



Atherton  
Godfrey

SOLICITORS

## **DISPUTE RESOLUTION OPTIONS**

**This factsheet is intended to act as a general guide to different forms of dispute resolution options, without applying to court. We are happy to discuss the particular circumstances of your case in more detail.**

### **Overview of dispute resolution options**

There are a variety of ways of agreeing child arrangements or a financial settlement, without applying to court.

You may only use one method of agreeing a settlement, or you may use a combination of methods. All have their advantages and disadvantages.

The most common ways to reach an agreement, without court proceedings, are the following:

- Direct discussions between both parties;
- Mediation;
- Negotiation through solicitors;
- Collaborative law/roundtable meetings;
- Arbitration.

More information about each of these is set out below.

If you are unable to reach a settlement through any of these methods, then you may choose to apply to court.

### **Direct discussions**

You may be able to agree things without the need to involve anyone else.

It is good for both you and any children involved if you are able to do this, particularly when you are sorting out the arrangements for children.

When discussing financial matters, you should still exchange financial disclosure and seek independent legal advice before making or accepting proposals for settlement.

### **Mediation**

Mediation is a popular way of reaching an agreement about both child arrangements and finances.

In mediation, a trained mediator will first speak to you and your partner separately before then aiming to get everyone together to talk about what arrangements will be made for the future.

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 with the aim of eventually reaching an agreement. If you don't manage to agree everything, you

can't refer to the discussions that you've had in mediation in court but you can refer to the financial information.

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

The mediator is independent. This means that they cannot advise either of you. However, they can give you general guidance on the law. You should consider taking separate legal advice both during mediation and once mediation has concluded, so that you have been advised on your decisions before any agreement is made binding.

Mediation is not right for everyone. It won't work where there is a big imbalance of power between the parties 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 down the tricky issues. It can also help with communication and understanding, going forward.

Legal aid is still available for family mediation, depending on the level of your income and assets. If you qualify and the mediation service is a legal aid provider, you will be able to go through mediation for free.

You can find out more information about mediation and access a directory of accredited mediators at [www.familymediationcouncil.org.uk](http://www.familymediationcouncil.org.uk).

### **Negotiation through solicitors**

Negotiation through solicitors is also a popular way of reaching a financial settlement or agreeing child arrangements.

We can represent you in any negotiations with other solicitors or directly with your former partner. Usually, these negotiations take place primarily through correspondence. In letters sent to the other person, or their solicitors, proposals are set out and the reasons for them are explained. Sometimes roundtable meetings or telephone calls may also be used to reach a settlement.

Before making or accepting any proposals for a financial settlement, full and frank financial disclosure should be exchanged.

### **Collaborative law and roundtable meetings**

Collaborative law is a process whereby both parties engage solicitors who are specialists and who are trained in the collaborative law process.

At the beginning of the process, you, your spouse or partner and both collaborative lawyers sign an agreement committing to the collaborative law process as a method of reaching an agreement. The lawyer's commitment is such that if the process does not result in an agreement, the lawyer will not be able to represent you if the matter later went to court.

The process is centred on a series of 'four-way' meetings attended by both clients and their lawyers. During these meetings everyone attempts to reach a fair agreement.

Some people choose to use 'four-way' roundtable meetings as part of negotiation through solicitors, without entering the formal collaborative law agreement that excludes the lawyers from acting if an agreement cannot be reached.

### **Arbitration**

Arbitration more closely resembles the court process because the arbitrator can make a decision if you and your former partner do not reach an agreement first.

Arbitration is not usually used to deal with child arrangements, although it can be. It is more frequently used to sort out finances

Arbitration has the advantage that you and your former partner can choose the arbitrator and the timetable is usually shorter than court proceedings due to the under-resourcing of the court system. One disadvantage of arbitration compared to court proceedings is that you have to jointly pay for the arbitrator, which is likely to be several thousand pounds.

If you are interested in using this process, please have a look at the leaflet prepared by the Institute of Family Arbitrators, available at [www.ifla.org.uk/public](http://www.ifla.org.uk/public).

## **Formalising any agreement**

### *(a) Child arrangements*

If you reach an agreement about the arrangements for your children, it may not be necessary to formalise this in a written document, but it may be helpful to do so.

You and your former partner can complete and sign a parenting plan, which records what you have agreed about various practical issues of parenting. More information about Parenting Plans and draft forms can be found on the Cafcass website ([www.cafcass.gov.uk](http://www.cafcass.gov.uk)).

If a more enforceable agreement is needed, for example if it involves arrangements for taking children abroad, then you can convert the agreement into a court order. If you wish to do this we would be happy to discuss it with you in more detail.

### *(b) Financial settlement*

If you have reached a financial settlement through any of the above processes, then you should formalise this in either a consent order (if you are divorcing or have divorced) or a separation agreement (if you are not divorcing).

We can prepare a consent order or separation agreement on your behalf. You and your former partner must then both sign it. A consent order must also be sent to the court to be approved by a judge.