

Family Law

## Resolving Financial Matters on Divorce & Civil Partnership Dissolution



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## Financial matters need not become a contentious issue when parties separate.

### Non-Court Dispute Resolution

As of April 2024, couples involved in financial disputes are required to consider Non-Court Dispute Resolution (NCDR) options before pursuing court proceedings. There are multiple methods of NCDR including:

- Mediation.
- Collaborative Family Law.
- Arbitration.
- Private Financial Dispute Resolution Hearing (FDR).

The aim of introducing NCDR is to encourage couples and their lawyers to explore these alternatives, which can often lead to quicker, more amicable resolutions while avoiding the potential difficulties and delays associated with court proceedings.

All couples are required to discuss NCDR options during a Mediation Information Assessment Meeting (MIAM). Failing to consider these options without a valid reason may have financial implications, including potential cost orders if the case goes to court.

### Mediation

After the initial discussion with your partner about separation, you may both feel you will benefit from the assistance of an independent third party to mediate between you. Mediation is designed to assist in discussions about financial arrangements rather than to resolve relationship issues.

During mediation, you can discuss what you both want to achieve from the financial settlement, and with the assistance of a mediator, you can reach a settlement that you are both satisfied with, having provided full and frank financial disclosure.

If an agreement is reached during mediation, a memorandum of understanding is typically drawn up, which can then be converted by a solicitor into a legally binding Consent Order effective upon divorce.

If you are interested in having a mediation session, we can provide details of trusted mediators in your area.

### Arbitration

Arbitration involves selecting an impartial arbitrator to address the dispute between both parties. The arbitrator's decision is designed to be binding for both parties, allowing for a definitive resolution much more swiftly than through the court system.

Both parties jointly appoint and instruct the arbitrator, and the process can be scheduled at a convenient time and location for everyone involved. If your situation is suitable, we can facilitate the arbitration process.

### Collaborative Family Law

Collaborative Law is a process that involves a series of meetings attended by you, your former partner, and both of your lawyers. This approach is holistic in nature, with the focus on the parties themselves guiding the discussion rather than the lawyers.

A distinctive feature of Collaborative Law is that if the process fails, both parties must engage new lawyers, creating a strong incentive for everyone involved to remain committed to resolving their issues outside of the Court system.

### Private Financial Dispute Resolution Hearing

An Private Financial Dispute Resolution Hearing (FDR) is an alternative to court hearings where the parties involved can recreate a typical court hearing in a private setting. This process allows both parties to appoint a judge or a retired judge to assist them in negotiating a settlement.

During the FDR, the appointed judge reviews the financial circumstances of both parties and offers guidance on how the case might be resolved based on legal principles and previous similar cases.

While the judge does not impose a binding decision, their input can provide insight that encourages both parties to reach a settlement. **For more information on FDRs or NCDR, please contact us.**

## Negotiations through solicitors

If you are unable to agree financial matters with your partner between yourselves or through mediation we can advise, guide and negotiate a settlement for you. This can happen initially through correspondence and maybe ultimately at a round table meeting.

If a settlement can be reached via negotiations through solicitors a Consent Order is drawn up setting out the terms of the settlement which is then sent to the court for approval so that it forms a legally binding Court Order.

## Legal proceedings

In the worst case scenario, if it is not possible to negotiate a financial settlement between you, with or without the assistance of mediation or legal advice, the Court will have to consider what share of the financial assets you should each receive and this is done by issuing court proceedings.

The court procedure is as follows:

<b>Step 1</b>	<p>If you have not previously sought to resolve your financial issues by mediation, the court will require that you, as the applicant, attend a Mediation Information Assessment Meeting (MIAM). At the MIAM you will meet with an independent mediator who will assess whether or not your case is appropriate for mediation.</p> <p>If the mediator decides your case is appropriate he/she will contact your partner to arrange a mediation session with you both. If the mediator decides your case is not appropriate for mediation then you can proceed to court by making the relevant application.</p>
<b>Step 2</b>	<p>Court Form A is issued with a fee of £303 being paid and the matter is listed for an initial 30 minute hearing called the First Appointment.</p>
<b>Step 3</b>	<p>The parties are required to complete a Form E, which is a financial disclosure form.</p>
<b>Step 4</b>	<p>The First Appointment takes place and this is a hearing before a judge where issues between the parties can be raised, and hopefully narrowed, and it gives the parties the opportunity to raise questions in the form of a questionnaire about the other party's disclosure. A date for the next hearing, the Financial Dispute Resolution hearing, is also set.</p>
<b>Step 5</b>	<p>Questionnaires are exchanged and answered.</p>
<b>Step 6</b>	<p>The Financial Dispute Resolution hearing takes place. This is a without prejudice hearing where the parties attend with their legal representatives, and are given a view from a judge as to how that judge thinks the case should settle.</p> <p>The parties are encouraged to negotiate a settlement between them at court on that day. If a settlement is reached the judge can then approve it. If however, no settlement is reached at the end of the day the court will list the matter for a final hearing. The judge will set out a timetable for both parties to prepare written statements and the exchange of evidence necessary before the final hearing. The judge will also set a date for that final hearing.</p>
<b>Step 7</b>	<p>At the final hearing, the judge will decide, based on all the evidence and the law how the financial matters between the parties should be resolved. The decision made will be binding on the parties.</p>

At law division of capital assets starts from a 50/50 basis. This is not necessarily cast in stone and the Court has to take into account the following statutory factors which can lead to movement from an equal split:

- The income, earning capacity, property and financial resources of the parties now and in the future;
- Financial needs, obligations and responsibilities of each of the parties now and in the future;
- Standard of living enjoyed by the family before breakdown of the marriage;
- The age of party to the marriage and the duration of the marriage;
- Any physical or mental disability of either of the parties;
- The contributions which each of the parties has made or is likely to make in the foreseeable future to the welfare of the family;
- The conduct of the parties, that is conduct in the opinion of the Court inequitable to disregard; and
- The value of any benefit which each of the parties will lose the chance of acquiring.

There is a whole raft of statutory provisions and case law dealing with all aspects of financial matters between parties.

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