

## Are there alternatives to divorcing in court?

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#ModernRelationships

There are many reasons couples choose to resolve financial and children issues that arise on divorce or separation without going to court.

The Court system is under a great deal of pressure as many courts have been closed and resources reduced, leading to long delays. Public funding has also been removed save for cases where there is harm to adults or for some children related matters. Hearings are not guaranteed to be heard in private and there is often no judicial continuity so a different judge will usually deal with each hearing. Once parties are in the court system it can be difficult to get out of it unless by agreement.

Many couples want to take control of how their issues are resolved, using a private system where they can control the timings. They also want more cost effective solutions. We understand that each couple's needs are different. In every case we provide strategic input into the case from the first meeting, including assessing the most suitable process to reach a resolution. There are various options.

### Our new separation model

- Having listened to many clients, and based on our experience, we have created a better way to resolve matters. It increases significantly the opportunities to reach an early resolution and minimise conflict, to increase speed and reduce costs and is conducted by our independent team under one roof.
- How does it do this? We've combined the best parts of different options and removed the bad parts where parties are encouraged to adopt polarised positions. Instead we've replaced them with focused independent input that provides direction. But if the discussions fail, a determined binding outcome can be given – all without going to Court. This is a solution focused process which is private, managed at your pace and cost effective and is delivered by our specialist team under one roof.

### Mediation

- The couple instruct an independent mediator who will assist their discussions and negotiations to try to guide them to a resolution. It can be used as a way to reach agreement concerning the finances, the children, and sometimes both and usually involves a series of meetings with a qualified mediator (who is often a family law solicitor).
- All negotiations are confidential and cannot be referred to in later court proceedings. Each person will often have their own lawyer to advise in-between the mediation sessions about areas which need investigating further etc and to input into settlement proposals for negotiation. Over the series of sessions, the proposed terms will be explored and the mediator will assist by giving independent input but cannot give legal advice to the couple. You can opt in or out at any time. You will usually follow a successful mediation up with a binding court order (all done on paper, so there is no need to attend court).
- Before mediation commences the mediator will speak to each person to assess suitability. A challenge to the success of mediation is that the mediator cannot direct parties towards a settlement. However, successful resolutions are achieved and it can be quick, cheaper than litigation and can form a good basis for future dialogue and communication.
- One of our partners was a founding member of the Resolution mediation service. We have experienced mediators in the team.

### Arbitration

- Arbitration is another private way to resolve disputes. In this option, you and your former partner each have your own solicitors, and you instruct an Arbitrator to make a binding decision on either specific matters relevant to your situation or to make a decision on a

final outcome. You choose and appoint a family arbitrator (usually a practicing solicitor, barrister or retired judge) on a private basis who will review all of the legal documents and probably hear submissions from your lawyer. The arbitrator will make a binding decision on financial and property issues or on (some) child related issues.

- The arbitration process does not involve negotiation. It is a process where the outcome will be determined by a 3rd party. It is bespoke, confidential and can be conducted at the pace suited to the people involved. The arbitrator's decision will need to be converted into a Court Order which is usually done on paper by the court.
- We can offer expertise in arbitration, having helped to pioneer and run Family Arbitration Training in England and beyond, with colleagues drafting the case studies and training materials.

#### Financial Dispute Resolution hearings (FDR)

- A court FDR is a compulsory court appointment as part of financial proceedings on divorce or dissolution of your civil partnership. Having exchanged information about the finances settlement proposals are filed on behalf of each person. They and their legal teams attend an appointment at court before the FDR Judge (who has a full grasp of the issues between them) who gives his/her non-binding indication of what the likely outcome will be if the matters continues to a trial at court.
- The aim is that by having had an indication on outcome each person and their legal teams negotiate in the backdrop of that indication which can help focus their settlement proposals. If a resolution is reached it can be approved by the Court at that appointment. If a settlement is not reached the case will continue to trial.
- A private FDR is the same, but it is not imposed by the court. It is voluntary, private and flexible. You ask an experienced judge (a barrister or solicitor or retired judge) to review the documentation and to give you their view on what the outcome should be in a private meeting with each party and their legal team. If you reach an agreement it can be sent to the court on paper to make it legally binding.

#### Collaboration

- Each party instructs a Collaborative Practitioner, who is a qualified lawyer who has undertaken specialist training. The parties and their collaborative practitioners agree the objectives and sign an agreement to collaborate. This includes an acknowledgement that the parties cannot use their collaborative practitioner to engage in court proceedings unless it is by agreement between them.
- There is a series of round table meetings at which information is shared and negotiations take place. The collaborative practitioners can give legal advice to their client but all discussions about settlement and case management should be conducted in the meetings or through communications open to both parties. If an agreement can be reached it can be made into a Court Order.

We can help identify which option is best suited and deliver it.


To read more on [\*\*#ModernRelationships, click here\*\*](#) or listen directly to our [\*\*podcast series here\*\*](#).

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