



# iGuide: Resolution by Out of Court Settlements

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

## Solicitor Negotiation

The majority of family law disputes in England and Wales are resolved by lawyers negotiating on behalf of their clients, after exchange of financial disclosure. A client will receive ongoing advice about the merits of a settlement.

The skills required by lawyers in negotiating a settlement are quite different to preparing a case for court. There are different tactics, approaches, language, offers, counter offers and styles.

There are various ways of making proposals, which may be appropriate at different stages of working towards a settlement, such as round table meetings, offers in writing and discussions between lawyers over the telephone, as well as remotely online. Frequently settlement is achieved following a combination of these options.

## Mediation

This is a process whereby the parties meet with a neutral professional mediator, who may also be a family lawyer. The **Mediation** assists and guides the couple to reach their own proposals. It is not to be confused with **counselling**. It is recommended that the parties receive ongoing legal advice prior to and between mediation sessions.



The mediator cannot advise the parties but can provide information as to whether an outcome is within the bounds of that which would be approved by a court, or 'reality test' proposals made. Mediation is entirely forward thinking, looking to achieve an outcome concerning finance or children arrangements, and should not be confused with counselling.

Partner, Sarah Cornes of iFLG is a trained mediator.

## Hybrid Mediation

This is a mediation process where solicitors or legal advisors play a role in the mediation, including being present at mediation sessions on occasions.

Directive Mediation is a type of mediation where the parties agree in advance that the mediator may give guidance to the couple regarding the likely outcome, if their matter were to go to court.

## Collaborative Law

In the **collaborative** 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, financial advisers, valuers or children experts 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. The last aspect is fundamental to collaborative law and is intended to ensure that the parties and the lawyers continue to work to achieve a settlement fair to both parties. If either party issues court proceedings, ending the collaborative process, both parties must instruct different lawyers.

Partner, Sarah Cornes at iFLG is a collaborative-trained lawyer.

## Early Neutral Evaluation

This arises when a senior solicitor, barrister, or Judge, is appointed by the parties as a neutral voice? to give a view as to the likely 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 (FDR) hearing, but an increasing number of clients prefer the option of out of Court early neutral



evaluation. It can be listed earlier and with more flexibility, and greater control over the expertise of an evaluator and also provide more privacy.

Out of court early neutral evaluation can be adopted when solicitors representing clients in negotiations struggle to settle because of differences over matters of law, outcome, practice or procedure. The more informal, and quicker approach of instructing a senior family lawyer to give an indication, sometimes on one discrete issue, may be an alternative to an application to the court.

iFLG can 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.

## Arbitration

This is a form of independent adjudication but outside the court system and with the opportunity to agree timetables, choice of arbitrator, procedures, and location of hearings. It can be for all issues in a case or just a narrow point in dispute. Advantages can include the choice of an arbitrator, instead of the Judge imposed by the court, continuity of the arbitrator dealing with the matter, procedures and timetables agreed by the parties, greater confidentiality, and quicker resolution. The parties agree to be bound by the decision of the arbitrator.

Prof David Hodson OBE KC(Hons) MCI Arb at iFLG is an experienced Arbitrator.

## When Court Proceedings are Required

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

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

On occasions it can be 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



lengthy correspondence which can sometimes prolong the process, leading 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 and complex points of law, because the other side maybe being unreasonable, or because the positions are polarised. However, they are a rarity.

There are many different ways to resolve a case without a final court hearing. This is known as 'Dispute Resolution'. Most dispute resolution processes, have a very high rate of settlement or outcomes that are satisfactory to clients.

It is important for individuals to choose the best and most appropriate method for their matter, at each stage, on the basis of legal advice.

We set out below the main options that are available for resolving disputes. At The International Family Law Group LLP, we are trained and have access to trained professionals able to undertake all of these different forms of dispute resolution.

For more information about resolution by out of court processes, 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](mailto:enquiries@iflg.uk.com) or telephone on +44 (0)20 3178 5668

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