Good Divorce Week 2022: Ending the Family Court Crisis

This week (28 November to 2 December 2022) is Good Divorce Week run by Resolution, a community of family justice professionals who work with families and individuals to resolve issues in a constructive way.

This year the focus is the ongoing crisis in the overstretched family courts which is resulting in significant backlogs and delays in court listings and processing court documentation.

Resolution is accordingly seeking to highlight the various alternative dispute options available to families, to help them reach a resolution to their financial disputes and/or children matters outside of the court process.

As members of Resolution, the family solicitors at Lester Aldridge are trained in advising clients through trying to resolve their matters outside of court, where it is safe and suitable to do so. In support of Good Divorce Week, we've included a brief guide to several commonly used dispute resolution options that are available to people going through a dispute.

Mediation

Family mediation involves you and your ex-partner attending a session (either jointly or separately by way of 'shuttle' mediation) to explain your concerns and needs in the presence of a trained family mediator.

The mediator is impartial and neutral and cannot give either of you legal advice or impose any decisions on either of you. The mediator is there to assist you both in reaching an agreement and will help you talk through the options available, and the practicalities of those options.

Mediation is a 'without prejudice' process which means any negotiations or settlement offers made within the mediation sessions cannot be relied on if mediation then breaks down.

If an agreement is reached then this is recorded in a memorandum of understanding, which is signed by both of you and the mediator. However, it is not legally binding and cannot be enforced unless you both agree to submit it to the court to become a sealed court order.

In March 2021 the government announced a mediation voucher scheme. Under the scheme, parents trying to

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resolve disputes (outside of court) regarding their children are eligible to claim a £500 mediation voucher to pay towards their mediation sessions (£500 in total for both parties rather than each). In June 2022 the government announced they were extending the scheme to offer a further 10,200 mediation vouchers to promote mediation as an option to separating & divorcing parents trying to resolve matters outside of court.

Hybrid mediation

There is also the option for hybrid mediation - whereby the mediation sessions take place where one or both parties also bring their solicitor or a legal representation to the sessions.

While it can help parties reach a resolution where they have the benefit of legal advice through the sessions, it is not a requirement to have your solicitor with you for mediation. There will be additional costs associated with paying for your legal representative to attend. You can always seek legal advice before or after the mediation sessions if you are unsure as to the legal position.

Solicitor advice and correspondence

Whichever route you select, our family lawyers are on hand to help you choose an appropriate dispute resolution method or to provide you legal advice as you go through the out of court processes.

Another option is that we can liaise on your behalf (according to your instructions) with your ex-partner directly or with their solicitor (if they have instructed one). Solicitor correspondence can be used to arrange disclosure, to negotiate the issues at hand and to put forward and discuss offers for settlement to try to help you reach a resolution with your ex-partner.

Where you are able to reach an agreement with your partner directly, by way of solicitor correspondence or using mediation sessions, then we can prepare the agreement into a draft court order to be submitted to the court to become legally binding (if both parties agree and consent to this).

Arbitration

Family arbitration is where a family specialist (often a barrister who also sits as a deputy court judge) is jointly instructed by both parties to conduct private proceedings as an arbitrator. Rather than acting as a mediator between the parties, the arbitrator acts similarly to a court judge where they give directions and, if needed, make final decisions on a case.

The details of the arbitration will need to be agreed between the parties in advance - this includes deciding on parameters such as:

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How many hearings are necessary to reach a settlement:

- You can have private directions hearings to determine what evidence or expert evidence is required, a private FDR hearing and/or a final arbitration hearing where the judge will listen to arguments and evidence from both sides and then will make a final award on the matter which is a binding decision.

Who the arbitrator will be:

- Unlike court proceedings, private arbitration means that you select and agree on the private arbitrator who will be determining your matter.

What issues need to be determined:

- If the parties are agreed on some issues then the private arbitrator does not need to determine the whole case and their scope can be limited to any remaining issue outstanding, e.g. pensions.

How costs will be shared:

- The costs of arbitration include paying for your own legal fees and barrister for the hearing(s) as well as the additional cost of the private arbitrator's fee (and potentially the hearing venue costs if external). The arbitrator's fee is usually split equally between the parties.

Collaborative law/Round table discussions

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Collaborative law is similar to hybrid mediation in that you and your ex-partner both attend a meeting(s) with your own collaboratively trained lawyer/legal representative. These are also known 'round table discussions'.

The aim is to help the parties move towards a resolution, by bringing them to a meeting together to open up discussions and negotiations, with the added benefit of legal advice and guidance throughout the meetings. There is typically no mediator or third party for collaborative law sessions.

Collaborative meetings can only take place if both parties agree to participate in the process. At the start, both parties will sign a 'participation agreement' to demonstrate their commitment to working through the issues without court proceedings. At the end of the meeting(s), the parties will sign a further agreement to set out what agreements have been reached/ what issues have been narrowed.

It is important to note that at the end of the collaborative sessions if an agreement has not been reached then your collaborative lawyer cannot continue to be your lawyer going forwards. You would need to instruct a different lawyer. This is to encourage everyone involved in the collaborative meetings, even the lawyers, to try to reach an agreement by the end of the meetings.

Need advice?

If you have any questions or would like to discuss whether any dispute resolution options would be suitable for your matter, then please give our Family Team a call at 03449 670793 or email online.enquiries@LA-law.com.

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