

Divorce and ADR – when should the ‘alternative’ become the norm?



ADR. It stands for Alternative Dispute Resolution. The ‘alternative’ part means non-court based. But why should that be ‘alternative’ and not the norm?

The family courts were stretched beyond their budgetary limits prior to the pandemic. I have seen the impact of this on my clients. Long and costly delays; cases being cancelled by the court at the last minute due to judicial unavailability.

Since March 2020, the increased volume of domestic abuse cases and applications filed by parents who have been prevented from seeing their children has pushed the local courts to breaking point. My clients are waiting up to 10 months between hearings, simply because the courts cannot offer them an earlier date.

The emotional – and financial – impact of this is hard to quantify, not to mention the uncertainty as they wait in limbo for the court to facilitate finality in their divorce.

ADR should be the norm

ADR should no longer be seen as an ‘alternative’. It should be the norm. Applying to court is not the only option available to couples who cannot reach an agreement between themselves. There are a myriad of other ways forward and I encourage my clients to consider them prior to making a court application.

Mediation is well known although its suitability does need to be carefully considered. Mediation requires compromise, and for each person to take on board the concerns of the other and seek to reach an agreement



which is fair to them both. It should be with a trained family mediator (not a friend who offers to 'mediate') who can address any power imbalance between you and your spouse.

It is important to speak to a solicitor alongside mediation, as the mediator cannot provide legal advice to either of you. I advise all of my clients to discuss their objectives with me prior to mediation and then check in after each meeting to make sure that the mediation is progressing with their objectives in mind.

Collaborative law enables open discussion

Collaborative law is another approach to consider. For some people, the idea of going to mediation without a solicitor can be intimidating. In the collaborative approach, you attend meetings with your spouse and your respective solicitors.

There is plenty of time for discussions just between you and your solicitor; however, all negotiations take place in an open forum, where both of you can be involved in the construction of the resulting settlement.

If you feel that you need the involvement of an independent third-party adjudicator to help you and your spouse resolve matters, you could consider a private hearing or arbitration.

At a private hearing, an experienced family lawyer is appointed as a neutral evaluator. You present your position, normally through a barrister, and your spouse does the same. The evaluator will provide a non-binding summary of how he would determine the case if he were a judge. It's important to note that this is not binding and is intended to leave the control in the hands of you and your spouse, allowing you to then negotiate a settlement which works for you.

Arbitration follows a similar process, although will produce a binding determination, with very limited options for appeal, so is more akin to a court process.

As you can see, there are many options for resolution of your divorce which stay far away from the doors of court. Often, it is possible to reach an agreement using one of the above methods before the court would even hold a first hearing. They also leave the final decision in your hands, empowering you to reach an agreement which you know is best for your family.

In my opinion, these should not be seen as alternatives – they should be the norm, with a court application being a last resort. Staying away from the court – and the added stress and acrimony which this can add to the process – can also aid your onward relationship with your spouse, especially if you are to continue to co-parent post-divorce.

How we can help

Should you require any further information in respect of the above, or feel that one of the above options would be a better fit for your divorce, please contact Helen Fisher on 01892 506 258 or helen.fisher@cripps.co.uk for a no-obligation chat.



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