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Full spectrum law

# Guide to Non-Court Dispute Resolution Options



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## Overview

### What is Non-Court Dispute Resolution?

It is often abbreviated to 'NCDR'. It has been broadened to encompass various methods of resolution beyond traditional court processes.

### What is it used for in family law?

Mainly children and financial issues.

### What methods are involved?

Mediation, Arbitration, collaborative law, private finance hearings, collaborative law, independent social workers and one solicitor/two clients.

### What is the Court's role in promoting this?

NCDR will now require parties to submit and file their views with the Court on using NCDR instead of going to Court. This aims to raise discussion and promote non-court methods in the legal process.

### What else might the Court do during proceedings?

They may adjourn court proceedings at times to encourage parties to pursue NCDR. There may also be adverse cost consequences against a party who unreasonably refuses to engage in NCDR without good reason.

## Mediation

### What is mediation?

Mediation is a process that allows people to negotiate on common family matters such as children arrangements or financial matters, with the assistance of a neutral third party known as a 'mediator'. The mediator attempts to assist them in reaching an agreement.

### How is mediation conducted?

1. In person. It can take place in person with both parties in the same room with the mediation at their agency venue.
2. Shuttle mediation. This is a conflict resolution method commonly used in high-tension scenarios. The parties in dispute are separated into different rooms with the mediator who goes back and forth in an attempt to mediate between the two.
3. Hybrid mediation. The same as shuttle mediation, but in addition the parties are also both supported by their legal representatives who can provide legal advice along the way.
4. Online mediation. It can be conducted online either with the parties on the same link or different links.
5. Child inclusive mediation. It is where the mediator, with specialist training as a child consultant, meets directly with your child/ren to allow them to share their views, thoughts, and feelings.

### Is there anything I need to do before a mediation session?

Before your first session is arranged, you need to attend a Mediation Information Assessment Meeting, otherwise known as a 'MIAM'. It is a first meeting with a specially qualified family mediator to consider whether your issues can be resolved within mediation i.e. whether it is suitable. Each party has their own MIAM.

### Is mediation legally binding?

No. Whilst agreements reached in mediation are not legally binding and cannot be enforced by the Court, they are valuable and an important step in the process. Any agreement reached can be drafted into a parenting agreement. This is a good document to rely on should the matter then proceed to Court.

# Arbitration

## What is arbitration?

A form of private dispute resolution in which the parties enter into an agreement under which they jointly appoint a qualified person i.e. the arbitrator to adjudicate a dispute. It can be used to resolve financial dispute and children disputes.

## Is it legally binding?

An arbitration agreement is generally binding on the parties to the extent that they cannot proceed through the Courts contrary to the terms of the agreement and/or without the consent of the other parties. However, the final decision made by the arbitrator is legally binding.

## Collaborative law

### What is collaborative law?

Each person appoints their own collaboratively trained lawyer and everyone meets together to discuss and resolve things face to face. Both parties will have a lawyer with them during the process for support and advice. It is otherwise known as a 'four way meeting' or a 'round table meeting'. Both parties agree not to issue court proceedings whilst in the collaborative process.

# One solicitor, two clients

## Overview

It is standard for solicitors to be prevented from acting for both parties in a divorce due to concerns around conflict of interest. However, with the introduction of the new 'no-fault' divorce law introduced in 2023 and the opportunity to make a joint divorce application, the traditional approach to providing advice is changing.

## What does one solicitor and two clients mean?

The SRA has recently approved a joint assistance and advice model. This is where one lawyer can advise both of the separating parties in relation to divorce, finances, and children. Often, the parties will come to the solicitor with an agreement in mind. The solicitor will provide advice based on the court's approach and current legal guidance, with an aim to trying to find solutions and a compromise between the parties. The solicitor will likely involve other third parties in the process, such as financial advisors, counsellors or pension experts, depending on what the clients require at each stage. It is a holistic approach to the separation, with the advice being provided openly between the parties, Parties will usually share the cost. The approach requires transparency between the separating couple and encourages better communication to a more amicable conclusion. If parties are able to reach an agreement, their joint solicitor can draft a binding outcome for both parties.

## How do I know if it is suitable for my case?

A joint approach will only be suitable where parties are willing to be transparent in the process, as well as being willing to compromise to achieve an amicable solution which works for both parties. It not be suitable in all cases, including those where there has been an allegation of domestic abuse. The solicitor advising the parties must continue to work within the current SRA regulations and where a conflict arises, can act for one party with both parties' consent if appropriate or will be unable to act further.

# Independent Social Workers (ISW)

## When may an ISW be used?

As part of private children proceedings, a Cafcass Officer will usually be appointed to provide a report to the Court in relation to any safeguarding concerns. Cafcass is the Children and Family Court Advisory Service and is a government organisation that employs social workers to provide advice to the court that focuses on the best interests of the child/children.

## What is the benefit of an ISW?

Unfortunately, Cafcass have stated significant delays in their reporting, which in turn results in delays to the proceedings. Delays can be detrimental to the child's welfare and therefore parents may apply to the Court to instruct an ISW to conduct an investigation instead. ISWs will likely have capacity to conduct an assessment sooner than Cafcass.

## Why else may I need an ISW?

Parents may also want to appoint an ISW if they feel that their child has specific needs that need to be assessed by a specialist. Parents may apply to the Court to appoint an ISW that has expertise in a certain area to recognise and help overcome specific issues in a more thorough way than Cafcass might.

## How do I get an ISW on board?

Where parties are in court proceedings, the court's permission must be obtained to instruct any kind of expert, including an ISW. This is known as a Part 25 Application. The Court will have to consider whether the appointment of an ISW is necessary and proportionate to the proceedings. The fee for an ISW would usually be split between the parties. The costs will vary depending on the price charged by the ISW, and any travel/associated expenses they may have.

# Private hearings

## Overview

There are significant delays in the courts in both private children and financial remedy proceedings, and often hearings are delayed or cancelled last minute.

## What can I do to avoid delay?

As a result, parties are now choosing to instruct a private 'judge' to conduct a private hearing, which can take place outside of the court room. This 'judge' can be a solicitor, barrister, or retired judge. The 'judge' will listen to both arguments and help the parties negotiate an agreement. This will incur costs, which parties usually split equally.

## When can a private hearing be used?

Private hearings in both financial and children proceedings. In financial proceedings, the private hearing will act like a Financial Dispute Resolution hearing (FDR). In children cases, the parties may decide at an early stage that they want to see the neutral opinion of a specialist barrister. The 'judge' will give parties an indication of what they think the outcome of the case would be, to try and help them reach an agreement.

## When is a private hearing suitable?

A private hearing may be suitable where there are long delays in the local court, meaning that waiting times for a hearing are extensive. Parties can have a private hearing to overcome these delays. Parties will be able to choose the date of the hearing, instead of it being listed at the first available date by a court. As the appointed judge has less time constraints on them compared to the court, they are more likely to be able to read through all of the paperwork thoroughly beforehand, and therefore will have a better understanding of the case.

Private hearings are also beneficial where there is a particular issue in contention, as parties can appoint a 'judge' who is a specialist in that area.

It should be noted that the private 'judge' will not be able to make any court order or any directions orders. For example, if agreement is reached, the parties will still have to submit a draft Consent Order to the Court for approval, but this could still be quicker and more cost effective.

# How can Wollens help?

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If you need help with a family matter, our team of professionals are here to help you and guide you through the process.



**Abigail Roode**  
Solicitor



**David Kendall**  
Partner



**Cate Jewell**  
Family Law Executive



**Elizabeth Foster**  
Family Law Executive



**Rachel Carter**  
Partner, Head of  
Department, Family



**Deborah Baker**  
Partner



**Alicia Payne**  
Trainee Solicitor



**Amelia Smith**  
Solicitor



**Courtney McManus**  
Trainee Solicitor



**Victoria Harle**  
Associate Chartered  
Legal Executive



**Rebecca Procter**  
Partner



**Lydia Murray**  
Solicitor

**WOLLENS**

Full spectrum law

South Devon  
01803 213251

Exeter  
01392 274006

North Devon  
01271 342268

wollens.co.uk