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FAMILY LAW DEPARTMENT

Alternatives to Court Dispute Resolution Fact Sheet

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

- Mediation
- Hybrid 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. It allows you to set the agenda, discuss what is important to you and, to reach a solution that is tailored to your family's individual needs.

Mediation is usually much quicker and cheaper than using solicitors for a court application. It is non-adversarial reducing the potential for distress that court proceedings create.

Hybrid Mediation

What is it?

In Hybrid Mediation the lawyers are present in the Mediation process to provide legal advice and guidance when needed. The Mediators have received specialist training for this advanced form of Mediation which is similar to the process adopted in civil cases.

How does it work?

Both you and the lawyers sign the Mediation Agreement. The lawyers' involvement in the process will depend upon complexity but they will attend a preliminary meeting, provide support throughout the process and may attend some or all of the meetings.

The Hybrid Mediation process allows the Mediator to have separate meetings with the couple as individuals as well as meeting the parties altogether.

Is it for me?

Hybrid Mediation is suitable for high conflict cases where one or more of the parties feel vulnerable and require additional support.

Hybrid Mediators can also be brought in to assist on a specific issue if an impasse has been reached either during the Collaborative process or in solicitor led negotiations.

Collaborative law

What is it?

Within Collaborative family law 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. There is a shared commitment to avoid litigation.

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 within the Collaborative process, 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.

The process involves a series of roundtable meetings for the settling of all issues. Where necessary, you can bring other experts into the Collaborative Law process, such as family consultants and financial experts.

Is it for me?

Collaborative law is suited to couples who have a shared commitment to avoid litigation and wish to find solutions that enable them and their family to move forward in a positive way. It can work particularly well where financial and children's arrangements are intertwined, as it allows all arrangements to be worked out together. The process allows you to focus on what is important to you and to achieve a creative solution that meets your own family's individual needs. Collaborative Law is useful in a wide variety of circumstances but may not be appropriate or possible where there is little trust, if you are in the midst of a very acrimonious separation, or where there has been domestic abuse.

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. We will explain whether your circumstances are such that the court would not expect you to attend a MIAM.
