



**Family Law Alternative  
dispute resolution  
services**

## Alternative dispute resolution services

An ever increasing number of families are looking for alternatives to conventional court processes as a means of reaching mutually acceptable proposals in relation to their children and financial arrangements. They want an approach that is client centred and focuses on preserving the long term interests of their families. They also want to retain some control over the process. This is where mediation and collaborative law can come in.

### What is mediation?

It is a process to help separating couples discuss the issues arising from their separation – be they financial, child-related or other- in a constructive, regulated environment. Mediators are trained to help the couple reach agreement about how to make the best arrangements for the future. It entails the couple talking to each other face to face about the terms of their separation with the help of a mediator who will:

- actively manage the negotiation process
- help the couple set their own agenda and prioritise issues for discussion
- assist the parties in dealing with financial disclosure
- raise different options for each party to consider
- provide all the information the parties need to reach informed decisions.

The mediator remains impartial throughout the process and is not permitted to give the couple legal advice or make decisions for either of them. The mediator is able to provide information and set out possible options, which many couples find very useful. Mediation often works best if each of the couple consults their own solicitor about the law as it affects them and the proposals being made so that they feel properly informed during the process, but this is not obligatory.

The mediation sessions are arranged to suit the convenience of the couple thereby helping them to remain in control of the process. At the end of the mediation, the mediator would draft a summary setting out any terms that the couple have found to be mutually acceptable and the couple can then take this document to their respective solicitors for them to convert to a legally binding agreement, or court order.

Mediation will not be suitable in every case; often the issues, or the

emotions, in a case will mean that mediation is not appropriate. However, in the right cases the process can be very effective in allowing couples to reach an outcome that works for them.

Mediation is particularly helpful where couples disagree about the future arrangements for their children's care. The mediator can assist couples to focus on their children's needs and create a joint parenting plan.

### **What are the benefits of mediation?**

Mediation can help couples to:

- reduce tension and hostility
- make decisions on an informed basis
- communicate and co-operate
- explore and examine options
- tailor-make solutions to their particular requirements.

### **How long does it take?**

The period of the mediation as a whole and the number of sessions required will vary according to the complexity of the couple's circumstances as well as the degree of co-operation between them. As a guide, a couple could expect an average of 4 to 6 sessions varying in length from one to two hours. Successful mediated outcomes are often reached more swiftly, and at less cost, than cases that proceed through the court process.

### **What is Collaborative Law?**

It is a process designed to ensure that couples, and their lawyers, negotiate constructively towards agreed resolutions.

Fundamental to the process is the Participation Agreement in which the couple agree in writing with their respective solicitors to work towards a settlement without going to court. This means that any financial or children issues are dealt with by way of negotiation and the court only becomes involved once an agreement has been reached, and then purely for the purposes of converting that agreement into a binding order. If negotiations break down or for some other reason the couple wishes to withdraw from the process they would each have to appoint new solicitors to represent them if they issued an application in court. The Participation Agreement therefore acts as an incentive for both the couple and their solicitors to reach a negotiated agreement.

All negotiations take place in face to face meetings with the couple and their respective lawyers present, thereby keeping correspondence to an absolute minimum. The couple are involved in setting the agendas for each “four way” meeting which are arranged to suit the convenience of the parties. The process seeks to promote honesty and openness between all involved and once it gets under way it is not dependent on a court timetable but only on the availability of everyone to fix regular appointments.

If a couple finds that the emotional issues do prove an obstacle to reaching an agreement we recommend that they see a Family Consultant to address these arising issues. This is not counselling in the traditional sense but practical assistance for the couple to deal with this non-legal side of the process. Family Consultants are specifically trained to assist couples going through the collaborative law process.

### **What are the benefits of collaborative law?**

Whilst not every case is suitable for this approach, collaborative law can, in the right case, bring the following benefits:

- the couple will each have their respective solicitors present in the meetings who will be able to advise them at the four way meetings as well as outside such meetings
- all negotiations take place in the presence of the couple which gives them an opportunity to own the discussions
- the Participation Agreement incentivises the parties and their solicitors to take a constructive approach and not a litigious one.

### **How long does it take?**

In common with mediation, the number of meetings required will vary according to the complexity of the couple’s circumstances as well as the degree of co-operation between them. Each party must be separately represented and individual solicitors will have varying charging rates. The collaborative process can be more cost effective than the court route but should not be regarded as necessarily a ‘cheap’ option. It will depend on the number of meetings required to reach an agreement.

Speechly Bircham’s team of specialist family lawyers includes trained mediators and collaborative lawyers. We are happy to advise as to the relative merits of each process in a given situation.

## About Speechly Bircham

Speechly Bircham is a highly regarded City Law firm with a long established reputation for providing high quality legal and tax planning advice. The firm's clients include wealthy individuals, families and trusts as well as quoted companies, private companies and charities.

Our Private Client practice is the second largest in the UK (*Private Client Practitioner* 2008 Survey) with 21 partners and 54 fee-earners. It is highly ranked in the leading independent law firm directories produced by Chambers & Partners and the Legal 500.

The team advises individuals, families and trustees, both in and outside the UK on all aspects of their affairs relating to wealth preservation and the mitigation of tax, family and residential property matters.

We are large enough to provide the breadth and quality of legal advice expected from a leading City law firm, yet we remain small enough to ensure that every client receives a personal and tailored service.

### For more information

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