adopt aggressive conduct. Causing unnecessary stress to our opponents will often be counterproductive given the likely impact upon them and their response and upon the effective management of the case and the proper administration of justice (see note below on the amygdala).

7. Reflection
A measured, mindful, response, having given ourselves the time to think and reflect, and to engage our conscious thinking, will likely be more helpful than an immediate or knee jerk reaction which will often be informed by our automatic, unconscious, thinking.

8. Collective responsibility
We can expect to be treated with the same level of courtesy and respect as we treat others. As practitioners engaged in this area of work, we, along with the judiciary and others involved, all have a collective responsibility for how litigation is conducted and we have the ability, if we so choose, to take deliberate steps to effect meaningful change for the better administration of justice, the better advancement of our clients' interests, the mechanism for the resolution of their disputes and the wellbeing of all those involved in the litigation process.

[1] For broader discussion of these duties in the context of England and Wales please see the relevant guidance from the SRA and the BSB.

A brief word about our amygdala and its impact

The amygdala is a part of our brain that regulates our response to threat. It comes from an evolutionary period in which our main threats were very physical in nature. It is highly automated and efficient.

As soon as we perceive ourselves to be under threat it is triggered to respond and (among other things) it promotes the release of adrenalin and other hormones whose function is to create physiological changes in our bodies to effect the fight or flight response.

Part of this automated response is to reduce the blood supply to our brain, restricting our cognitive functioning. It is our prefrontal cortex, the conscious part of our brain, that is impacted most.

Stress is itself a trigger for the amygdala, hence MBC's focus on reducing stress. Equally, perceived aggressive behaviour towards us will often be assumed to be a threat triggering this fight or flight response.

Further, when we are in this state of amygdala arousal, we are much more likely to perceive things as being a potential threat to us.

This can very easily spiral – if we feel under attack from a professional opponent, our amygdala is likely to be triggered meaning we respond in a more aggressive way than we might ordinarily do which will in turn be likely to trigger that same response in our opponent whose behaviour will then further inflame our amygdala and so on.

This is counterproductive to the effective resolution of disputes.

Litigation, given its adversarial nature, is more prone than other areas of legal work to involve behaviour that we are likely, often unconsciously, to perceive as a threat triggering the amygdala in this way.

As a result, litigators, more than other legal practitioners, need to be mindful of their own states of mind, and also of the potential state of mind of their opponents, and not to trigger them with aggressive behaviour unnecessarily.

MB Mindful Business Charter

SPECIFIC GUIDANCE FOR DIFFERENT SCENARIOS

In the following pages we will look at a series of particular situations (some of which may overlap) that arise in the conduct of litigation, and which could cause stress. In each case we set out some questions to have in mind. We are deliberately not providing answers to those questions because we recognise that some of the situations are unavoidable, and it is not our desire to dictate how to respond.

Our intention, rather, is that the questions will encourage reflection and more mindful behaviour. We will, where appropriate, reference relevant Statements of Principle (SoPs). In some cases, the questions are intended to prompt reflection on whether the situation you are now in was avoidable and therefore whether any lessons can be learned for the future.

It will be apparent that one of our intentions is to try to avoid, where possible, the service of documents on a Friday, and particularly late on a Friday afternoon/evening, or indeed over the weekend. This is, of course, because of the impact this can have on the personal time of the recipients.

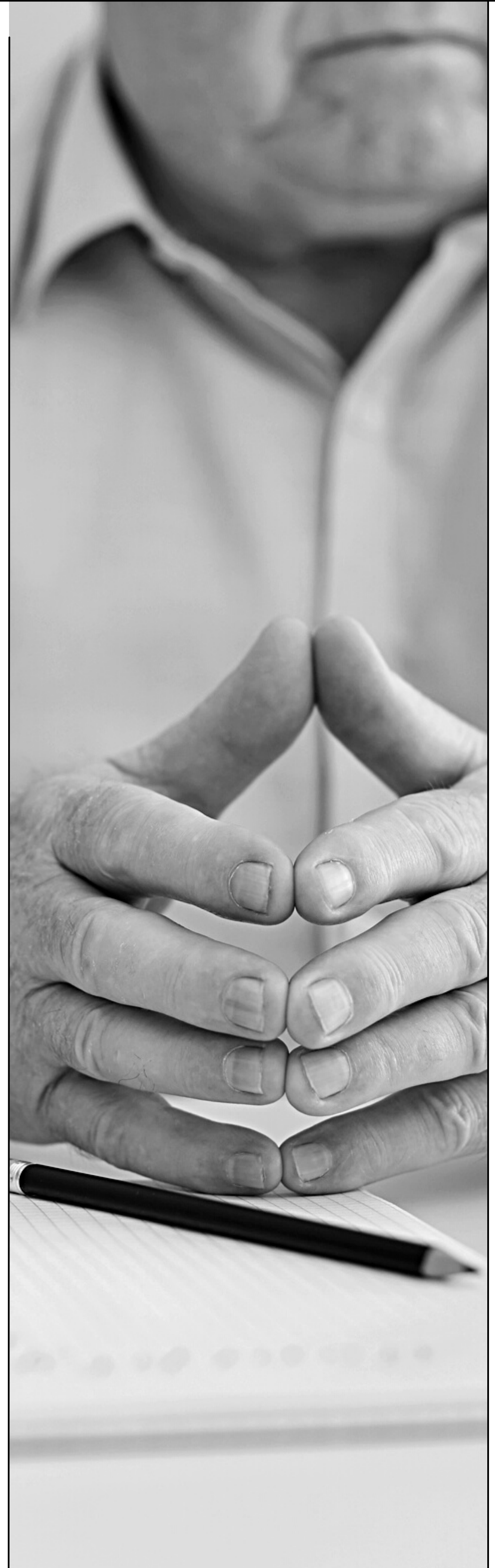
We recognise that direction orders may prescribe service on or before a Friday. We would encourage, therefore, thought being given to agreeing with other parties to litigation, and the Court/Tribunal, that direction orders, where possible, provide for service earlier in the week (or on the Monday of the following week).

Something that runs throughout the examples we reference below is that candour, early forewarning and a willingness to acknowledge and apologise for unintended impacts on your opponent are all to be encouraged.

Much of what follows is deliberately focussed upon behaviours between opponents in litigation and the impact of those behaviours. It would, however, be remiss in a document of this nature not also to encourage all practitioners to have in mind their own team and what they can be doing to reduce the stress experienced by its members. That team may include the lay client, the other members of your own team, those instructing you, if you are counsel, or the counsel you may instruct, as well as expert and other witnesses.

We can all contribute to a more effective and healthier litigation culture by keeping in mind the impact of our behaviours on all those with whom we interact – the SoPs apply equally to them all and much of the guidance in these example scenarios could be applied (with suitable amendment) to them.

Finally, the same applies to the judiciary and other Court staff whose role, and our potential impact upon whom, is often overlooked.

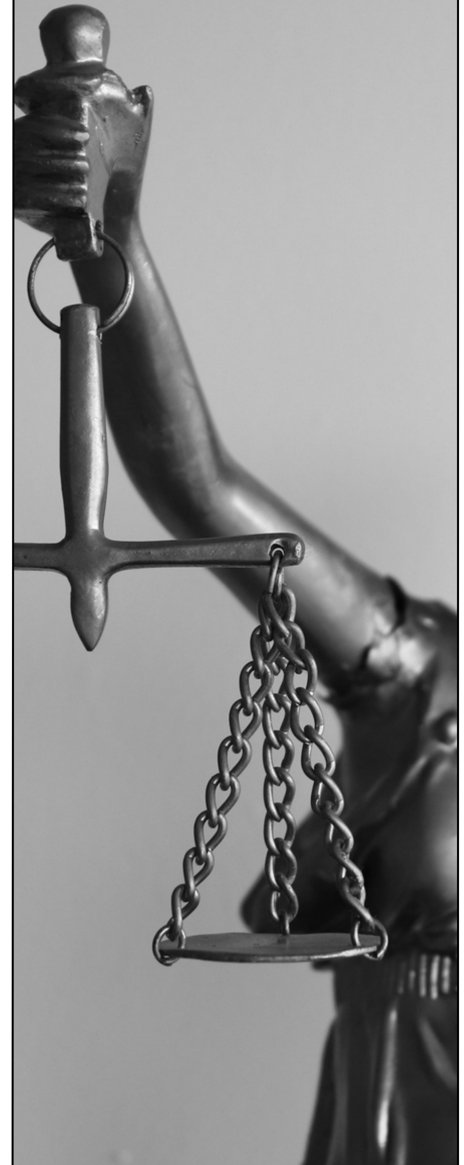


1. THE OUTSET OF A CASE

The tone of litigation is often set at the outset of a case. Fractious and unhelpful relations can be created. Alternatively, good, collaborative relations can be established early on which can both facilitate the effective conduct of the litigation and limit the potential for participants to be caused damaging stress. At the outset of litigation and/or at an early stage consider whether it would be helpful to discuss with your opponent any or all of the following:

- Your team members, their role, and their working hours;
- A general desire to collaborate and what that means for each of you;
- Preferred methods of communication;
- How you would like your opponent to raise concerns they may have about your conduct;
- Are there likely to be other related cases which will need to be factored in;
- Are there opportunities for you to collaborate over, for example, the use of technology in disclosure or other aspects of the case;
- Your understanding of what close of business means in a deadline; and
- If relevant people are in different locations/time zones (noting that this might be confidential and sensitive in certain cases) and whether this will have an impact on the conduct of the litigation, responsiveness and other issues.

Relevant SoPs – All



2. SERVICE LATE IN THE EVENING, ON A FRIDAY, OR OVER THE WEEKEND

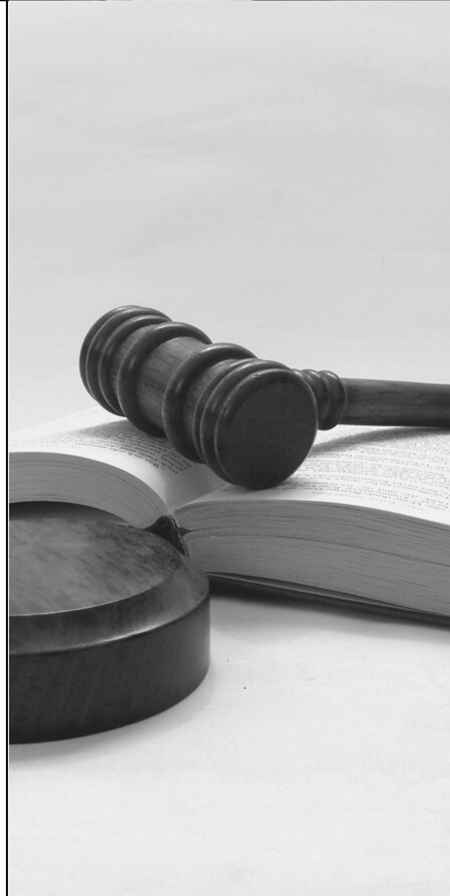
This might be service of documents or correspondence. It will be obvious that this can cause disruption to the recipients' rest time. Before serving documents in this way consider the following:

- Is service by the relevant date required in compliance with a Court/Tribunal order?
- Is it possible to forewarn the recipient that documents are to be served, when they are expected to be served and to discuss and agree how and to whom it would be most helpful to copy them (including for example the recipient's counsel and/or expert)?
- With greater planning on your part, would it have been possible to have been in a position to serve earlier – and, if so, what lessons can be learned for the future, and would it be possible/appropriate to apologise for and explain the reasons for the timing?
- Is it necessary to serve that day or could you reasonably delay service until the following working day? If so, would it be possible to speak to the recipient to ask whether they would prefer service immediately or for it to be delayed?

2. (continued)

- If serving by email, and you want/need to send it out, is it possible to use the email function to delay delivery until the following working day?
- Is service at that time motivated by any desire deliberately to cause disruption/hardship to the recipient?
- Are there relevant time zone or location issues which you ought to consider such as knowing that your opponent's client is in a different time zone?

Relevant SoPs – 2 (Our role and duties), 3 (Objectivity and dispassion), 4 (Humanity and respect), 5 (Intent vs impact), 6 (Strategy vs conduct) and 8 (Collective responsibility)

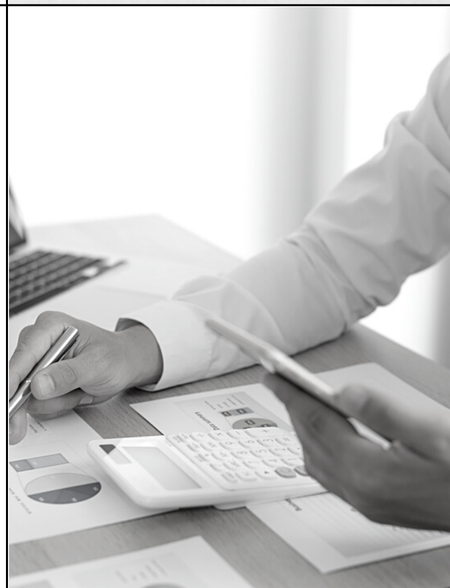


3. RECEIPT OF SERVICE LATE IN THE EVENING, ON A FRIDAY, OR OVER THE WEEKEND

If you are the recipient of service of documents or correspondence in this way, it can cause irritation. Before responding, consider the following:

- Was service by the relevant date required in compliance with a Court/Tribunal order?
- Have any of your decisions or actions contributed to service in this way, for example as a result of when you supplied necessary preceding information or documents?
- Have you previously effected service on the sender in the same / a similar way?
- Have you genuinely sought to act in a collaborative way with the sender, with which this service seems out of sync?
- Before you assume ill intent, might there be genuine and well-founded reasons, of which you may be unaware, why service in this way was necessary?

Relevant SoPs – 2 (Our role and duties), 3 (Objectivity and dispassion), 4 (Humanity and respect), 5 (Intent vs impact), 6 (Strategy vs conduct), 7 (Reflection) and 8 (Collective responsibility)



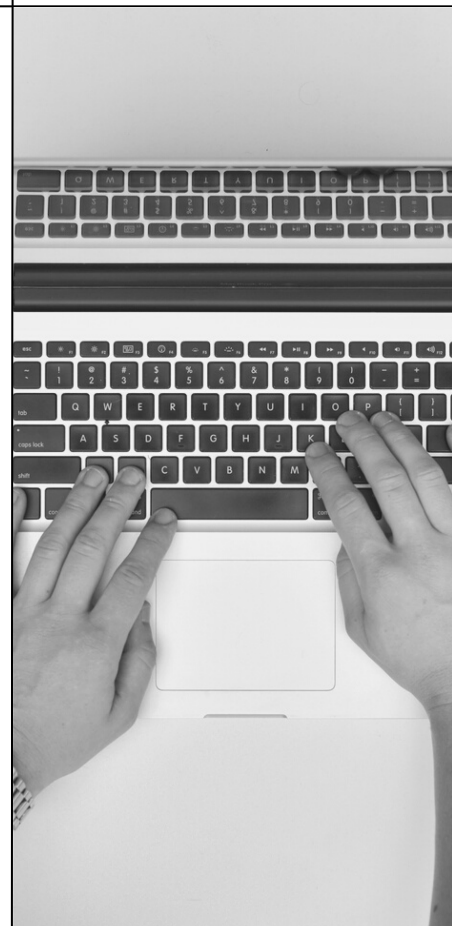
4. SENDING MULTIPLE LETTERS OR EMAILS OVER A SHORT PERIOD OF TIME

Receiving multiple letters or emails over a short period of time can be oppressive and stress inducing. There may be genuine reasons for it, such as a fast-paced discussion of urgent issues or a desire to separate correspondence on different aspects of a case. Before sending multiple letters or emails, whether on the same day or over a short period of time, consider the following:

4. (continued)

- Are you motivated by a desire to overwhelm and/or irritate the recipient?
- Before sending a letter reflect on whether there may be other things on which you need to correspond shortly which might be better included in the one letter?
- Rather than multiple letters would it be possible to deal with all issues in one letter or is it genuinely helpful to separate out correspondence on different aspects of the case?
- Is there any good reason to hold correspondence back once ready, for the purpose of sending it with other correspondence?
- If there are multiple issues to raise with the recipient, would it be possible/preferable to arrange to speak with them to discuss the issues in place of, or at least in advance of, the correspondence?
- Do subsequent letters need to be sent immediately or would it be possible to delay some or all of them?

Relevant SoPs – 2 (Our role and duties), 3 (Objectivity and dispassion, 4 (Humanity and respect), 5 (Intent vs impact), 6 (Strategy vs conduct), 7 (Reflection) and 8 (Collective responsibility)



5. BEING INSTRUCTED OR ASKED BY YOUR CLIENT TO BEHAVE IN WAYS THAT CAUSE YOU DISCOMFORT

As referenced in SoP 1 (The nature of litigation) and SoP 2 (Our role and duties), litigation is necessarily contentious and may often be fuelled or accompanied by strong emotion on the part of your client, which may or may not be justified. This may result in you being asked/encouraged to behave towards your opponent, or to the Court/Tribunal and its Orders, in ways that are contrary to the SoPs and the broader content of this guidance and/or otherwise give you cause for concern. In these situations, consider the following:

- Do you need to speak to a senior colleague for support/guidance?
- Are you being asked to act contrary to your professional duties?
- Has your conduct (for example in how you have presented the conduct of your opponent) contributed to the situation and, if so, what can you do to undo that and what can you learn for the future?
- Can you explain to your client the nature of your concern and its basis?
- Can you explain to your client any potential negative consequences of certain behaviour?
- If you are minded to comply with the request, are you able, while respecting your duties to your client, to indicate to your opponent (whether by the content of correspondence such as "we are instructed…") or by a telephone call in advance that this is happening in order to try to avoid unnecessary escalation?

Relevant SoPs – All

6. DISCUSSION WITH YOUR CLIENT ABOUT YOUR OPPONENT'S ACTIONS

The way in which we relay events to our client can have a significant impact upon how they perceive them, how they then react and to the subsequent conduct of the litigation. Before criticising your opponent or their behaviour to your client consider the following:

- Are you being objective and fair?
- Have your actions or decisions contributed to the situation, and do you need to explain that?
- Are you reacting in the heat of the moment, and would you be better placed taking time to reflect?
- Are you remaining dispassionate when you communicate with your client (while still demonstrating empathy for the situation)?
- Is the behaviour in line with, or capable of being reasonably construed by your opponent as being in line with or required by, an Order of the Court or Tribunal?
- Have you genuinely sought to act in a collaborative way with your opponent, with which this behaviour on their part seems out of sync?
- Before you assume ill intent, might there be genuine and well-founded reasons for your opponent's behaviour of which you may be unaware?

Relevant SoPs - All

7. INFLAMMATORY CORRESPONDENCE

Litigation is adversarial. It is very easy to be angered and/or insulted by the perceived behaviour of one's counterpart. We and they only have the benefit of one perspective and may find it hard to recognise the existence of, or understand, another perspective, particularly when feeling threatened. It is also very easy to perceive unhelpful behaviour from an opponent as being personally directed. The result will often be an instinctive desire to express outrage and indignation in correspondence which may escalate in an unconstructive fashion, e.g. to a personal attack on an opponent, perhaps calling into question their professional conduct with threats to report them to a relevant regulator and/or the Court/Tribunal. This has a tendency to escalate the temperature of correspondence to the detriment of the resolution of the underlying dispute.

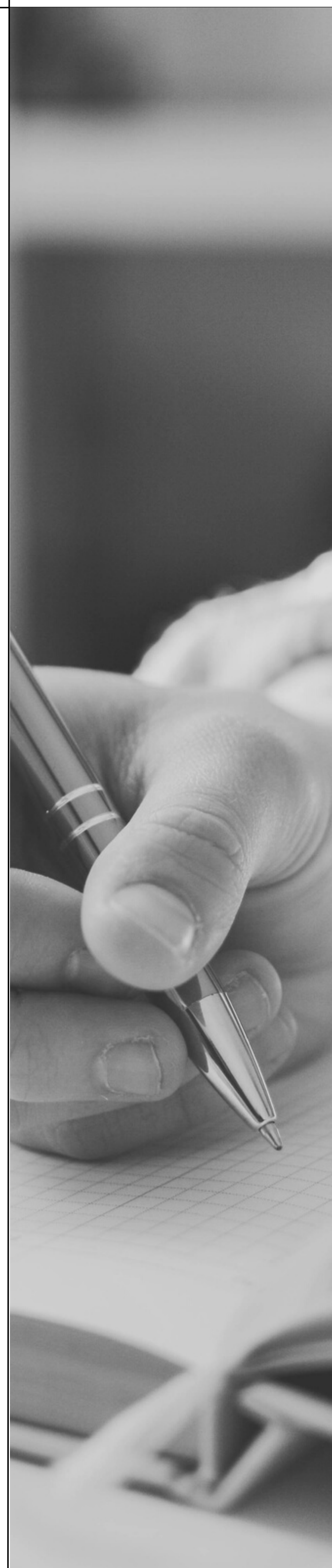
Further, although some correspondence of this nature is sometimes written with the intention that it might be read by the Court/Tribunal in due course, our experience is that judges are rarely persuaded by angry and emotive correspondence, may simply ignore it or may take it into account against the author when considering costs and other issues. Further, although there unfortunately are situations in which parties and/or their professional representatives behave poorly, withhold evidence, mislead the Court and so on, our experience is that this is much rarer than would be suggested by the volume of allegations of the same in inter party correspondence.

7. (continued)

Before sending angry and outraged correspondence, or making any allegation that might be construed as a personal attack on your opponent, consider the following:

- Are you being objective and fair?
- Have your actions or decisions contributed to the situation, and do you need to explain that?
- Are you reacting in the heat of the moment, and would you be better placed taking time to reflect and to review your response in light of that reflection?
- Is the behaviour in line with, or capable of being reasonably construed by your opponent as being in line with or required by, an Order of the Court or Tribunal?
- Have you genuinely sought to act in a collaborative way with your opponent, with which this behaviour on their part seems out of sync?
- Before you assume ill intent, might there be genuine and well-founded reasons for your opponent's behaviour of which you may be unaware?
- Would you benefit from input/review of your draft response from a colleague who is less emotionally invested in the matter?
- Being as honest and objective as you are able, how is your proposed letter going to be perceived by your opponent and/or the Court/Tribunal?
- Does your proposed response contribute to or detract from the effective resolution of the underlying dispute?
- Are you able to express your disagreement and/or dissatisfaction in terms that are less emotion fuelled, albeit strongly worded?
- The legal profession (and therefore each member thereof) depends upon its reputation for professional integrity. While there are occasions when genuinely egregious behaviour should be called out, take care only to do so with justification.

- Relevant SoPs - All



8. CALLING YOUR OPPONENT WITHOUT WARNING

A telephone call will often be a useful way to discuss and resolve issues between opposing lawyers. They can help you to understand another's perspective, are less likely to involve inflamed language that might be contained in correspondence, can more easily cut through issues and can then be confirmed in writing.

We would encourage their use. However, some people may find unplanned calls challenging, particularly where there is a sense in which the person making the call has had time to prepare themselves (and gather their team around them) or when the time of the call is unsocial or has caught the recipient unprepared and/or under other time pressures of which you are likely to be unaware.

An effective call is much more likely to happen when both parties are prepared for it and have set aside time for it.

This might be something that is discussed between counterparts at the start of litigation but absent any such discussion, before calling your opponent without warning consider the following:

- Are you required to make the call pursuant to any Order of the Court/Tribunal?
- Is it necessary to make the call immediately or would you be able to send an email asking for a convenient time to speak – or make the call to arrange a time to speak substantively?
- What time of day is it, for example is it late on a Friday or outside "core hours"?
- Are you proposing to call in the heat of the moment and would it be helpful to allow some time for reflection – whether for you or your opponent?
- Is your opponent likely to want other members of their own team present and/or time to prepare?
- Similarly, have you included anyone else on your team for the call and, if so, is your opponent likely to feel ambushed/outnumbered?
- Are you calling a more junior individual, and, if so, is that appropriate or might they feel ambushed?
-
- Relevant SoPs – 2 (Our Role and duties), 3 (Objectivity and dispassion), 4 (Humanity and respect), 5 (Intent vs Impact), 6 (Strategy vs Conduct) and 7 (Reflection).

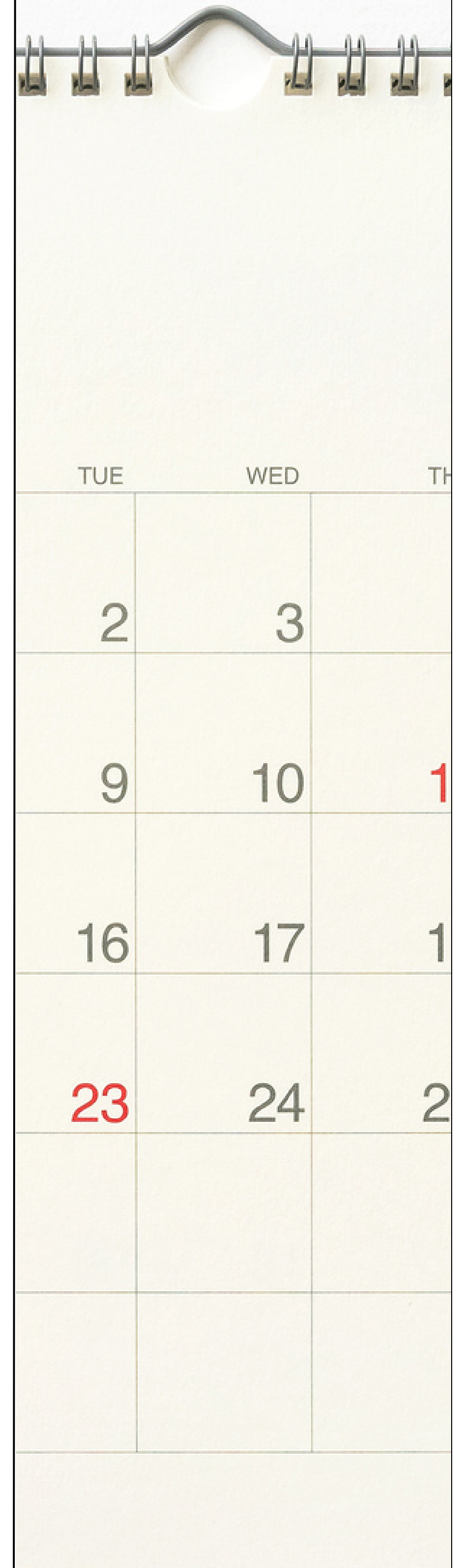
9. SETTING OF DEADLINES FOR A RESPONSE

It is common practice in correspondence to set the opposing party a deadline to do something failing which certain action may be taken – for example an application to the Court/Tribunal.

There is nothing wrong with this practice and indeed it may often be the most effective way to get a reluctant party to act. Like many things, however, it can be overused and can be, or appear to be, aggressive. It can certainly cause stress. Before issuing a deadline consider the following:

- Does the proposed deadline provide a reasonable time frame within which to comply bearing in mind what is being demanded and the time that will take, the time of day and the day of the week the deadline is being issued, what you know about the availability of key people on your opponent's side, relevant time zones and other relevant factors, balanced against the importance and urgency of the task being required?
- ·Is your language clear and unambiguous – "we will" do x, y and z as opposed to "we may"?
- ·Would it be possible to negotiate rather than impose a deadline – a letter could specify what is required with a follow up call being proposed to agree a date by when it should be done?
- ·Will you be in a position promptly to respond to the task required by the deadline – if not could further time be provided to your opponent? For example, if you are stipulating a 4.30pm deadline, could it be by 9am the following morning and make no material difference to you?
- ·Will you be in position to respond to non-compliance immediately upon the deadline – if not could further time be provided to your opponent?
- ·Does whoever will be taking the next step (such as an application to the Court/Tribunal) upon failure to comply agree with the deadline and are they in a position to take that step in good time thereafter?
- ·Is the imposition of the deadline for the better conduct of the litigation or is it to cause irritation to your opponent?
- ·Is there relevant previous experience in the litigation which would inform whether this approach is appropriate in the circumstances?

- Relevant SoPs – All



10. DEALING WITH DEADLINES

Deadlines, whether imposed by Court Rules, an Order from the Court/Tribunal or opposing parties are an integral part of the litigation process.

However, they can also be a source of stress and friction which in many cases is avoidable (or at least may be mitigated against). Much will depend on the circumstances and as a result we do not think it helpful to list questions to consider under this heading.

What we do ask practitioners to be mindful of, however, are the following:

- It goes without saying that deadlines should be clear and unambiguous.
- There may be benefits to not having deadlines on a Friday.
- It may be helpful to agree at the outset of litigation what the parties will expect. For example, parties could (subject to any relevant Court/Tribunal Order(s) or rules) agree that a deadline for a given day means by midnight on that day (or even by 9am the following morning).
- Where a deadline is for exchange, it is preferable to ensure these are in working hours to avoid, for example, one party having to wait until late in the evening for the other party to be ready (with no clear indication of the timing) – this could be avoided by exchanging early the following morning.
- Parties often prepare for deadlines and plan their own work on the assumption that they will be met. Therefore, stress and cost can be reduced by being upfront as early as possible if a deadline is unlikely to be met and if an extension may be required.
- Requests for extensions and responses to such requests are also less likely to cause irritation if a clear explanation is provided. Further, routinely asking for extended deadlines may have cost consequences as may unreasonably refusing a request for an extension.

Relevant SoPs – All

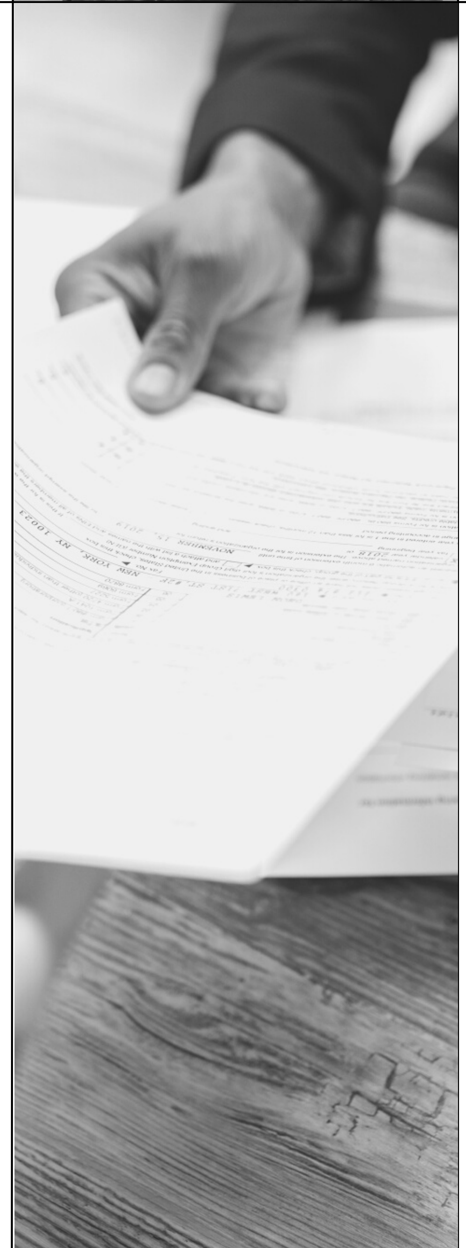
11. RESPONDING TO PROPOSALS FROM YOUR OPPONENT

As previously noted, litigation is adversarial. Further, one party, the Defendant usually, will not have wanted the litigation and may see little benefit in engaging with it. There may also be cost issues where one party is well funded and the other not, and perhaps a perceived benefit in dragging things out in the hope an issue may go away. In those circumstances it is understandable that there may be a reluctance on the part of one party or both to collaborate with the other.

That said, it can, of course, create stress on the other side if, for example, proposals (such as for a timetable or system for disclosure) are criticised or rejected without any constructive engagement, such as a counter proposal.

When the issue of collaboration arises, and also where you perceive that the other side is not collaborating, we would invite you to keep in mind all of the SoPs when considering your response, not least the professional obligation under the Overriding Objective to cooperate.

12. LACK OF TRANSPARENCY AND THE LATE RECEIPT OF RELEVANT INFORMATION OR DOCUMENTS



The failure to share information when it is appropriate to do so can have a big impact on the time available to prepare and respond. This is particularly so in the run up to a hearing or trial.

This type of conduct typically becomes apparent after the fact when it is too late to do anything about it, and when it would be a waste of time and resources to make any kind of complaint. For example, one side's skeleton argument may refer to a document or piece of evidence that was not made available to the other side before skeleton arguments were due to be exchanged.

This type of conduct has an impact on the party receiving the document or evidence late because it increases the time pressure in preparing for the hearing or trial.

It is also fair to say that even with the best intentions, new information may come to light at a late stage for a whole range of reasons, particularly as individuals are forced to focus on the issue in the run up to a trial.

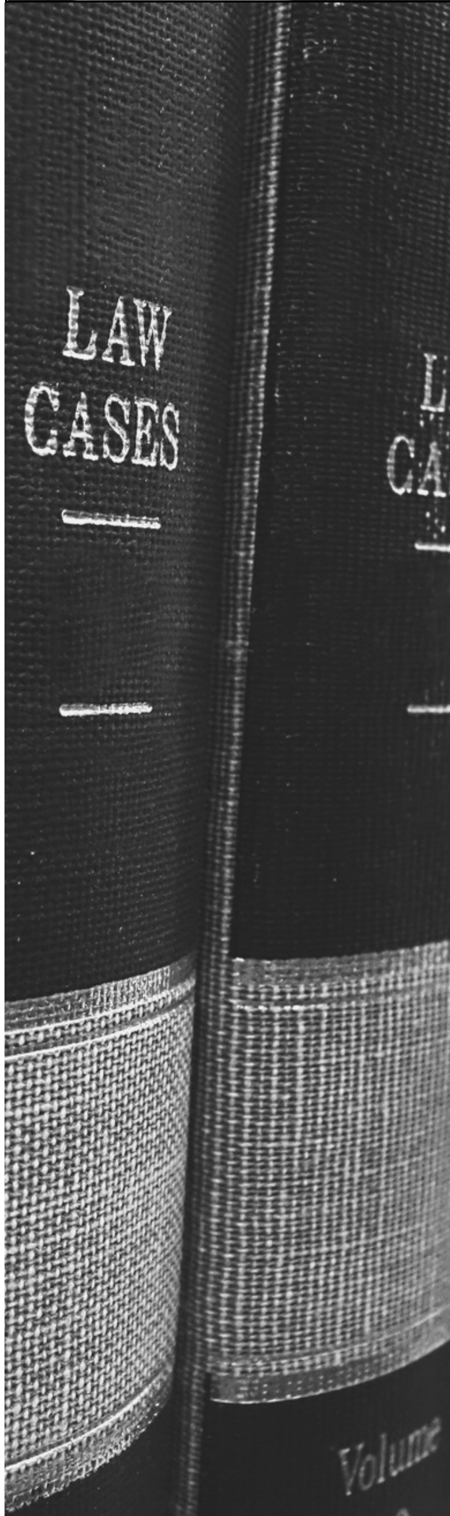
When you receive information or documents from your client at a late stage (or receive late disclosure from the other side) consider the following:

- Is there any justifiable reason not to disclose them immediately to the other side?
- What is the reason for their emergence at this point and why did they not emerge earlier?
- Is there likely to be other similarly undisclosed documentation?

12 Continued

- What is the likely impact upon the effective and timely preparation for trial/a hearing for all parties and their representatives?
- At the very least are you able to forewarn the other side that the documents/information have come to light, provide some broad description of what they are and relate to, a timetable for their disclosure and an explanation for their late emergence?
- Has the relevance of the information/documents come about as a result of changes to the way the case is being argued?
- When provided with late disclosure, are you able to take a dispassionate view as to the cause and avoid assumptions of ill intent unless the contrary becomes clear?

Relevant SoPs – All



13. MAKING LATE OR DISINGENUOUSLY TIMED APPLICATIONS

The final stages of litigation, whether that be a negotiated settlement or a trial, are necessarily demanding of time and energy and can involve significant pressure and stress.

Although good case management is there to ensure the orderly dispensation of justice, it also serves to manage the strain on parties and their representatives by planning and spreading the workload of preparation over a longer period.

This can be undone by parties who fail to cooperate with that orderly preparation, focus on issues properly only at a very late stage and seek to make late applications, the impact, if not intent, of which is to distract the opponent from their preparation and unnecessarily increase both stress and cost.

In the extreme this can involve late attempts fundamentally to reshape the nature of the dispute or the key issues to be determined at trial or a hearing.

When contemplating applications late in the process or close to a major hearing consider the following:

- Why has this emerged at this late stage and what could have been done differently to have avoided that?
- Are you able to forewarn your opponent (and perhaps the Court/Tribunal) so they can take this into account in their preparation as soon as possible?
- Is the application for genuine and legitimate purposes or is the intention to distract your opponent?
- Are you able to refine as far as possible the application you wish to make?
- What has been the level of collaboration and cooperation to date and how far is that relevant to what you do and how you do it at this stage?

Relevant SoPs – All

Rehumanising Litigation

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