



QBE European Operations

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Resolution Together

Managing professional negligence risks

The benefits of Resolution Together (RT) are clear: faster, more cost effective, and less acrimonious. It promotes fairness and transparency, avoids court proceedings and, therefore, gives greater confidentiality to those involved. But dual representation is still a compromise. While ‘one couple, one lawyer’ may satisfy the SRA’s ‘common purpose’ requirements, efforts can still be flawed; working for the good of the family unit means neither side has its individual best interests served. Emotions might be suppressed, and details overlooked ‘for the sake of the children’ or in pursuit of a quick separation. These issues can resurface later – perhaps when finances are tight, new partners or children are introduced, or whenever the agreed outcome begins to feel ‘unfair’. Should this happen, efforts to explain your neutrality may fall on deaf ears. Justified or not, you could face professional negligence claims.

Managing Resolution Together risks – a three-tier approach

Having a structured, proactive risk management strategy in place can help you to realise the benefits of RT, while protecting against claims. On that basis, we’ve put together the following three-tier approach, bringing together model-specific risk controls, firm-wide risk management protocols, and targeted mitigation for known vulnerabilities.

Tier 1: Resolution Code of Practice

The generic risk and quality controls are part of [Resolution’s Code of Practice](#) which is fundamental to the delivery model for Resolution Together services. The aim of the Code is to ensure that a constructive approach is adopted, considering the needs of the whole family and that language used throughout all communications supports that aim.

As part of the Code, RT practitioners are required to:

- Adhere to the guidance in the Resolution Together Handbook for protocols such as when the process is and isn’t suitable for use.
- Follow the various Good Practice Guides, Guidance Notes, Templates, and other resources available which embody the code’s objectives.
- Maintain their professional development, accreditations, and networks.
- Use the Complaints Handling Toolkit for when issues do arise.

Tier 2: Adapting your existing risk management framework

Most firms will already have established policies and procedures designed to manage risk and safeguard against professional and regulatory breaches. By embedding RT considerations into this structured framework, firms can ensure the model benefits from the same rigour applied to other high-risk matters.

This may involve:

- An automatic high- or higher-risk rating for all RT matters, which are notified to Risk and Compliance authorities for approval before any joint meeting takes place.
- Specific, pre-agreed risk management controls for RT matters (e.g. more frequent independent reviews, or additional risk control gates).
- Clear identification of RT matters in records and file listings, making it clear when specific protocols apply.
- A minimum of two fully trained RT practitioners to enable effective peer review, absence cover, and mutual support.
- Use of experienced advisors with the risk awareness to spot red flags.
- Support staff trained on RT principles to manage communications and raise concerns with confidence.
- Independent file reviews using checklists that are adjusted to capture the key risk controls for RT.

This should be underpinned by the application of relevant regulatory principles around conflict management, confidentiality, privilege, and information security.

Tier 3: Specific mitigation for Resolution Together risks

Even with strong protocols and training, RT carries inherent risks that demand early recognition and consistent control. Proactive safeguards, applied and documented from the outset, are essential to protect trust, meet regulatory and ethical standards, and secure effective outcomes for clients. The table which follows e

Area of risk	Key issues	Risk mitigation
1. Conflicts of interest	An actual or perceived bias for one side over other can lead to dissatisfaction and claims of conflict.	<ul style="list-style-type: none">• Conduct conflict checks on the parties and closely related stakeholders (e.g. family members) to rule out existing relationships with the practice or RT advisor.• Retain evidence of all information provided, including your explanation of strict neutrality.• Have a transparent, pre-agreed plan in place to manage any actual or perceived impartiality, and act swiftly to implement it as required.• After agreement, ensure no communications take place with either party outside of the discussions with both parties.• If concerns are raised, undertake an independent review by a senior person or compliance officer and end the process if deemed to be a conflict.

<p>2. Misunderstanding of neutrality</p>	<p>The concept of dual representation is misunderstood or there are differing expectations of this approach.</p>	<ul style="list-style-type: none"> • Clearly explain the RT model and use the model documents to obtain both parties' informed consent. • Require any changes to the content of retainers and agreements to be approved by a senior person with knowledge of RT • Ensure continued understanding of dual representation throughout the matter life cycle and repeatedly obtain consent to continue for instance at the start of each meeting. • Document all advice, options and implications explained, and decisions taken. • Pause to allow both parties to take independent legal advice if this would be helpful.
<p>3. Safeguarding</p>	<p>Power imbalances exist within the relationship which are not detected at the outset or during the matter.</p>	<ul style="list-style-type: none"> • Hold initial screening meetings with each party to assess them against agreed inclusion criteria. • Use a standardised checklist to apply these criteria consistently. • Ensure screening is conducted by qualified personnel able to notice any form of power imbalance – physical, mental, emotional, or financial – including coercion and control and domestic violence. • Remain alert to behaviour changes throughout the matter to ensure the continued suitability of both parties. • Develop and update a list of red flags to strengthen vigilance.
<p>4. Transparency</p>	<p>The loss of trust and transparency hinders the process and eventual outcomes (e.g. by a lack of disclosure).</p>	<ul style="list-style-type: none"> • Make openness, collaboration, full disclosure, and waiver of privilege an essential part of the initial suitability assessment, with advisors trained to spot contrary signs. • Once informed consent is given, allow only joint meetings, discussions, and documents – with no side conversations that could lead to claims of bias. • Develop a timetable for disclosure, allowing parties time to reflect, take independent advice, and ensure the RT model remains suitable. • Ensure all considerations and advice to both parties is non-positional. • Keep a full record of all meetings, discussions, and correspondence, and ensure the file settings allow for open sharing and independent review.
<p>5. Breakdown of process</p>	<p>The breakdown of the process because of any of the above issues.</p>	<ul style="list-style-type: none"> • Abide by the model protocols, documents, and agreed risk controls for your RT service without deviation. • Use specialist third parties where necessary – including independent financial advisors, pension experts, etc. • Conduct ongoing risk monitoring to ensure any decisions made are aligned with what the courts would consider fair. • Address red flags early, provide written 'warnings', and monitor closely. • Agree a dissolution protocol at the outset to prepare for referral to independent legal advice (or other dispute resolution method). • Once a conflict arises, do not act for either party. • If the RT model has been deemed unsuitable at an early stage, define under what criteria a party may still be represented. • Incorporate lessons learned from process breakdowns into subsequent management processes (e.g. via an annual review).

This article was a collaboration between QBE and Lockton. For more information contact:

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Previous guidance from QBE is available on our client portal, QRisk Knowledge Centre (login required)

<https://qbееurope.com/document-library/knowledge-centre/solicitors-ew/dwf2022-resolution-together/>

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