

**NON-COURT DISPUTE
RESOLUTION
CLIENT GUIDE**

Non-court Dispute Resolution

This document provides general guidance regarding alternatives to court in family law matters including the requirement to attend a mediation information and assessment meeting (MIAM) prior to the issue of certain family proceedings. Your family lawyer will be able to provide specific advice based on your circumstances.

There are three main alternatives to court when you are trying to work things out after separation:

- mediation
- collaborative law
- arbitration

Mediation

How does it work?

In mediation a trained mediator speaks to you and your former partner separately at first, then aims to get everyone round a table to talk about what arrangements will be made for the future. It can be used to work out financial matters or children's schedules and any other practical decisions that need to be addressed. It is a process that focuses very much on the future, rather than the past.

Mediation is a voluntary, confidential process. In the meetings the mediator will guide you through discussions that help you both to explain what you want to happen and eventually to reach an agreement. If you don't manage to agree everything, you can't refer in court to discussions that you've had in mediation but financial information can be used in court.

Legal advice

While you are going through mediation, it is sensible to take some legal advice. This can be the best balance between keeping costs low and achieving a settlement that works for you.

An agreement reached in mediation is not legally binding by itself but can be turned into a court order to become binding and enforceable if that is what both of you agree should happen. It is usual to do this in financial matters.

Is it for me?

Mediation is not right for everyone. It won't work where there is a big imbalance of power between you or where there has been significant domestic abuse. However, for most people, even where conflict levels are high, it can be a very effective process for sorting out disagreements or narrowing the tricky issues. It can also help with communication and understanding, going forward.

Mediation is usually much quicker and cheaper than using solicitors for a court application. Legal aid is still available for family mediation, subject to a means test, and if you qualify you will be able to go through mediation for free with a legal aid provider.

Collaborative law

What is it?

Collaborative family law is so called because the lawyers and clients work together to sort things out. The aim is to achieve a fair resolution of the issues for everyone involved and in order to get there the solicitors work in a non-positional, non-confrontational way.

How does it work?

At the beginning of the process, you, your spouse or partner and both collaboratively trained lawyers sign an agreement that they will not go to court to resolve matters. The effect is that if things can't be worked out using collaborative law, both of you will have to get new lawyers if you want to take the dispute to court. In fact, most collaborative processes are successful.

As far as possible matters are dealt with at meetings, which controls legal costs. Where necessary, you can bring other experts into the collaborative law process, such as family consultants and financial experts.

Collaborative law is useful in a wide variety of circumstances but may not be appropriate or possible where there is little trust, if the couple are in the midst of a very acrimonious separation, or where there has been domestic abuse. It can work particularly well where financial and children's arrangements are intertwined, as it allows all arrangements to be worked out together.

Arbitration

What is it?

Arbitration is private judging. It is available for financial disputes but not for children's arrangements.

Before arbitration starts, you both sign an agreement that you will abide by the arbitrator's decision. You also agree that after the decision (sometimes referred to as an 'award') has been made, it will be turned into a court order by consent, making it enforceable in law. Although an arbitrated decision in a family law case has not yet been challenged in court, lawyers expect that arbitrated awards will be upheld by the court except in unusual circumstances.

How does it work?

Family law arbitrators have to pass a special exam to be able to take arbitration cases. They all belong to the Institute of Family Law Arbitrators, which is a professional body with strict rules.

The arbitration process is tailored specifically for your needs. With the advice of your lawyers, you choose your arbitrator and the way the process works. This means that sometimes arbitration will look quite like court proceedings held in private but in other cases it can be completed entirely on paper. Whatever process is considered to be appropriate, the end result is a binding settlement.

If necessary, the arbitrator can decide what issues the arbitration is to deal with, determine the timetable of events, deal with what evidence is needed and how it will be presented (oral or paper), and determine whether there is to be any sort of final hearing. Arbitrators can also make interim awards if necessary.

Is it for me?

You can use arbitration to decide all the financial issues between the two of you on separation, or just a single matter. You avoid the delays of the court system, and both the process and the outcome are completely private and confidential. Arbitration can work well with mediation or collaborative law to determine any remaining issues that can't be agreed.

If you decide to issue court proceedings

In most cases, before most family proceedings can be issued by way of an application to the court, the courts' requirements are that you must at least explore the possibility of an alternative method of dispute resolution by attending a mediation information and assessment meeting (a MIAM). In some cases a MIAM may not be suitable. Your family lawyer can explain whether your circumstances are such that the court would not expect you to attend a MIAM.