

A Guide to Family Peer Review Webinar – FAQs

27 October 2020

Recorded Webinar and Slides

The recording of the webinar and the slides can be viewed on our website which can be accessed using the following link:

<https://dglegal.co.uk/training/2020-free-webinars/#2020AGuideToFamilyPeerReview>

FAQs

The majority of the questions received were answered during the webinar, please see the recording, which can be viewed here:

<https://dglegal.co.uk/training/2020-free-webinars/#2020AGuideToFamilyPeerReview>

Q What is the client's entitlement to their file, and what is the difference between privately and publicly funded files?

There is a popular misconception that the client is entitled to 'the file' i.e. that the solicitor holds a file, whether paper or electronic, which contains every document which relates to a client's matter and that the client is entitled to have that file and each and every document in it.

In fact, usually within a 'file', there will be documents which belong to the solicitor as well as the client and, as such, the solicitor is not required simply to hand them over on request. A Solicitor must only hand over those documents which actually belong to his client and, for the purposes of delivery up, any question of relevance can be parked entirely (as can be seen by *Ex p Cobdeldick and Gomba Holdings UK Ltd v Minorities Finance Ltd*). A solicitor does not have to give the client anything that belongs to the firm. The question for the court is solely one of ownership.

Essentially there are two broad principles to consider:

- a) did the document come into existence for the purposes of giving advice to the client or as a result of the solicitor acting as the client's agent; and
- b) for whose benefit and/or protection was the document prepared. If the solicitor only obtained a document in the course of acting as the client's agent (e.g. an expert report or correspondence from an opponent or third party), this will belong to the client and the solicitor will have to give it to the client. If not, and the document relates to advice, we move on to the second test.

The solicitor is not obliged to hand over the following categories of documents:

-  Correspondence written from the client to the solicitor - ownership of the original letter passes to the solicitor once the client has sent it (*Re Thomson and Re Wheatcroft*);

- Copies of letters sent by the solicitor to the client - ownership of the original letters passes to the client and the copies have been prepared for the solicitor's benefit and protection, not the client (again, Re Thomson and Re Wheatcroft);
- Attendance notes, working notes, diary notes etc. of the solicitor's attendances upon the client - again these are prepared for the benefit and protection of the solicitor (Leicestershire CC v Michael Faraday and Partners Ltd);
- Other documents prepared solely for the solicitor's benefit such as timesheets, accounts documents and internal memoranda.

Even if the client has paid for the preparation of attendance notes, this will not necessarily entitle him or her to them. The client would not even see the attendance notes in the normal course of the matter. Both these notes and copies of any correspondence sent to the client have been prepared for the solicitor's benefit i.e. in helping the solicitor to remember what advice was given to the client, and to protect his position in the event of a claim being brought. There is no benefit in these documents to the client; the client has had the benefit of the oral advice which was the subject of the notes, and has received the original letters.

Therefore, a solicitor can decline any request for a 'file' of documents and only provide those which the client is actually entitled to. Sometimes it may be tactically advantageous just to give the client the file in its entirety, but the solicitor doesn't have to if it s/he doesn't want to, and certainly shouldn't feel that s/he is under an obligation. It is also worth remembering that the pre-action protocol for professional negligence expressly prohibits fishing expeditions, something which many claimant lawyers overlook when making the request. It is only upon receipt of a properly drafted letter of claim with properly formed allegations that the question of disclosure – and consequently relevance of documents - comes into play.

How DG Legal can help

To discover more about how we can help you with an upcoming or future Peer Review, please call 01509 214 999 or send us an [email](#).