

How do I know which procedure is best for me and my family?

Mediation - Collaborative law - Solicitor lead negotiation - Court proceedings

Mediation

Suitable for:

- Couples who both want to resolve matters themselves
- Dealing with urgent interim issues that arise on separation
- Deciding on the process to govern the separation e.g. divorce/judicial separation or separation deed
- Issues relating to the Children – contact arrangements, schooling, health treatment etc
- Financial arrangements that need to be made

Who is involved?

- The Mediator
- Both husband and wife
- Your individual solicitors can advise between meetings and regarding implementation (if needed)

Procedure

- Face-to-face three-way meetings attended by both husband and wife and the mediator

Outcome

- Financial summary prepared by the mediator – to help solicitors draft Consent Order
- Memorandum of Understanding prepared by the mediator – non-binding

Independent advice

- The mediator cannot give advice to either spouse but can give general guidance
- Husband and Wife can get advice from his or her own solicitor between the mediation sessions

Implementation

- By Husband or Wife, or by their solicitors
- Typically the Husband or Wife's solicitor would draw up the divorce papers and a consent order (following the terms set out in the Memorandum of Understanding) for approval by the court

Advantages

- The timescale of the mediation process is completely governed by you
- The outcome is based on your decisions and not one imposed by someone else
- Mediation can deal with a wide range of issues as and when they arise

Disadvantages

- No independent advice is given during the mediation sessions
- Financial disclosure is informal and “on trust”
- The Memorandum of Understanding is not a legally binding agreement

Collaborative law

Suitable for:

- Couples who both want to resolve matters amicably and are prepared to agree not to use the court process
- Maintaining confidentiality
- Dealing with interim issues as and when they arise
- Deciding on the process to govern the separation e.g. divorce, judicial separation or separation deed
- Issues relating to the children – contact arrangements, schooling, health treatment etc
- Financial arrangements – even if complex

Who is involved?

- Two trained Collaborative Lawyers – one advising Husband and one advising Wife
- Husband and Wife
- Collaboratively trained experts (if needed) – i.e. accountant, IFA, pensions consultant, counsellor

Procedure

- Preliminary meetings between Husband and Wife and their own solicitor
- Face-to-face four-way meetings attended by both Husband and Wife and their respective Collaborative Lawyers (and expert if needed)
- Preparation for the meetings carried out in advance by Husband and Wife and their Collaborative Lawyers

Outcome

- Financial summary prepared by the Collaborative Lawyers
- Contractual agreement/consent order drawn up by the Collaborative Lawyers for final approval by the court

Independent advice

- Each spouse can get advice from his or her own Collaborative Lawyer before, during and after the four way meetings

Implementation

- By the Collaborative Lawyers and/or Husband and Wife
- Typically either the Husband or the Wife’s Collaborative Lawyer would draw up the divorce papers and both Collaborative Lawyers would work together to finalise the drafting of the consent order for approval by the court and any other documents required to implement the agreement

Advantages

- The outcome is your agreement not one imposed by someone else
- You control of the pace of the procedure
- You and your Husband or Wife each have the benefit of a lawyer present at all meetings to assist with your case and to give you independent advice
- Collaborative law can deal with a wide range of issues
- The discussions remain confidential apart from the final consent order and any implementation documents

Disadvantages

- If the Collaborative Law process “breaks down” both you and your Husband or Wife will have engage new solicitors to represent you in any subsequent court proceedings
- Both you and your Husband or Wife will have to engage trained Collaborative Lawyers which limits the choice of representative
- If one party is not cooperating with the disclosure of assets there is no machinery for enforcing disclosure

Solicitor lead negotiation

Suitable for:

- Couples who both want to resolve matters amicably but wish to retain the option of using the court process if negotiations break down
- Couples who would prefer not to engage in face-to-face meetings
- Dealing with interim issues
- Deciding on the process to govern the separation e.g. divorce, judicial separation or separation deed
- Children – contact arrangements, schooling, health treatment etc
- Finances – even if complex

Who is involved?

- Two Solicitors – one advising Husband and Wife
- Experts (If needed) – property and/or business valuer, accountant, IFA, pensions consultant, counsellor

Procedure

- Preliminary meetings between Husband and Wife and their respective solicitors
- Disclosure of each spouse’s finances by exchange of financial statements with supporting documentation and valuations
- Negotiation by written offers and/or discussions over the telephone between solicitors

Outcome

- Financial Statements prepared by Husband and Wife’s own solicitor
- Contractual agreement/consent order drawn up by the solicitors for final approval by the court

Independent advice

- Each spouse can get advice from his or her solicitor at any time

Implementation

- By the solicitors and/or the two spouses
- Typically one spouse's solicitor would draw up the divorce papers and both spouses' solicitors would draft the consent order for approval by the court and any other documents required to implement the agreement

Advantages

- You have the option of issuing court proceedings if your spouse is not co-operating or negotiations break down. You each retain your own solicitor
- The outcome is a negotiated agreement not one imposed by someone else
- You and your respective solicitors control of the pace of the procedure
- You both have the benefit of a lawyer to argue your case and give you independent advice
- Negotiation through solicitors can deal with a wide range of issues
- The negotiations remain confidential apart from the final consent order and any implementation documents

Disadvantages

- Any negotiated settlement involves compromise
- Both solicitors will argue points for their respective clients which may not assist in resolving matters amicably
- You may feel the agreement has been created between solicitors rather than between you and your spouse
- Costs can be increased if your spouse is not co-operating and court proceedings subsequently need to be issued

Court action

Suitable for:

- Couples where all communication has broken down and who are therefore unable to resolve matters amicably
- Emergency procedures – freezing injunction's, applications for interim maintenance
- Cases where disclosure is likely to be a problem
- Children – residence applications, contact disputes, schooling, health treatment etc
- Finances – even if complex

Who is involved?

- Two Solicitors (or barristers who are frequently instructed for court hearings) – one representing each spouse (although it is possible for anyone to represent themselves)
- A judge – normally a District Judge of a local county court
- Experts (If needed) – property and/or business valuer, accountant, IFA, pensions consultant, counsellor (normally written reports are prepared)

Procedure

- One spouse issues an application through the court
- The court gives directions for steps to be taken by each party – in financial proceedings initial directions are normally given without a hearing
- Disclosure of each spouse's finances by exchange of formal financial statements with supporting documentation and valuations
- Questionnaires, chronologies, statements of issues are prepared by both sides
- Further directions are given by the District Judge at a First Directions Appointment (FDA), both parties and their solicitors have to attend
- The second hearing is a Financial Dispute Resolution (FDR) hearing at which the district judge will give his/her opinion as to the likely outcome of the case in order to assist any negotiated settlement. All negotiations and the judge's opinion at this hearing are privileged and cannot be used in any subsequent final hearing
- If no agreement has been reached both parties will give oral evidence at a final hearing. This is usually about 12 months after the initial application. Barristers are normally instructed to represent each party at the final hearing. The District Judge will decide the facts of the case and will make an order as to the division of assets, payment of maintenance etc

Outcome

- Consent order prepared by each spouse's solicitor (and approved by the court) if matters settled by agreement even though proceedings have been issued
- Final order imposed by the District Judge at a final hearing

Independent advice

- Each spouse can get advice from his or her solicitor at any time

Implementation

- By the solicitors and/or the two spouses
- Typically one spouse's solicitor would draw up the divorce papers and both spouses' solicitors would draft any consent order for approval by the court and any other documents required to implement the agreement or final order

Advantages

- The court will set a fixed timetable for steps to be taken to manage the proceedings
- The outcome can be a negotiated agreement but if the case goes to a final hearing it will be imposed by the District Judge
- You and your spouse each have the benefit of a lawyer to argue your case and give you independent advice

Disadvantages

- Any final order imposed by a judge is likely to leave both parties feeling dissatisfied
- Both solicitors will argue points for their respective clients

- There is likely to be an increase in animosity which will not assist future relations, especially detrimental where there are children involved
- You may both have to face cross-examination in court which can be an uncomfortable experience
- The costs of a final hearing will be considerable and in “modest asset” cases will be disproportionate