



WESTGATE  
CHAMBERS

NON COURT DISPUTE  
RESOLUTION SERVICES

t: 01273 480510

e: [family@westgate-chambers.co.uk](mailto:family@westgate-chambers.co.uk)

w: [www.westgate-chambers.co.uk](http://www.westgate-chambers.co.uk)



## Why use NCDR?

It may actually be easier to ask why you wouldn't use NCDR? It is much quicker and cheaper than going to court. You can choose your 'judge' to preside over a private Financial Dispute Resolution (FDR) hearing. You can even choose where and when to hold the NCDR, how it will be conducted, what you include and what you leave out. You can choose whether the outcome is binding on both parties or not. You can even achieve an outcome that the court may not have the power to give you.

The success rates of cases that use NCDR are very high; 80% of all mediations settle either in full or in part. While a case in the Family Court can take over a year to resolve, in some cases NCDR will produce a result within a couple of weeks.

The courts have realised how effective and efficient the various types of NCDR are so are now encouraging everyone to actively take part unless, as in some rare situations, it would be inappropriate to do so. NCDR is now mandatory in civil cases and very heavily encouraged in family cases where a party that fails or is unwilling to participate in some form of NCDR is likely find the court imposing

---

**The success rates of cases that use NCDR are very high; 80% of all mediations settle either in full or in part.**

---

a costs order against them.

All family lawyers should explain the different methods available of resolving family law disputes outside the courtroom to their clients. They should be advising on the benefits and/or limitations in a party's specific case, including how a solicitor can support the non-court dispute resolution process.

As a result, NCDR, previously known as Alternative Dispute Resolution (ADR), is no longer 'alternative' but mainstream against a backdrop of a court system unable to cope with the sheer volume of family work, a situation that is resulting in severe delays in dealing with cases. The potential suitability of the many and various non-court methods of dispute resolution should be reviewed regularly during every case.



### Mediation Information and Assessment Meeting (MIAMs)

**Family Procedure Rules 2010 (FPR 2010), SI 2010/2955, Pt 3, together with FPR 2010, PD 3A demand all potential applicants attend a mediation information and assessment meeting (MIAM) before making certain types of application for a court order in relevant family proceedings, except where an exemption applies. The court will also expect the prospective respondent to attend a MIAM as well.**

At every stage in proceedings, the court must consider whether non-court dispute

resolution is appropriate. The court also has a general power to adjourn proceedings in order for non-court dispute resolution to be attempted, including attendance at a MIAM to consider family mediation and other non-court dispute resolution options.

Parties must also file a form with the court setting out their views on using non-court dispute resolution as a means of resolving the matters raised in the proceedings that will be served to all other parties.



## Methods of Non-Court Dispute Resolution

- Negotiation
- Mediation including-
  - i. Resolution Model
  - ii. Commercial Style Model
- Collaborative Law
- Early Neutral Evaluation and pFDRs
- Arbitration





## Negotiation

**Negotiation can take many forms. It can occur between the parties themselves if they are still able to communicate effectively. Sometimes family members or community elders try to assist parties. Where lawyers have already been instructed, very often the parties' respective legal representatives will negotiate.**

Negotiations can take many forms, via correspondence, on the telephone or face-to-face. Many parties already embroiled in litigation manage to engage in negotiations at the doors of the court in a bid to settle their dispute.

Negotiation is simply a conversation between parties. It allows them to understand the 'interests' of the other and to consider how their respective interests could be satisfied. Each must also recognise that in negotiation, neither party achieves everything they want so they will need to compromise and be prepared to give a little ground in order to reach the best possible outcome.

### Negotiation has the following advantages:

- Savings in costs as disputes may be resolved more quickly and efficiently
- Less stress and emotional pressure for parties
- Certainty rather than the 'gamble' of a court hearing
- The flexibility to offer indemnities or undertakings in matters beyond the court's jurisdiction
- All encompassing
- Reduced acrimony between the parties
- Comprehensiveness as you have time to ensure all issues are dealt with



## Mediation

**Mediation by an experienced and specialist mediator has a success rate of over 80%.**

Mediation is the process whereby parties arrive at their own solutions or settlement proposals in relation to children or financial issues via negotiation and discussions facilitated by an impartial mediator in a safe and managed space.

The mediator assists the parties to identify the issues they need to resolve and finding the most sensible and practical solutions for the family. In family law there are two main models of mediation:

### 1. The Resolution Mediation Model

This involves the parties in a number of short sessions (1½-2 hours) over a period of time in which they meet together with the mediator. Whilst mediation usually takes place with both parties in the same room, this is not always possible. If this is the case, mediations can be managed with parties in different spaces or even remotely. This is known as 'shuttle' mediation.

In financial matters, one of the mediator's key tasks is to provide appropriate documentation to assist the parties

to provide full and frank disclosure to accompany their Forms E. The mediator may also flag up where further financial disclosure or expert reports may assist in the decision-making process. Mediators often recommend when a party may benefit from legal advice within the process, as the mediator's task is not to advise on legal matters but to gather information from the parties and to give information where appropriate in order to assist them in reaching their own solutions.

Where children are involved, the Mediator can assist parents to focus on their children's needs and to create a tailor-made joint parenting plan. In addition, Child Inclusive Mediation can be undertaken when it is important to the parties to involve their children directly in the mediation process.

At the end of the process of financial mediation, the mediator provides the parties with a Memorandum of Understanding. This contains their acceptable proposals for settlement together with the open Financial Statement upon which those proposals are based. These documents are then taken to the parties' respective legal advisors for the legal formalities to be completed and a draft order prepared for court approval.



Hybrid mediation is the option that enables parties to include their lawyers throughout the mediation process and can be beneficial where there are complex legal or financial issues to be resolved.

## 2. Commercial Style Mediation

Another style of mediation is Commercial Style Mediation. This is where the parties are 'trial ready' in the sense that all the information necessary to facilitate a resolution of the dispute is available to the mediator and the parties require assistance in reaching an agreement.

This type of mediation is usually carried out over the course of a day with each parties' legal representatives present to advise on the merits of the range of solutions being considered.

If an agreement is reached, the legal representatives will draft the consent order/Tomlin Order and the terms of the agreement which will be binding for the parties once approved by the court. Commercial style one day mediation is particularly suitable for TOLATA claims (Trust of Land and Appointment of Trustees Act 1996) between formerly cohabiting couples and where the law – and, therefore, a court-imposed outcome is unpredictable.

### Mediation has the following advantages:

- It reduces tension and hostility between the clients
- Solutions are tailored to each parties' needs
- The parties can develop their own outcomes
- Decisions are made on an informed basis
- Parties are able to communicate and co-operate, explore and examine options in a safe environment and appreciate and consider the needs of their children
- There are cost savings as disputes can be resolved more quickly and effectively



## Collaborative Law

**This is an innovative method of dispute resolution in which both parties and their respective lawyers, trained collaborative lawyers, all work together to achieve a fair outcome relating to their children, finances or both, without going to court.**

The parties and their lawyers sign a Participation Agreement setting out the parties' and lawyers' respective obligations to each other and the process. The incentive is that in the event the process breaks down, the lawyers are disqualified from representing their collaborative clients in court proceedings. In this way, everyone invests collaboratively to make the process work by resolving the issues as constructively and collaboratively as possible.

Issues are put on an agenda, discussed and eventually resolved during face-to-face meetings between all four signatories to the participation agreement. Outside of the four-way meetings, each party will have a two-way meeting with their own lawyer and the lawyers will also engage in two way meetings between themselves to consider how best to progress a case, narrowing the issues as much as possible.

Other professionals can be involved although they do not necessarily need to attend the

meetings. Sometimes expert help is needed, for example with respect to the treatment of pensions or if a party or their child is having difficulty coming to terms with the family issues, a therapist or counsellor may be brought in to assist.

When a settlement has been reached, both lawyers draft the formal legal document together and submit it to court for approval, without either party having to attend court.

### Collaboration has the following advantages:

- Everyone enters the process in good faith so it is quicker and less acrimonious
- If things become difficult the parties can be reminded of their obligations as stated in the Participation Agreement
- The parties set their own agenda
- The parties can move along the process at their own pace
- There is full and frank disclosure which means decisions are reached from a position of knowledge
- The collaborative process helps to keep the channels of communication open





## Early Neutral Evaluation/pFDR

**Early Neutral Evaluation (ENE) is a private and non-binding technique whereby a third party (in some cases a retired evaluator or other senior, experienced and legally qualified person such as a barrister) provides an opinion on the likely outcome at trial. With its speed, non-binding nature and use as a springboard to settlement, ENE is becoming a popular tool either on its own or following an impasse in negotiation or family mediation.**

A private FDR/Early Neutral Evaluation is an appointment at which your own privately selected evaluator will give an objective indication as to the appropriate outcome to the case. This will help both parties to reach an agreement on all issues. The parties chose their evaluator, which means they can ensure that the person selected has the relevant expertise. Unlike in court proceedings, the parties and their legal representatives will also be able to schedule the appointment when it is convenient at a location of their choice.

Unlike the court process, the private evaluator will have the time in advance of the appointment to consider all the papers and will remain available to the parties for as long as they require on the day. Although the

indication from the evaluator is not binding, it is likely to lead to the parties reaching agreements or at the very least, to narrowing the outstanding issues.

This process can be used to address financial issues, TOLATA claims and child arrangements.

Litigation is not only expensive financially and emotionally but is conducive to entrenched positions which do not lend themselves to the search for solutions. To some extent ENE enables parties to rehearse the arguments they would use within the litigation process and to test their effectiveness with both each other and before an independent person qualified to give an informed and expert view as to the likely court decision.

### **ENE/pFDR has the following advantages:**

- It can take place anywhere at any time convenient to all
- The parties choose a specialist family lawyer as the ENE/pFDR evaluator
- The ENE/pFDR evaluator focusses on the case for as long as needed



- It is more cost-effective than court proceedings
- An indication of likely outcomes from an experienced evaluator at an early stage can help achieve an earlier settlement thus reducing the costs involved
- If settlement is not achieved, the evaluator can assist in narrowing the issues between the parties, which may then be suitable for arbitration
- Unlike the court based FDR, parties do not have to be engaged in court proceedings and are able to engage as part of a voluntary process in trying to achieve settlement
- Each party is provided with a view of their likelihood of success in court
- Each party is able to assess their respective positions and decide whether it is more cost-effective or efficient to litigate
- The parties have the opportunity to evaluate whether a mediation or continuing mediation could be workable
- Disputes can be assessed on paper rather than an attendance, and a paper 'hearing' could be helpful in those cases where parties find it difficult to face each other and prefer not to be in the same room together.



## Arbitration

**The Institute of Family Law Arbitrators (IFLA) developed the arbitration scheme to enable parties to achieve binding final decisions in financial and children disputes that are quicker, cheaper, more flexible and user-friendly than pursuing a case through the courts.**

In order to begin this process, the parties sign a form (ARBFs1 or ARBCS1) agreeing to arbitrate and to adopt the IFLA Rules. The arbitrator is offered the appointment and then seeks the parties' agreement to the terms of appointment. Once accepted, this creates a contract between the parties and the arbitrator and the arbitration process begins. The arbitrator will contact the parties to introduce themselves and will ask for additional information not included in the arbitration forms. The arbitrator will also canvass the parties' views as to the scope of the arbitration, the issues they wish to be determined and how those issues will be decided, i.e. in a face-to-face hearing or solely on the papers.

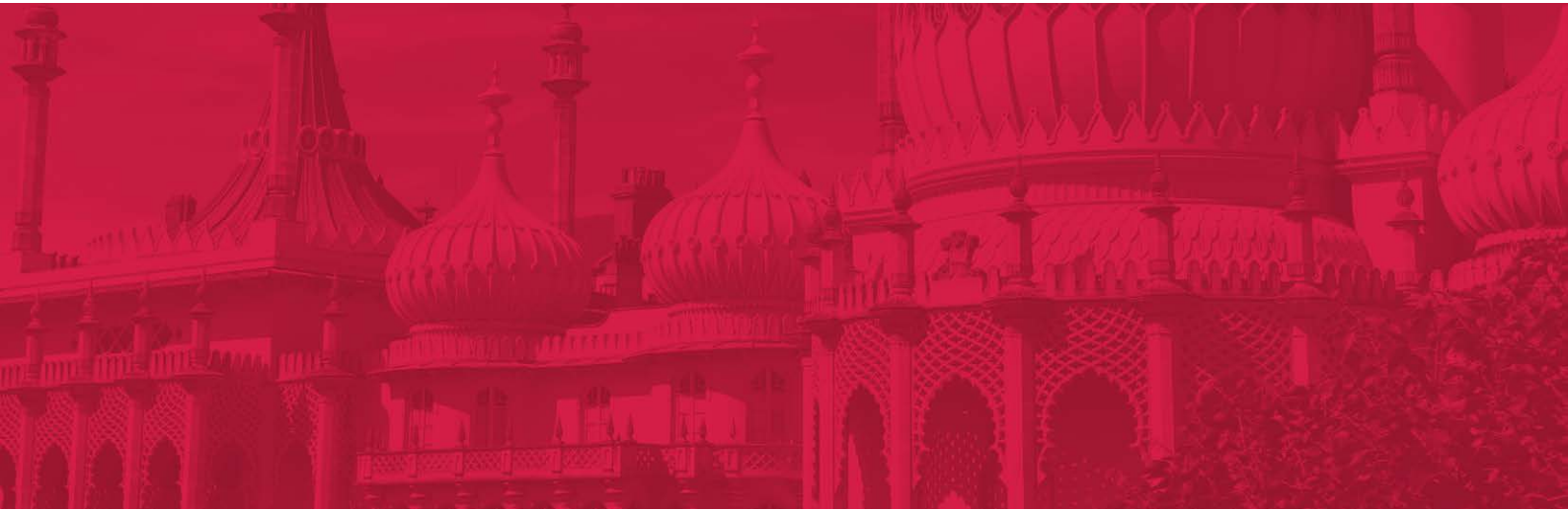
There is usually a preliminary meeting between the arbitrator and advocates who attend with their client's instructions to agree how the case should proceed. Sometimes this initial meeting takes place

with the parties and their advocates, especially if there are contentious matters which are likely to require the arbitrator to decide the best way to proceed.

Where there is a final hearing, parties are usually represented by a barrister or a solicitor. They can be cross examined or the case can simply be determined by way of submissions made by the lawyers on the instructions of their clients. On conclusion of the arbitral hearing, the arbitrator will usually make their final award or determination in writing within 28 days.

The arbitrator is entitled to withhold the award/determination until the parties have paid for the arbitrator's services. The parties may then decide to apply to the court for an order which contains the terms of the arbitration award/determination for the court to convert the arbitral award/determination into an order, or enforce the award.

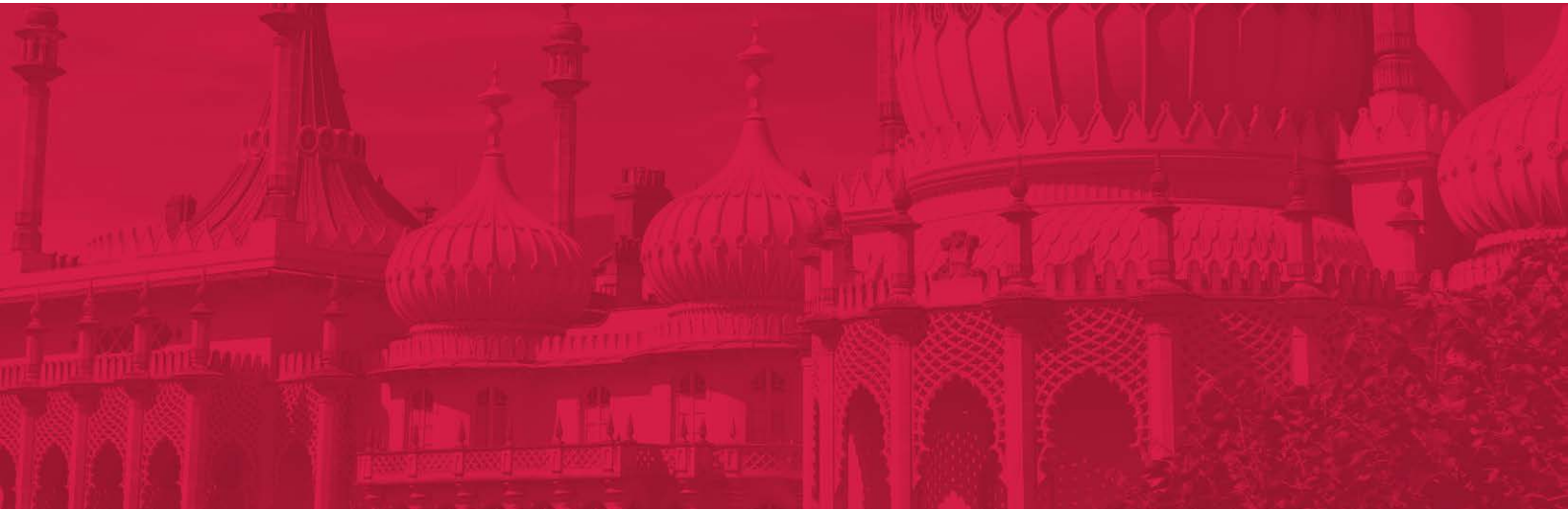
There is also an Arbitration recital that indicates to the court that the outcome has been carefully considered by someone qualified to make a determination which may reduce the time otherwise taken for the court to approve a consent order.



**Arbitration has the following advantages:**

- Clients select their decision maker from a panel of qualified Family Law Arbitrators
- The arbitrator will be a qualified and very experienced senior barrister or retired judge who is well versed in the law and practices of financial remedies and/or children cases
- The arbitrator will be continuously and directly involved in the case once appointed
- The arbitration is confidential
- The process is quicker and more efficient than litigation which is hampered by a rigid standard procedure, under-resourced and over-used courts, and huge delays in getting a case before a judge
- The process can be tailored to meet the needs of the parties, e.g. venue, process, scope of what is to be determined, resulting in speed and costs savings compared with conventional litigation route
- An arbitration can incorporate children and financial remedy disputes
- An arbitration can be used to resolve the entire case or a discrete issue which needs to be addressed quickly, e.g. whether a child's name can be changed or whether an asset is held in trust for a party or not (in situations like this, if court proceedings have been started, the court will pause the litigation process to give the parties time to arbitrate the discrete issue, with the option to return to court if required)
- Arbitration is suitable for those have been unable to agree but who want a quick, cost effective and binding decision to finalise the dispute between them
- Arbitral determinations and awards can be enforced either by way of breach of contract or, if converted into an order on application to the court, under the enforcement rules similar to those available through litigation
- Arbitration can also provide solutions unavailable to the court, e.g., an apology from one party to another





## Our Team

Westgate Chambers boasts a highly experienced and professional team of Family Law barristers who practice across all areas of family law including public and private Children Act 1989 matters, e.g. child arrangements, prohibited steps and specific issue order applications, matrimonial financial disputes, cohabitation (TOLATA) claims and Court of Protection work covering the needs of the elderly and vulnerable.

Westgate Chambers provides expertise and in depth knowledge in all aspects of non-court dispute resolution, meeting the growing need and increased encouragement for NCDR.

Westgate Chambers offer clear and comprehensive advice to clients wishing to

obtain a resolution to their problem whilst avoiding the expense, delay and stress of the courtroom.

Westgate Chambers provide clients with the highest quality personalised and professional, solution-focussed representation. We believe that finding an agreed resolution by using the most appropriate method of NCDR rather than in court is in everyone's best interests.

Please visit the NCDR page on our website for further information about our team of specialists.

Alternatively, please contact the clerking team to discuss your matter so we can help you find exactly the right practitioner to help.

t: 01273 480510

e: [family@westgate-chambers.co.uk](mailto:family@westgate-chambers.co.uk)

w: [westgate-chambers.co.uk/family/specialist-non-court-dispute-resolution-ncdr](https://westgate-chambers.co.uk/family/specialist-non-court-dispute-resolution-ncdr)

