

**EXETER FAMILY COURT CLINIC - SCHEME PROTOCOL**

1. This document describes the Exeter Family Court Clinic (‘the Clinic’), what it will do and how it will operate.

**Definitions**

1. In this document
2. ‘Volunteer’ means a barrister or solicitor who volunteers to give support through the Clinic;
3. ‘ECCC’ means Exeter Combined Court Centre;
4. ‘CASS+’ means the charity (number 1160513)
5. ‘LiPs’ means litigants in person.
6. The Clinic is a collaboration between volunteer members of the Family Bar, Solicitors, Advocate and CASS+. It has the support of local Chambers, the Western Circuit, and Her Honour Judge Ingham, Designated Family Court Judge for Exeter.
7. Save as explicitly provided for in this Protocol, the Clinic is entirely independent of HMCTS and the judiciary although it has their support.

**Aims**

1. The Clinic aims to contribute to fairer and more efficient Family Court proceedings involving LiPs.
2. The aim of the Clinic is to help people who cannot afford legal advice to represent themselves in their court case and to guide them towards other support services.
3. The scheme is also designed to make available the assistance of CASS+ to unrepresented parties. It also helps identify cases that may be suitable for subsequent assistance through Advocate.
4. Success will be measured through Clinic users reporting:
5. Increased awareness of how the Family Court works
6. Sense of procedural fairness
7. Sense of being more prepared
8. Knowing where to go for help
9. Sense of being better able to handle their case

**Scope**

1. The Clinic is designed for persons without legal representation.
2. For practical reasons, the Clinic will not apply a “means test” to confirm the inability of the unrepresented person to afford legal representation.
3. The Clinic will provide limited free support to a LiP involved in **current private law family court proceedings (disputes between family members about arrangements for children)** and **Family Law Act proceedings (non-molestation and occupation orders)**.
4. The Clinic is also available to people **considering these actions**, but who have not yet issued proceedings.
5. The Clinic does **not** offer support or advice to those considering or involved in divorce or financial matters on separation or care proceedings. It does not assist in Special Guardianship cases.
6. The Clinic offers the LiPs free support in the form of 40-minute pre-booked appointments held on the final Friday of the month at ECCC. Appointments are held in person, and cannot be conducted remotely (for example by phone or Skype).
7. The exact nature of the support given during an appointment will be a matter for the Volunteer. In general terms, it is expected that such support will likely involve giving information, signposting to resources and may include legal advice. The Clinic does not provide representation in Court.

**Access to the Clinic and role of Advocate and CASSPLUS**

1. HMCTS and CASSPLUS will display publicity material and signpost court users to the Clinic where appropriate.
2. LiPs must make an appointment via Advocate, using their email address southwestprobono@weareadvocate.org.uk.
3. Once in receipt of an email from the LiP, Advocate will ask the LiP to complete the ‘Booking Form’, providing details of the issue with which they are seeking assistance and their availability for a Clinic Appointment.
4. The Booking Form has been designed to ensure that sufficient information is gathered in advance of the appointment to enable conflict checks to be properly carried out.
5. Some LiPs may need assistance with completing the Booking Form and understanding what information is needed from them in order to request a Clinic appointment. CASS+ will make themselves available to assist those LiPs will submitting the Booking Form.
6. It is expected that the majority of LiPs will have access to email. On the rare occasion that the LiP does not have access to email or the internet, CASS+ will make themselves available to submit the Booking Form on the LiP’s behalf, together with a signed form of authority.
7. Advocate will check the Clinic’s records when receiving a booking request. If a LiP has accessed the Clinic previously, Advocate will usually decline the booking and direct the LiP to alternative support options. If a follow-up appointment is agreed, any previous Concluding Letters will be shared with the Volunteer to assist them.
8. Advocate will send the LiP the Explanatory Note for LiPs at the time of booking an appointment. The Explanatory Note will explain, in simple language, how the Clinic operates. Advocate will also provide a copy of the Data Protection Notice.
9. LiPs will be strongly encouraged to visit CASS+ (also in ECCC, on the ground floor) in the week leading up to their appointment with the Clinic. CASS+ will assist the LiP with organising their paperwork and preparing any questions for their upcoming Clinic appointment.
10. On Clinic days, the usher will direct Clinic users to the Clinic on arrival. The staff at the ECCC will provide a room for the Clinic on the agreed dates.
11. Some LiPs seeking assistance through the Clinic may have particular needs and vulnerabilities. Those LiPs will be supported by CASS+ and Volunteers, as necessary.
12. However, for the avoidance of doubt, if a particular LiP has a live case in the Family Court in ECCC and has a Court-appointed intermediary – which is something the LiP will be asked to confirm , the LiP must be reminded that the Clinic is separate to the ECCC and the judiciary and, further, the LiP must made aware that the intermediary will not be available to support them, or explain matters to them, during their Clinic appointment.
13. In cases where the LiP has a Court appointed intermediary, CASS+ will consider whether one of their volunteer staff can be available to sit with the LiP during the Clinic appointment and, to answer the LiP’s follow-up questions (including questions about the contents of the Appointment Summary Form, discussed below).

**Volunteers and professional insurance**

1. The Volunteers will be family lawyers (solicitors or barristers holding a full practising certificate) with the requisite experience, to be determined by the Clinic Committee.
2. A barrister:
3. will volunteer under the auspices of Advocate; and
4. is insured under their indemnity insurance with the Bar Mutual Indemnity Fund
5. A solicitor, legal executive, or other legal professional
6. will volunteer under the auspices of their respective law firm; and
7. will operate under their firm’s indemnity insurance; and
8. will need to provide their insurer with a copy of this protocol document in order to obtain their approval to work being carried out under that policy prior to undertaking any pro bono work with this clinic.
9. All volunteers must be mindful of their respective Codes of Conduct.

**Role of the Volunteer**

1. The Volunteers will volunteer under a duty rota administered and organised by Advocate and available to sign up to online at ww.probonodutyschemes.org.uk.
2. Each Volunteer will usually be expected to undertake at least one day on the rota in each six month period.
3. The Volunteer will be responsible for undertaking conflict checks prior to their duty day. The Volunteer is responsible for establishing that no conflict of interest arises from any previous or existing instructions. The barrister volunteers will also be responsible for ensuring that their clerks are informed of the names of all parties and opposing parties and the case number so that future conflict checks can be undertaken.
4. Once a Volunteer has committed to a day on the rota (after completing relevant conflict checks), this constitutes a professional commitment and must be treated as such. Volunteers are responsible for ensuring their clerks or colleagues are aware of the commitment and it is marked in their diaries. Volunteers should only withdraw in exceptional circumstances and are responsible for providing a replacement. In the event that no substitute can be found, it is the responsibility of the Volunteer to notify Advocate that the Clinic will not run on that day so that any LiP attending can be notified by Advocate.
5. A Volunteer will be available to attend the Clinic at the ECCC, on the last Friday of each month from 9:00am to 4pm. Clinic appointments will run for 40-minute slots at 09:30, 10:30, 11:30, 13:30 and 14:30. Friday has been intentionally selected as a day when there are generally fewer private law family lists running at EFCC, as the Clinic is intended to provide support rather than representation.
6. The frequency of the Clinic will be kept under review and will respond to demand where Volunteer capacity allows.
7. The Volunteer will be clear on the limitations of the Clinic as set out in the Explanatory Note for LiPs, which is provided to all LiPs at the time of booking their appointment.
8. The Volunteer will be responsible for reviewing the Clinic users’ booking forms. Otherwise, the Volunteer will be provided with relevant papers by the LiP at the time of that LiP’s Clinic appointment. The LiP is encouraged to make use of CASS+ in the week leading up to their appointment so that the appointment can run as efficiently as possible.
9. It is a matter for the Volunteer to decide the exact nature of the support given to the LiP during the appointment. Typically, it is expected that the Volunteer will give information, signpost the LiP to further resources, and give general guidance on court procedure and legal advice. Given the appointment lengths are short, Volunteers are not expected to give detailed advice about the merits of the LiP’s claim. The Clinic does not provide representation.
10. A Volunteer who is of the opinion that, when having regard to the complexity of the issues arising and the standard of the documentation available, that it would not be reasonable to expect a member of the Family Bar or solicitor or legal executive to obtain a sufficient grasp of the case to be able to provide advice at the appointment, is not obliged to give advice. However, the Volunteer may (if they consider appropriate to do so and it is in accordance with the wishes of the LiP) refer the assisted party to seek assistance from Advocate.
11. While the Volunteer will make every reasonable effort to provide whatever assistance they reasonably can to any LiP, no Volunteer will be required to give detailed advice or assistance in any case in which in their opinion, the LiP is adopting an unreasonable and/or unlawful and/or untruthful stance or, in particular, wishes to advance a case which is for any other reason – in the opinion of the Volunteer – unmeritorious, time-wasting or vexatious. In such cases, the Volunteer must in the Concluding Letter state, “why I am not in a position to advise you” and provide a copy to the LiP and Advocate by emailing southwestprono@weareadvocate.org.uk for their records.
12. All support given to the LiP will be recorded in the Concluding Letter, using the template provided, setting out the issues discussed and support given, including a summary of next steps where appropriate.
13. If an Advocate referral is to be made, or has been made, that will be recorded in the Concluding Letter. It is important to use the Concluding Letter Template, which clearly records that there is no ongoing retainer or obligation to carry out further work. The LiP should be given a copy of the Concluding Letter, and a copy should also be lodged with Advocate for their records.
14. The Volunteer may consider it prudent to keep a copy of all Appointment summary forms for their own records.
15. In any referred case which is not resolved to a conclusion (i.e. overall settlement of the matters in dispute) whether or not advice and assistance has been provided, the Volunteer will consider whether the case is suitable for a referral to Advocate with a recommendation that 'conventional' pro bono representation be sought, and if so to provide appropriate information to the LiP and indicate this on the Concluding Letter. Summary notes may include an indication of a willingness to accept instructions on behalf of Advocate to represent the LiP at a hearing (if they are a barrister). The volunteer will provide details of what they have done, what they are willing to do going forward, and any information they obtained regarding the LiP’s means if any.
16. In the Concluding Letter, the Volunteer should note any relevant observations made during advice and express any view to Advocate about the merits and nature of any further assistance.
17. It is important to keep in mind that:
18. Advocate will generally require at least 3 weeks to review the request for further pro bono assistance, determine whether further assistance is possible based on financial means test and if necessary to allocate pro bono Counsel;
19. the normal limit to the pro bono assistance of Counsel is 3 days (to include preparation), though this limit can be exceeded in an appropriate case; and
20. even where a barrister is willing and available to assist, undertaking the case through Advocate is not guaranteed.
21. It is possible that the LiP will be accompanied by a “McKenzie friend”. The Volunteer is asked to respect this choice, but in the event of difficulty or complexity to raise the matter with CASS+ as soon as possible. As noted above, CASS+ may also make themselves available to support LiPs with particular vulnerabilities, including those to whom the Court has appointed an intermediary.

**Role of CASS+**

1. As noted above, CASS+ will:
	1. Advertise and publicise the Clinic.
	2. Assist LiPs who require additional assistance with completing the Booking Form for them (the LiP) to submit to Advocate.
	3. If necessary, submit the Booking Form on behalf of the LiP, if they do not have access to email.
	4. Be available in the week leading up to the LiPs appointment to assist with organising papers and preparing a list of questions for the Volunteer.
	5. If necessary, be available to sit with a LiP during their Clinic Appointment.

**Conflicts - practicalities**

1. The Volunteer will receive from Advocate a list of appointments and booking forms containing the necessary information for the purposes of conflict checks by not later than 10.30am on the Wednesday before the Clinic.
2. It is the Volunteer’s responsibility to ensure that appropriate conflict checks are carried out by them or their firm / chambers.
3. Where a conflict is identified, Advocate should be notified as soon as possible, and no later than 72 hours before the clinic date. Advocate will contact the LiP, offering them an appointment on a different clinic day (with a different advisor).
4. CASS+ will endeavour to ensure that two parties in the same dispute are not booked in for appointments on the same day, but it is the responsibility of the Volunteer to identify any conflict arising from dual bookings of this nature. Volunteers should advise Advocate who will rebook the party whose appointment was booked latest in the day. For the avoidance of doubt, the Volunteer cannot advise both parties to a dispute, whether in the same Clinic or on different Clinic days.
5. Where two parties involved in the same case approach the Clinic for an appointment, CASS+ will operate on a first come first served basis, and the party attempting to book second will need to book an appointment on a subsequent day with a different Volunteer.

**Data protection and confidentiality**

1. The Clinic treats data protection seriously, recognizing the sensitive nature of clients’ data provided to the Clinic. The Clinic works to ensure ongoing compliance with the General Data Protection Regulation (GDPR).
2. The both Advocate and CASS+ acts as ‘data controller’ for the Clinic. According to the GDPR, data controllers determine the *purposes* for which and the *means* by which personal data is processed.
3. In supporting the administration of the Clinic, both Advocate and CASS+ also act as a data processors. A data processor processes personal data only on behalf of the controller.
4. Clients’ explicit written consent is sought for the processing of their data. The booking form includes a Privacy Notice, which clients are asked to read and sign to show their consent.
5. Client data will be kept confidential, except where the law says a disclosure must be made, or the Volunteer believes a person may be seriously harmed or at risk of serious harm. The Explanatory Note for Litigants in Person and the booking form state this position.
6. Responsibility for the Clinic’s compliance with GDPR rests with Advocate and CASS+.
7. A client can ask for a copy of their personal information held by the Clinic (known as a Subject Access Request (SAR)). In line with GDPR, personal data will be provided at no cost, within 30 days. SARs should be passed to Advocate (for the attention of the Chief Operating Officer), who will acknowledge the SAR within 7 working days, and respond in full within 30 days.
8. Advocate and CASS+ will be notified within 24 hours of a breach of data security (including loss, theft, unlawful destruction, alteration and unauthorised disclosure of or access to personal data). The appropriate organisation (either Advocate or CASS+) will investigate the circumstances of the breach promptly. Where there is a risk of harm to an individual, they will notify the Information Commissioner within the prescribed timescale of 72 hours.

**Monitoring and evaluation**

1. A feedback form will be given to each LiP after a Clinic appointment, asking them to comment on the experience of using the Clinic and the difference it made. Feedback forms can be completed anonymously and will be returned to Advocate.

**Comments, concerns or complaints**

1. If a clinic user wishes to raise any comment, concern or complaint about the clinic they should, in the first instance write to Advocate Chief Operations Officer at International Dispute Resolution Centre, 1 Paternoster Lane, London, EC4M 7BQ.
2. Formal complaints should be received in writing by Advocate within one month of the incident. In the event of any direct complaint being received by a Volunteer, Advocate should be notified.
3. A Volunteer subject to a complaint should, if a barrister, refer to their chambers, if a solicitor, refer to their firm.
4. Advocate will acknowledge a complaint within 10 working days of receipt. Details of the complaint will be shared with the Volunteer for the purposes of investigating the incident.
5. Advocate will normally provide a final written response within 4 weeks of the date the complaint was received. If this is not possible, an update on the investigation into their complaint will be provided to the client within this timescale.