

A GUIDE TO ALTERNATIVES TO THE FAMILY COURT: mediation, mediation information and assessment meetings, collaborative law and family arbitration



Family breakdown can be a difficult time and there are different options for resolving family law issues such as finances, property and issues relating to your children. This is a guide to help you understand how you may be able to resolve your issues through alternative dispute resolution (ADR) without having to use the court process.

Alternative dispute resolution includes mediation, collaborative law and family arbitration. It is important when making financial arrangements or arrangements for your children after relationship breakdown that you seek legal advice. See also our range of legal guides on issues including divorce, financial arrangements on marriage breakdown, child contact orders, residence orders and parental responsibility and contact our free confidential legal advice line (see Useful Contacts).

The Family Procedure Rules

Mediation is now a key feature of the family justice system. The family justice system is governed by the **Family Procedure Rules**, which provide a set of practice rules and guidelines for family law court cases. Family law hearings such as applications for contact with children or divorce can be dealt with in the High Court, the County

Court or the Family Proceedings Court (part of the Magistrates' court). Family law is distinct from other areas of law due to the fact it involves very personal and sometimes distressing issues. For this reason family cases heard in any of the 3 courts are governed by the Family Procedure Rules. The Family Procedure Rules encourage the use of mediation and other forms of alternative

dispute resolution at every stage of the family court process (where it is appropriate) and require attendance at a **family mediation information and assessment meeting** before you make an application to the family court, subject to certain exceptions which are explained in detail below.

Mediation

It is important to understand what mediation is, how it works and whether it can work for you.

Mediation will not be appropriate if there are issues of harm concerning your child, for example allegations of sexual or physical abuse, and/or you have experienced domestic violence, or if there is an imbalance of power within the relationship, for example, because you have a disability or because English is not your first language.

Mediation is a voluntary process where you and your former partner have discussions (which are usually face-to-face but you can ask to be in a separate room from your husband/ex-partner) with the help of a trained mediator and try to reach your own agreements. You should always seek legal advice on any agreement made with your ex-partner as it is not the role of the mediator to give you legal advice even if they are a qualified lawyer. Mediators should be impartial and should not take sides. In some circumstances mediators may provide general legal information to both parties during the session if it is appropriate, but they should remain impartial. The mediator is there to facilitate the discussion between you and your partner and has a duty to advise you each to take separate legal advice, either during the process or after.

Any mediation agreement reached is not automatically legally binding unless it is made into a consent order and approved by a judge. The advantage of this is that the agreement is flexible and can be changed to suit the parties. It also means there are no legal consequences on either

party for not complying. Mediation is private and confidential and details discussed in mediation or agreements reached cannot usually be disclosed or used against you at any subsequent court hearings. Any financial information that is produced is open information and can be used outside the mediation setting.

An agreement you reach through mediation can become legally binding by the terms being made into a consent order. A **consent order** is a legal document usually drawn up by a solicitor setting out what you have agreed during mediation that will then be sent to the court and approved by a judge. Once it has been approved by a judge it will then be legally binding in the same way as a court order. Before signing a consent order, ensure that you receive legal advice from a family law solicitor. If your mediation concerns finances on matrimonial breakdown it is very important that you make your agreement legally binding by creating a consent order or a Deed of Separation (see ***A Guide to Financial arrangements after Marriage Breakdown***).

For mediation to be effective to resolve finances further to matrimonial breakdown, full financial disclosure is required to ensure a fair outcome (see ***A Guide to Financial arrangements after Marriage Breakdown***). It is important to seek legal advice before attending mediation.

Mediation can be very useful for couples who are willing to be reasonable and are open to compromise. If mediation is successful it can significantly reduce the cost of resolving issues of finance and children following relationship breakdown. Mediation can be very effective but it does not work for everyone.

Legal aid

If you are not working or on a low income, you may be eligible for legal aid for mediation so you will not have to pay the mediator. You may also be able to receive legal aid for a limited amount

of independent advice on the issues you are mediating upon if you are financially eligible for legal aid. For further details about legal aid see

Useful contacts.

Family Mediation Information and Assessment Meeting (FMIAM)

There is now a requirement to attend a Family Mediation Information and Assessment Meeting (FMIAM) before making an application to the family courts, such as financial relief proceedings following marriage breakdown (see our *Guide to Financial Arrangements after Marriage Breakdown*) or applications for contact with a child (see our *Guide to Child Contact*) or residence (see our *Guide to Residence*), unless you fall within one of the exceptions. The **FMIAM** is not mediation but rather a meeting with a mediator to discuss alternatives to going to court. The purpose of the FMIAM is for the mediator to assess whether the dispute may be suitable of being resolved by mediation or other forms of ADR.

You do not have to attend an FMIAM if:

- The mediator is satisfied that mediation is not suitable because your ex-partner is unwilling to attend the mediation information and assessment meeting;
- A mediator decides that a FMIAM is not suitable, for example because there has been domestic abuse or an imbalance of power in your relationship;
- A mediator has decided within the last 4 months that the case is not suitable for a FMIAM or for mediation; or
- There has been an allegation of domestic violence against a party to the family law dispute which has resulted in a police investigation, or an application for a non-molestation or occupation order has been made in the last 12 months (for more information see our *Guide to Domestic Violence Injunctions*).

The person wishing to make a family law application is expected to find a mediator and arrange the FMIAM.

Mediation is not appropriate if you have experienced domestic violence and you should advise the mediator of this prior to attending a FMIAM or at the first available opportunity. You can request that the mediator fills in the Form FM1 to reflect that an FMIAM is not appropriate.

If you do not have a solicitor and you have been contacted by a mediator regarding a FMIAM and you have experienced domestic violence, you should explain this to the mediator and advise that you do not want to mediate or attend an FMIAM.

You will need to file a **Form FM1** at the same time as making an application to the family court for issues including financial relief, child contact and residence. You can access all family court forms from your local court or they can be downloaded from the court service website. On this form you should either confirm your attendance at an FMIAM or the reason you did not attend an FMIAM. You are not required to file the FM1 if it is an emergency application, for example if you have serious concerns regarding your child's welfare. See our guide *When parents separate: some common issues*.

If you fall within one of the above exceptions and you do not want to contact a mediator you can complete Part 3 of court form FM1. On this form you can explain why you have not attended the FMIAM. It is important that you complete the FM1 as the court can order costs against you if you do not comply with the FMIAM requirement and you do not have an appropriate explanation.

You can request to be seen on your own without your partner being present in the room, or on different days. This will depend largely upon the mediator you choose. But there is nothing stopping you asking if you can be seen separately.

However be aware of any additional costs of extra meetings.

Although rare, you may be ordered to pay the other parties' legal costs if you fail to comply with the requirement to attend a FMIAM, and do not fall within the exceptions. If you have concerns, you should ask to see the mediator separately and explain why you do not feel mediation is appropriate.

Choosing a mediator

You should ensure that the mediator you use is a member of the Family Mediation Council. To find a mediator see **Useful contacts**. All members of the Family Mediation Council must adhere to a Code of Practice which details the general principles of mediation as well as training, conduct standards which can be expected from mediators. It also requires that each member organisation must adhere to a clear complaints procedure.

Complaints about mediators

There is no standard complaints process for mediators. Complaints about mediators should be dealt with by the organisation they are accredited by, for example solicitor mediators are usually accredited by Resolution. If you have concerns about your mediator contact the Family Mediation Council.

Collaborative family law

Collaborative family law can be used to resolve finances further to divorce or matters concerning child contact and residence. **Collaborative family law** involves negotiating with your ex-partner in a series of face-to-face meetings and through correspondence in an attempt to avoid going to court and to save costs. Unlike mediation, in collaborative law you attend these

meetings with your lawyer so you and your ex-partner will be negotiating with each other with the help of your legal representatives, who must both be trained collaborative lawyers. In addition, psychologists or counsellors can be invited to join the meeting to support you and/or your ex-partner in reaching an agreement.

If you are able to reach an agreement your solicitor may draw up a consent order (see above). If you are unable to reach an agreement you can still apply for financial relief or for an order for contact or residence, but you will have to consult a different solicitor because you cannot use the same solicitor who assisted you in negotiations.

Collaborative law can be a very expensive process and it is important that you ensure your solicitor sends you regular bills and that you keep an eye on the costs. It is also important that you consider whether you will be able to reach an agreement with your husband through collaborative law. If you are unable to reach an agreement through this process you will have to make an application to court for financial relief and instruct a different solicitor or represent yourself. Instructing a different solicitor will add additional costs.

If you have experienced domestic violence then resolving financial or children matters through collaborative law will not be appropriate.

Family arbitration

Arbitration is another form of dispute resolution where a legally trained person makes a decision which is supposed to be impartial based on considering all the circumstances. The decision is legally binding if the correct process is followed. Family arbitration is only suitable to resolve financial matters following relationship breakdown and is not available to resolve matters concerning children such as contact or residence.

You and your ex-partner will need to agree on an arbitrator (for details of how to find an arbitrator see **Useful contacts**.) The **arbitrator's** role is to consider all the evidence in the case and apply the law to make a decision on how your finances should be split. The arbitrator must be legally qualified and registered to act as an arbitrator in England and Wales. You will need to enter into an agreement with your ex-partner that the arbitrator will adjudicate the dispute and make a decision on the financial arrangements at the end of the process.

The arbitrator must be a member of the Institute of Family Law Arbitrators. All arbitrators are qualified family solicitors or barristers who have completed the accredited arbitration course. To find a family arbitrator see a solicitor or contact the Institute of Family Law Arbitrators (see **Useful contacts**.)

Arbitration can save money in comparison to going through the family court process but it can also be very expensive. There are a range of costs for using arbitration including arbitrators fees, the cost of venue hire and each party will

have to pay their own legal costs. Therefore, the initial costs for arbitration may be more expensive than going to court but could save money in the long run. The parties will usually submit their proposals and the arbitrator will set a timetable for financial disclosure and for deciding the final outcome. At the end of the process, the arbitrator will make a decision on how the financial assets should be divided. This is not automatically legally binding and must be made into a consent order and then submitted to the court. The order could be disputed by either party, but it is likely that the court would uphold it unless it decided it was substantially unfair to one party.

If you think that arbitration might help you, please seek legal advice from a solicitor or our legal advice line (see **Useful contacts**).

The law relating to this issue can be complex and we have provided a very basic overview of the terminology, law and court practice and procedure. We would strongly advise you to seek legal advice by either telephoning our legal advice line or a solicitor.

Please note that the law as set out in this legal guide is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

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For free, confidential, legal advice on family law issues including domestic violence, divorce and relationship breakdown and issues relating to children:

Women living and working in London call 020 7608 1137 or 020 7490 2562 (textphone). The advice line is open Mondays 11am–1pm, Tuesdays and Wednesdays 2–4pm

All women call 020 7251 6577. The advice line is open Tuesdays – Thursdays 7–9pm, and Fridays between 12 and 2pm.

For free, confidential, legal advice on immigration and asylum law or criminal and sexual violence visit www.rightsofwomen.org.uk for our advice line details.

Useful contacts

Legal Aid

Community Legal Advice www.gov.uk/legal-aid/how-to-claim 0845 345 4345

Finding a solicitor

The Law Society www.lawsociety.org.uk/find-a-solicitor/

Free legal advice

Citizens Advice Bureau www.citizensadvice.org.uk/index/getadvice.htm

Rights of Women (see above for details) www.rightsofwomen.org.uk

Domestic violence help

National Domestic Violence Helpline (domestic violence support) www.nationaldomesticviolencehelpline.org.uk
0808 2000 247

Court forms and locations

<http://www.justice.gov.uk/about/hmcts>

Finding a mediator

The Family Mediation Council www.familymediationcouncil.org.uk

ADR Group <http://adrgroup.co.uk/> (0)117 946 7180

College of Mediators <http://www.collegeofmediators.co.uk/> 0845 65 85 258

Family Mediators Association <http://thefma.co.uk/> 01355 244 594

National Family Mediation www.nfm.org.uk/ 0300 4000 636

Resolution www.resolution.org.uk 01689 820 272

The Law Society <http://www.lawsociety.org.uk/> 020 7320 5650

Family arbitration

Institute of Family Law Arbitrators <http://ifla.org.uk> 01689 820 272

Find a collaborative family lawyer

Resolution <http://www.resolution.org.uk> 01689 820 272

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