

## Your guide to dispute resolution

### Overview

Non-court dispute resolution (NCDR) refers to the different ways people can resolve disputes without going to court. This guide will provide you with an overview of the common NCDR processes as well as the support lawyers can provide if you are able to reach your own agreement.

A combination of NCDR processes can be used during your dispute or they can be used alongside litigation. Whilst court proceedings are usually the last resort, in some cases they may be necessary. You might have to consider issuing a court application if the other party refuses to use NCDR or if there are third parties involved, safeguarding issues or concerns over disclosure and hidden assets. Once however the other party is engaging you can again consider using NCDR alongside the litigation to try and reach an early resolution.

### Reaching your own agreement

If you are comfortable negotiating your own agreement a lawyer can support and advise you in the background and guide you through the process to make your agreement legally binding.

The law isn't always easy to understand and nor is the procedure to give legal effect to an agreement. Even in the most amicable of cases we recommend a lawyer is instructed so you can be sure that your agreement will be legally binding and have peace of mind that you haven't missed anything important out that could prove to be a costly mistake.

Until an agreement has been approved by the court financial claims will remain open. The agreement will need to be formalised in a consent order or contract to ensure that it is binding, and claims are dismissed.

### Mediation

Mediators are trained professionals who will meet with both parties to help resolve the issues between them, whether in relation to financial matters or child arrangements.

Mediators are neutral and cannot advise the parties individually. A mediator will assess suitability for mediation before inviting the parties to start sessions together. This is called a Mediation Information Assessment Meeting (MIAM). At the MIAM the mediator will assess suitability for mediation as well as advise on other non-court dispute resolution processes.

The mediator may also facilitate shuttle mediation whereby the mediator spends time with each party on their own.

How many mediation sessions are needed will depend on the issues to resolve and the complexity of the case. If an agreement is reached it will be recorded by the mediator in a document called a "memorandum of understanding". If the parties want to proceed with the terms in the memorandum of understanding they are advised to instruct a lawyer to prepare a consent order or contract to record the terms of their agreement. Conversations, any communication and information about possible options, proposals and the terms of any agreement are on a "without prejudice" and confidential basis which means that they cannot be referred to in court or at arbitration (except by order of the court, or agreement or where the law imposes an over-riding obligation of disclosure). The financial information provided during mediation will be provided on an "open basis" which means it can be disclosed in any subsequent court proceedings or arbitration.

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## Hybrid mediation

Hybrid mediation brings together the best of both the family and the civil mediation models. It can be an effective alternative if parties to the dispute do not feel comfortable being in the same room or if the case involves complex or difficult issues.

The hybrid mediator can facilitate shuttle mediation whereby the mediator spends time with each party on their own. The mediator will also be able to bring in other family professionals and experts such as accountants, pension experts, financial advisors and independent social workers as well as both parties' lawyers. Hybrid mediation gives the parties confidentiality to explore options with the mediator without commitment whilst having the benefit of instant advice from lawyers.

How many sessions are needed will depend on the complexity of the case. With everyone in one place and provided all necessary information has been provided in advance it may be possible to achieve a settlement in one day.

## Child inclusive mediation

Child-inclusive mediation provides opportunities for children and young people to have their voices heard directly during the process of mediation. This helps them to feel respected and listened to and, at their request, to assist parents or carers to receive, understand and take account of the child's messages and/or suggestions regarding decisions and arrangements for them.

The purpose of child-inclusive mediation is to give children a 'voice' rather than a 'choice'. The decision making process will always remain with the adults.

Child inclusive mediation is available for young people aged 10 and over.

The mediator must remain impartial in a meeting with a child or young person and must remain neutral as to the outcome of mediation. The mediator does not represent the child or act as the child's advocate.

The meeting with the children is confidential and they decide how their views and opinions are relayed back. Mediators only report back what the child or young person has asked the mediator specifically to convey.

## The Collaborative Process

Under the collaborative process each party will appoint their own collaboratively trained lawyer and the parties and their lawyers all meet to work through the issues between them, whether in relation to financial matters or child arrangements.

Other family professionals and experts such as accountants, pension experts, financial advisors, family consultants and independent social workers can also be part of the collaborative team. If help is needed on a particular issue or the parties find they are at an impasse they can ask a barrister to provide an early neutral evaluation of the situation or use arbitration to resolve the issue. Arbitration allows the parties to appoint an arbitrator of their choice who can provide a binding outcome in respect of any issues they wish to resolve.

As part of the process the parties and their lawyers will sign an agreement to commit to resolving the issues without going to court and this agreement will prevent the lawyers from representing the parties in court or at arbitration if the collaborative process breaks down. This means everyone is committed to finding a solution by agreement rather than through court proceedings.

How long it takes and how many meetings are needed will depend on the complexity of the case. The parties will be in control of the agenda and timetable. It may be possible in some cases to achieve a settlement after a couple of meetings or in more complicated cases it may need four or five meetings.

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### **Lawyer Led Negotiations**

Lawyers can take the lead negotiating on your behalf. There are several ways they can help you negotiate depending on what you feel comfortable with. They can exchange phone calls and correspondence with the other party or their lawyer or arrange face to face or virtual meetings or use a combination of these options. Lawyers can also help you with an early neutral evaluation, private financial dispute resolution appointments and arbitration. Please see below for an explanation of each of these services.

### **Early Neutral Evaluation**

This involves both parties jointly instructing an experienced barrister to give an early indication of what would be the likely outcome if the matter was to be decided by the court. Parties can ask for an opinion on their entire case or a discreet issue. The aim is to get a clear indication at an early stage to avoid the time and costs of having to go to court. The opinion can be given at a meeting attended by the parties or if preferred a written opinion can be provided.

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### **Arbitration**

By agreement parties to the dispute select an arbitrator to make a binding decision on the dispute, whether in relation to financial matters or in relation to child arrangements.

Arbitration is a direct alternative to court and will allow parties to resolve a family dispute without the delay and sometimes added expense of the court process. It allows parties to engage in a flexible process with complete confidentiality and the knowledge that a decision will be made.

Arbitration may not be suitable in certain circumstances, for example if evidence from a third party is needed, or there is a risk of hidden assets.

At the conclusion of the arbitration the arbitrator makes a decision. The decision is put in writing and delivered to both parties. The decision will include written reasons, much like a decision (judgement) made by the court. The decision is then incorporated into a consent order or contract and filed with the court in the usual way.

### **Private Dispute Resolution Appointments**

By agreement the parties to the dispute select a judge or experienced barrister to give an indication of what would be the likely outcome if the matter was to be decided by the court. It is a similar process to seeking an early neutral evaluation. The aim is to get a clear indication to avoid the time and costs of having to or continue in the court process. A private dispute resolution appointment can be arranged on a date and at a venue to suit the parties and will be much quicker than waiting for a court ordered appointment.

A private dispute resolution appointment can take place alongside existing court proceedings or can be agreed voluntarily. Parties can also agree to attend a private dispute resolution appointment before arbitration.

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## **Resolution Together**

A way of working that allows a single legal professional to provide advice to a separating couple who want to manage their separation together.

## **Court Proceedings**

Whilst court proceedings are usually the last resort in some cases they may be necessary. If the other party will not agree to use alternative dispute resolution processes or they are ignoring your requests to do so you may have to issue court proceedings to progress your case. The court’s assistance may also be necessary if there are third parties involved or concerns over disclosure and hidden assets.

Unless you meet one of the permitted circumstances before issuing an application parties must attend a Mediation Information and Assessment Meeting (MIAM). It is always possible to adjourn court proceedings to attempt alternative dispute resolution options.

For a detailed overview of the court process see our following client guides:

- [Your guide to applying for a financial remedy order](#)
- [Your guide to Schedule 1 of the Children Act 1989](#)
- [Your guide to the orders the court can make for children and the court process](#)

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.