

Amendments to the Family Procedure Rules: one step closer to mandatory non-court dispute resolution?



Change is on the horizon, in the form of amendments to the Family Procedure Rules 2010 ('FPR'), which is a comprehensive set of rules and guidance governing family law cases. These amendments come into effect partly on 8 April 2024 and partly on 29 April 2024 and they aim to encourage individuals to use non-court methods to resolve disagreements in respect of their finances upon separation or matters relating to children.

Such changes in family law proceedings mirror the increasing shift in civil proceedings towards non-court dispute resolution, brought into the spotlight by the recent case of *Churchill v Merthyr Tydfil CBC* [2023] EWCA Civ 1416. The Court of Appeal held that, in certain circumstances, the court can order parties to attempt to resolve their dispute via non-court dispute resolution means prior to initiating court proceedings or, alternatively, stay the proceedings to enable non-court dispute resolution to be undertaken. This is in contrast to the previous position where the court would order stay a case if both parties agreed.

In 2023, the UK government announced plans to make mediation compulsory for separating families, stating that, in doing so, up to 19,000 cases could be taken out of the court arena. Those proposals were scrapped in January 2024 following widespread criticism, in favour of early provision of legal advice. Notwithstanding, this does demonstrate that, in conjunction with the impending changes to the FPR, an emphasis on non-court dispute resolution for family law matters is firmly on the government's agenda.

From 29 April 2024, the definition of 'non-court dispute resolution' will be widened to encompass '*methods of resolving a dispute other than through the court process, including but not limited to mediation, arbitration, evaluation by a neutral third party (such as a private Financial Dispute Resolution process) and collaborative law.*' Previously, only mediation was explicitly named. This led to criticism that there was an unfair bias towards

mediation as a form of non-court dispute resolution and a lack of recognition of other methods, which could be more appropriate on the basis of the facts and desired outcome of the individuals.

There is already an obligation on separating couples or parents to attend a Mediation Information & Assessment Meeting (MIAM) before they can submit an application to the court to resolve their dispute (limited exemptions apply). Following the impending changes, however, there will be a requirement for MIAM providers to *'indicate to those attending the MIAM which form, or forms, of non-court dispute resolution may be most suitable as a means of resolving the dispute and why'* and provide them with information as to how they proceed with such methods if they wish to do so. The threshold for meeting the financial hardship exemption from attending a MIAM is to be heightened from *'unreasonable hardship'* to *'significant financial hardship'*.

The amendments to the rules impact on the court's duty to consider non-court dispute resolution methods, such that *'when the court requires'* a party must produce a form outlining their views on using non-court dispute resolution to resolve matters. The form will be served on an 'open basis', meaning that it will be visible to the court at each stage of the proceedings. Any unreasonable refusal to engage in non-court dispute resolution will therefore be plain to the judge..

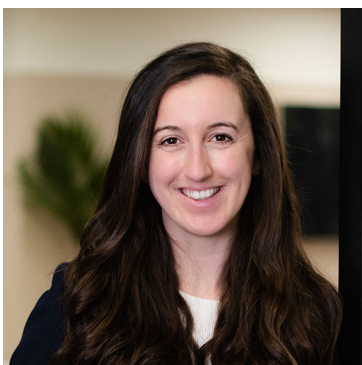
The court will be able to adjourn court proceedings where *'the timetabling of proceedings allows sufficient time for these steps to be taken'* with a view to encouraging the use of forms of non-court dispute resolution. The court will be able to do so without the agreement of the parties.

The general rule as to how costs are treated in financial remedy proceedings is that, usually, each party is to bear their own costs, although it is in the court's power to order one party to pay the other party's costs where it considers it appropriate to do so as a result of their conduct. The scope of such conduct is to be expanded to include failure, without good reason, to attend non-court dispute resolution. Parties embarking on court proceedings will need to be alive to this costs risk if they have not reasonably engaged in other dispute resolution methods.

Whilst the new rules undoubtedly strengthen the court's focus on non-court dispute resolution in line with the general trend towards the same, they do not go as far as mandating the use of such means. It remains to be seen whether the amendments will bring about the level of change for which many family law practitioners and members of the judiciary have long been advocating.

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