

iGuide: Resolution by Out of Court Settlements

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At The International Family Law Group LLP we are committed to achieving out of court resolutions for our clients wherever possible.

The vast majority of cases do not need to go to a final court hearing. However, very often there are considerable benefits in commencing court proceedings. Some of these benefits include:

- Creating a more formal and structured timetable and preventing delay
- Having the opportunity to seek additional disclosure or prevent unreasonable requests for excessive disclosure,
- Having the assistance of experienced family court Judges in guidance and prediction on outcomes and in other ways

Perversely as it may seem, it can often be much more cost effective, quicker and more reliable to settle a case once proceedings are under way rather than against the background of voluntary disclosure and correspondence which can sometimes prolong the process, lead to unsatisfactory levels of disclosure and increase costs.

There are a minority of cases which do require a final hearing in court, to test evidence, complex points of law, because the other side are being utterly unreasonable, or because the positions are polarised. They are a rarity and should be avoided wherever possible.

There are many different ways to resolve a case without a final court hearing. This is known as alternative or appropriate dispute resolution, ADR.

It is important for individuals to choose the best and most appropriate method for each case and at each stage of a case. We set out below the main options that are available for resolving disputes. At The International Family Law Group LLP we have access to trained professionals able to undertake all of these different forms of alternative dispute resolution.

Solicitor Negotiation

The vast majority of family law disputes in England and Wales are resolved by lawyers negotiating on behalf of their clients, after financial disclosure. These are invariably satisfactory as a client receives ongoing advice about the merits of a settlement.

The skills required in negotiating a settlement are very different to preparing to go to court. There are different tactics, approaches, language, offers and counter offers and styles.

Different forms of making offers can be appropriate at different stages of getting to a settlement, such as round table meetings, offers in writing and discussions on the telephone.

Mediation

This is a process of negotiation between the parties, assisted by mediators, neutral professionals who may be lawyers. Mediation runs alongside advice given by lawyers but offers a different way for couples to resolve themselves the issues they face. It is not to be confused with counselling.

In orthodox mediation, the mediators can say if a proposed outcome is unlikely to be upheld by a court. This should be compared with directive mediation, which is increasingly favoured by many specialist lawyers and many clients. iFLG has mediators or access to mediators including those trained in working with children.

Directive Mediation

This is a variety of mediation where the parties agree in advance that the mediator may give guidance and direction to the couple on what is likely to happen if a matter were to go to court for an outcome. It is not as passive as traditional mediation.

It also works very well where solicitors or legal advisors play a greater role in the mediation including sometimes being present at mediation sessions. It is the resolution model of choice of many specialists. iFLG can offer mediators who undertake directive mediation.

Collaborative Law

This is another alternative method which enables clients to resolve all issues arising from their separation or divorce without going to court.

In the collaborative law process both parties are represented by a trained collaborative lawyer. The case is dealt with mostly in four-way meetings between the couple and their respective lawyers. If required, other professionals such as accountants or valuers may also join the meetings to give neutral information.

Each party signs a contract to provide full disclosure, negotiate in good faith and not to use the court process save by agreement. The last aspect is fundamental to collaborative law. If either party issues court proceedings such as an application to the court for a financial order, then the collaborative law process ends, both parties – not just the one issuing proceedings – must change lawyers and both the collaborative lawyers will have no further involvement in the case. Some lawyers regard this as a disadvantage of collaborative law. iFLG can access collaborative-trained lawyers.

Early Neutral Evaluation

This arises when a neutral senior lawyer, solicitor, barrister or Judge, gives a view on what is likely to be the final outcome of a case if it were to be decided at court. Early neutral evaluations are given within the court process by a Judge at a Financial Dispute Resolution Hearing, but an increasing number of clients prefer out of Court early neutral evaluation. It can often be listed more flexibly, with greater control over the expertise of an evaluator and provide more privacy.

Out of court early neutral evaluation occurs from time to time when two solicitors representing their respective clients struggle to settle because of differences over matters of law, outcome, practice or procedure. Whilst these could be the subject of an application to the court, some prefer the more informal approach of instructing a senior family lawyer to give an opinion.

iFLG is able to provide this out-of-court early neutral evaluation on complex issues of finance and children matters including those with an international dimension. Please contact us about terms and how we can be of assistance.

Early evaluation can often lead to settlement.

Arbitration

This is a form of independent adjudication but outside the court system and with the opportunity to agree timetables, choice of arbitrator, procedures, location of hearings etc. It can be for all issues in a case or just a narrow point in dispute. Advantages include choice of arbitrator, instead of the Judge imposed by the court office, continuity of the arbitrator dealing with the matters, procedures and timetables agreed by the parties rather than imposed, greater confidentiality, faster resolution and other major benefits. The parties sign up to be bound by the decision of the arbitrator.

A family arbitration scheme was introduced in England in early 2012. iFLG has arbitrators able to assist.

For more information about resolution by out of court settlements, or other questions you may have, please contact a member of our specialist family law team.

You can do so via our website, by email to enquiries@iflg.uk.com or telephone on +44 (0) 203 178 5668.

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