

## Briefing Note: Alternatives to Family Court Proceedings

### Introduction

As a result of the enormous pressure that the Family Court is under to determine disputes following the breakdown in family relationships, cases involving children including where they live and how much time they spend with both their parents, as well as financial disputes can take a considerable amount of time to be decided by the Court.

Consequently, in recent years, there has been a growing appetite for change in the way family disputes are conducted. This has resulted in there currently being a number of different options open to separating couples to resolve family law disputes.

This briefing note will consider the various alternatives to formal Family Court proceedings available. For specific advice tailored to your own circumstances you should consult one of our specialist family solicitors.

Please note that this Briefing Note is not maintained, and reflects the law as at the date of publication or update.

### Briefing Note

#### Summary:

A general overview of the different options available to separating couples to resolve family disputes.

Author: Debra Frazer

#### For detailed advice on family matters please contact:

David Young  
Consultant  
01424 735000  
[david.young@gabyhardwicke.co.uk](mailto:david.young@gabyhardwicke.co.uk)

Giles Robinson  
Partner  
01323 435960  
[giles.robinson@gabyhardwicke.co.uk](mailto:giles.robinson@gabyhardwicke.co.uk)

Debra Frazer  
Partner  
01424 457500  
[debra.frazer@gabyhardwicke.co.uk](mailto:debra.frazer@gabyhardwicke.co.uk)

### Round Table Meetings

Parties can agree to attend round table meetings with their lawyers in an attempt to reach agreement.

#### ***Advantages of Round Table Meetings***

- Applies to both financial & children disputes;
- Cost - Can be relatively inexpensive as no formal court proceedings issued;
- Timescale - can be arranged quickly at dates, times and venues to suit the parties;

#### ***Disadvantages of Round Table Meetings***

- A party may renege upon an agreement reached in a round table meeting.
- If no agreement reached, parties have to consider next steps such as mediation or arbitration;
- If no agreement reached additional costs will be incurred to progress matters, as well as additional delay.

### Family Mediation

Family Mediation is a process which facilitates discussions between separated couples with a view to them reaching a mutually acceptable agreement. It enables people, whether or not they are married, to discuss with a trained family mediator all the relevant arrangements that need to be made following the breakdown of their relationship.

## Briefing Note: Alternatives to Family Court Proceedings

The process can be used to discuss both issues relating to children & financial matters.

### ***Advantages of Family Mediation***

- Parties decide what issues are discussed;
- Parties agree the timescale;
- Mediation can be used at any time, eg, when a relationship initially breaks down or, on a regular basis such as once a year to decide on the times that children spend with both their parents each year;
- Children can speak to a suitably qualified Mediator to express their views;
- New partners & family members can also be involved in the Mediation process;
- Speed - mediation can be much quicker than the court process;
- Flexibility - proposed arrangements can be attempted to see if they work before final decisions are made;
- Parties make the decisions, not a stranger such as a judge;
- Privacy – the mediation process is private;
- Can be done remotely;
- Cost effective.

### ***Disadvantages of Family Mediation***

- Agreement reached in mediation is not legally binding which can lead to agreements reached in Mediation being reneged upon;
- Both parties must agree to mediate;
- Not suitable if an issue of law needs to be determined;
- Not suitable if one party is in an entrenched position;
- Not suitable where one party has suffered domestic abuse at the hands of the other party

### **Collaborative Process**

Both parties instruct collaborative lawyers and other professionals if necessary such as family coaches, to assist them in negotiating an agreement without going to court; Four way meetings are held with the parties & their lawyers in the negotiation process.

### ***Advantages of the Collaborative Process***

- Applies to both children & financial disputes;
- Flexibility - parties agree the date, time & venue for the meetings;
- No formal court proceedings are issued;
- Control - the parties control the process & the timescale;
- Creativity - the process enables the parties to be creative in the solutions proposed to resolve matters;

### ***Disadvantages of the Collaborative Process***

\* If no agreement is reached:

- Both parties need to find new lawyers to represent them in a different process, e.g., court proceedings;
- Increased costs - if no agreement reached the parties will have to pay further costs in instructing new lawyers to represent them.

## Briefing Note: Alternatives to Family Court Proceedings

- Delay - inevitably there will be considerable delay if the parties have to instruct new lawyers & issue formal court proceedings.

### Private FDRs

A private Financial Dispute Resolution (FDR) appointment can be used in financial disputes where parties want a decision made quickly in relation to their finances. It has been described by the former senior family law judge (President of the Family Division), Sir James Munby, as follows:

*"A private FDR is a simple concept. The parties pay for a financial remedy specialist to act as a private FDR judge. That person may be a solicitor, barrister or retired judge. No additional qualification is required. The private FDR takes place at a time convenient to the parties, usually in solicitors' offices, or barristers' chambers, and a full day is normally set aside to maximise the prospects of settlement. It takes the place of the in-court FDR."*

### Advantages of Private FDRs

- Can be used by parties both already in court proceedings as well as those who have not started such proceedings;
- Cost - Even factoring in the cost of the private FDR judge (which is usually shared equally between the parties) it can be a cheaper process overall than court applications proceeding to a fully contested final hearing;
- Timing - parties agree with the private FDR judge the date & time for the hearing itself, as well as the venue. This means that the private FDR hearing could take place at a weekend or in the evening;
- Potential for settlement - given that parties have invested in a private FDR judge they are more likely to reach agreement as they are invested in the process;
- The private FDR judge will have read all of the documents filed in the case, whereas in court proceedings, due to time constraints, some judges have not read the parties financial documents before the FDR hearing & therefore cannot assist the parties specifically in their negotiations.

### Disadvantages of private FDRs

- Only applies to financial disputes;
- Cost – the parties have to pay the private judge's fee;
- No guarantee of settlement. If one party does not accept the recommendations of the private FDR judge, the case will need to then proceed either in the court process (if proceedings have been issued) or via arbitration (where no proceedings are in existence). This inevitably will lead to delay & substantial costs being incurred.

### Family Arbitration

The Institute of Family Law Arbitrators (IFLA) defines family arbitration as:

*"... a form of private dispute resolution in which the parties enter into an agreement under which they appoint a suitably qualified person (an "arbitrator") to adjudicate a dispute and make an award. It can be used to resolve financial disputes and disputes concerning children."*

The process is similar to court proceedings as a formal decision will be made which is binding upon both parties.

## Briefing Note: Alternatives to Family Court Proceedings

In children disputes the final decision is called a "determination". In financial disputes the decision is called an "award".

### ***Advantages of Family Arbitration***

- Applies to children and financial disputes;
- Timing - the arbitration process is likely to be much quicker than formal court proceedings;
- Specialism - a family arbitrator will be specifically trained and experienced in family law. If there is a difficult issue to be determined parties can choose an arbitrator with a particular specialism. Judges are trained to deal with all different types of legal disputes & do not always have the specialism in a specific area;
- Convenience - like private FDR's, parties can agree with the arbitrator the date, time & venue of the arbitration;
- Matters to be determined - parties can use the arbitration process to determine either all points in relation to their dispute or just one issue. The process is much more flexible than court proceedings;
- Continuity - parties have the same arbitrator throughout the whole case;
- Privacy - family arbitration is completely private. No members of the press will be able to attend the arbitration;
- Costs - the process can be cheaper than formal court proceedings as it is a quicker process;
- Finality - the decision of the arbitrator is binding upon both parties.

### ***Disadvantages of Family Arbitration***

- Cost - parties have to pay the arbitrator's fees. Generally both parties pay the fees equally;
- Binding decisions - at the start of the case both parties must agree to accept the arbitrator's decision which is binding. Appeals can only be made in exceptional circumstances.

There are a number of different, non-court processes for separating couples to consider when wanting to make decisions following the breakdown of their relationships. No one size fits all. Sometimes, parties will attempt a number of different options in an attempt to resolve issues.

For tailored advice on the respective merits of each option in your personal circumstances, or to discuss the likely outcome if your family dispute goes to court, please contact any of our Family Law specialist solicitors.

**Gaby Hardwicke**  
33 The Avenue  
Eastbourne  
East Sussex  
BN21 3YD

Tel: 01323 435960  
Fax: 01323 435946  
[giles.robinson@gabyhardwicke.co.uk](mailto:giles.robinson@gabyhardwicke.co.uk)  
[www.gabyhardwicke.co.uk](http://www.gabyhardwicke.co.uk)

**Gaby Hardwicke**  
2 Eversley Road  
Bexhill on Sea  
East Sussex  
TN40 1EY

Telephone: 01424 735000  
Fax: 01424 222702  
[david.young@gabyhardwicke.co.uk](mailto:david.young@gabyhardwicke.co.uk)  
[www.gabyhardwicke.co.uk](http://www.gabyhardwicke.co.uk)

**Gaby Hardwicke**  
34 Wellington Square  
Hastings  
East Sussex  
TN34 1PN

Telephone: 01424 457500  
Fax: 01424 457534  
[debra.frazer@gabyhardwicke.co.uk](mailto:debra.frazer@gabyhardwicke.co.uk)  
[www.gabyhardwicke.co.uk](http://www.gabyhardwicke.co.uk)