

# Family feud - Pitfalls of acting for multiple family members

In suburban and country practice, it's very common for solicitors to be approached to act for multiple members of the same family in transactions where they share an interest.

These transactions may appear straightforward: siblings engaging in a joint purchase, parents acting as guarantors for an adult child's mortgage or business loan, intra-family property transfers, and dozens of other possibilities - if family relationships break down these transactions can expose the solicitor to a minefield of potential claims.

While, apparently, the family members are approaching a solicitor for a common purpose, it's important not to lose sight of what may be a range of different interests. When acting for a single client, it's important to identify and act in their interests. However, when being instructed by multiple parties it's more difficult, and more important, to identify individual interests and to understand where interests are common and where they diverge. When everyone is happy, and seem to be on the same page, it can be easy to overlook the many potential pitfalls.

## What could possibly go wrong?

The following are just a few examples of the many things that could create problems:

- ▼ If an adult child defaults on a mortgage or loan, an elderly parent might be at risk of losing their home
- ▼ A divorce might change family dynamics, resulting in a claim where a solicitor failed to advise one party of their interests

- ▼ If an elderly parent dies, the remaining spouse might decide that they would rather support a new partner than their adult child
- ▼ In the aftermath of a parent's death, siblings might claim that the solicitor disadvantaged them by transferring property which they may have been entitled to inherit.

## Conflicts of Interest or Conflicts of Duty

We talk a lot about conflicts of interest but, in these circumstances, a single solicitor acting for multiple parties is facing a conflict of duties. As a solicitor, you have a duty to act in your client's interests but, where you have more than one client, these interests will often conflict. A solicitor's obligations in respect of a conflict are incidents of a fiduciary relationship. To act for multiple clients with conflicting interests is a prima facie breach of fiduciary duty unless there is full disclosure of all material facts and fully informed consent.

Establishing the full disclosure of material facts and fully informed consent may be very difficult, in the event of a claim. This is due, in part, to the fact that determining exactly which matters are material will often not be clear until after something has gone wrong. Often, the one issue where advice wasn't provided will become the central issue in the event of a claim.



As these claims often raise allegations of breach of fiduciary duty, they pose an even greater risk to solicitors than an ordinary professional negligence claim. Claims for breach of fiduciary duty give rise to a right of equitable compensation which is non-apportionable, and may be an exception to the limitation of liability provided by the Professional Standards Scheme.

### How can you protect your practice?

First and foremost, it's essential to identify exactly who is your client. Remember that, while they may approach you with a common purpose, multiple family members may also have differing interests and, as a consequence, it may not be appropriate for you to act for them all.

It's essential to ensure that you know who will be instructing you, and in whose interests you should be acting.

Further it's important to ensure that your retainer carefully constrains the work that you propose to undertake on their behalf and doesn't leave you open to allegations that you failed to advise them on matters that are outside the specific work you agreed to undertake.

And, finally, when you identify competing interests, don't hesitate to refer individuals for independent advice. It might just protect you from a future claim.

- ▼ Identify who is your client
- ▼ Understand your client's interests
- ▼ Understand competing interests of other family members
- ▼ Ensure your retainer clearly defines the work being done
- ▼ Refer for independent advice.