

FORSTERS



FORWARD-THINKING
APPROACHES TO DIVORCE
AND SEPARATION



COMING TO THE DECISION TO SEPARATE OR DIVORCE IS DIFFICULT AND OFTEN DISTRESSING. FOR MANY, THE PROCESS THAT LIES AHEAD IS A MYSTERY AND IT IS ASSUMED THAT IT WILL BE CONFRONTATIONAL AND DRAWN-OUT. HOWEVER, THERE IS IN FACT A WIDE RANGE OF FORWARD-THINKING, CONSTRUCTIVE APPROACHES TO RESOLVING THE ISSUES FLOWING FROM YOUR DIVORCE OR SEPARATION.

ALL OUR FAMILY LAWYERS ARE MEMBERS OF RESOLUTION, AND HAVE SIGNED UP TO A CODE OF PRACTICE, WHICH COMMITS THEM TO ATTEMPTING TO RESOLVE MATTERS CONSTRUCTIVELY AND WITH THE INTERESTS OF ANY CHILDREN AT THE FORE.

INTRODUCTION

Our family lawyers will help you to find the best process or blend of processes to sort out matters arising from divorce or separation, whether in relation to money or children (or other things). Options include many non-court based processes, as well as court/arbitration for those cases which need a third party decision. We take a fresh, forward-thinking approach to enable you to move forward in a way that considers you and your family's long-term best interests.

By the time you come to consult a specialist family lawyer, you have a good idea of the outcome you seek. This may be a binding financial settlement, a document recording the arrangements for your children, or financial provision for a child. You will certainly want to move to the next stage of your life as swiftly and as painlessly as possible.

It will soon become clear, though, that there are a myriad of options for getting from Point A (where you are now) to Point B (where you want to be).

You soon find yourself beset by a blizzard of jargon. What is the difference between 'arbitration' and 'mediation' between 'collaborative practice' and a 'round-table meeting'? What on earth is a 'private FDR'? Whilst choice is appreciated, it can be very confusing.

The fact is that whilst each process has positive features, not all will be suitable for you.

At Forsters, we have experience in all of these processes and an experienced family lawyer will guide you through the options, so you reach your goal by the most appropriate method or combination of methods.

Anyone can describe the different processes; the real skill lies in identifying the most effective process for your particular circumstances and in building a team who will assist you to achieve your desired outcome.

This document aims to provide you with an introduction to the different processes available to you. We hope that you find it informative.

Forsters Family Team

End result – what are we aiming to achieve?

Whichever process, or blend of processes you use, the aim is to form an agreement as to how a couple's finances will be separated and (if relevant) child arrangements. The agreement may (and in the case of a financial agreement, should) then be made legally binding via a consent order sent to the court.

Getting a divorce or dissolution of civil partnership

The legal process of ending a marriage ('divorce') or civil partnership ('dissolution') typically runs alongside the processes outlined in this document. In the majority of cases, this follows a set procedure and is relatively straightforward. For ease, references in this document to divorce are intended to apply equally to dissolution, subject to some differences in terminology between the two processes. Further details can be found at page 18 (Court Process).

THERE ARE MANY WAYS TO RESOLVE YOUR DIVORCE OR SEPARATION

LET OUR FAMILY LAWYERS GUIDE YOU THROUGH THE OPTIONS AND FIND THE BEST ROUTE TO CONCLUDING YOUR DIVORCE OR SEPARATION JOURNEY.



WITH THE SUPPORT AND GUIDANCE OF YOUR FORSTERS FAMILY LAWYER:



Better understand your options



Find the best option (or blend of options) for you



Resolve things and move forward





SOLICITOR NEGOTIATIONS

IN MANY INSTANCES, SOLICITORS ARE ABLE TO ASSIST A COUPLE TO REACH AGREEMENT THROUGH NEGOTIATION

THE PROCESS

Solicitor negotiations may take place through correspondence, one or more round-table meetings, or simply by picking up the phone.

Even if a couple are far apart, solicitor negotiations can be helpful to reduce and narrow the issues. Constructive negotiations can be helpful in setting a positive tone, focused on settlement.

Round-table meeting

A round-table meeting (RTM) involves both parties and their respective lawyers sitting around a table to try and reach an agreement regarding their financial and/or children matters.

Usually both sides will have their own room, so that they can speak confidentially and take advice from their respective solicitors. There will also be another room where everyone, (or just the solicitors) can come together to negotiate.

A RTM can be useful to break a deadlock in negotiations or to narrow issues. Often clients feel they need the support of a solicitor present to help them negotiate and to advise them, but like the idea of reaching their own bespoke solution with their spouse or partner.

SUITABLE CIRCUMSTANCES

Solicitor negotiation is particularly suited to situations where the parties are on amicable terms.

It can also be particularly suitable for separating couples:

- ▶ where there is a desire to reach an agreed settlement, rather than have one imposed
- ▶ where there is broad agreement regarding general principles, but various details need to be hammered out
- ▶ in cases which have 'got stuck' a RTM, getting together in one place can focus everyone's minds.

SOLICITOR NEGOTIATION IS AT THE HEART OF OUR WAY OF WORKING. EVERY CASE IS LIKELY TO INVOLVE AN ELEMENT OF NEGOTIATION. IT WILL CONTINUE ALONGSIDE OTHER PROCESSES. FOR EXAMPLE, AS PART OF THE COURT PROCESS, PARTIES ARE EXPECTED TO PUT FORWARD SETTLEMENT PROPOSALS AND TO TRY AND NARROW THE ISSUES THAT THE COURT IS REQUIRED TO DETERMINE.

BENEFITS OF A RTM

-  **'Confidential and without prejudice'** – this usually means that ideas discussed cannot later be used against either party if there are future court proceedings so negotiations are more open.
-  **Privacy** – the venue for the RTM will be far more discreet than a busy court building.
-  **Comfort** – it can take place in a more comfortable setting than at court, e.g. solicitor's office or hotel meeting room with refreshments.
-  **Work at your pace** – a RTM can be booked on a date of your choosing and at relatively short notice to deal with an immediate issue, such as arrangements for an imminent school holiday.
-  **On your terms** – both parties are directly involved in the discussions whilst also being supported by their solicitor. As a result they often feel empowered, and more positive moving forward.

OUR INSIGHT

All cases involve an element of solicitor advice and negotiation. Some are resolved entirely by negotiation. In other cases, it can continue alongside mediation or court proceedings.

Frequently, following an early discussion with the other party's solicitor, we will form a view as to whether the particular case is capable of being resolved by negotiation, whether it would be well-suited to another form of out-of-court resolution, or whether our client's interests would best be preserved by making a court application.

CASE STUDY

Example negotiation process

INITIAL MEETING

A solicitor has an initial meeting with their client. It is clear that emotions are running high and there are multiple issues. The couple are still living under the same roof and are struggling to sort out arrangements for the children or how their finances should be sorted out in the short term.

PHONE CALL BETWEEN SOLICITORS

The solicitor books a call with the other party's solicitor. They agree that the couple need to put some very short-term arrangements in place until they have separated. Both solicitors feel that the couple are likely to be able to work together to sort out arrangements for their children, and agree that both will recommend mediation as the best way forward to resolve those issues. They agree to speak again in a few weeks, when matters have settled down.

SECOND CONVERSATION & EXCHANGE OF FINANCIAL INFORMATION

During their second conversation, the solicitors agree the couple should exchange financial information on a voluntary basis. Both emphasise that their clients are keen to resolve matters swiftly and cost-effectively. They agree that, provided both parties are satisfied with the financial information the other has provided, they should then convene a RTM to discuss settlement.

ROUND-TABLE MEETING AND SETTLEMENT

Issues are narrowed at the RTM, written offers are exchanged soon after and a few remaining issues are ironed out in a series of telephone conversations between the solicitors. An agreed consent order is sent to the court.



MEDIATION

MEDIATION INVOLVES A COUPLE MEETING TOGETHER WITH A NEUTRAL MEDIATOR WHO WILL HELP GUIDE THEM TOWARDS REACHING AN AGREEMENT, THROUGH A SERIES OF FACE TO FACE MEETINGS

THE PROCESS

The mediator's role is to guide the couple to facilitate an agreement. Any agreement reached is subject to having an opportunity to take legal advice. A mediator cannot give legal advice, but he or she can provide information.

Where both parties are legally represented, they can bring their solicitors to some of the mediation sessions. This can be particularly useful where time is of the essence or the issues are complex, as legal advice can be provided during the meeting, and if an agreement is reached this can be signed off immediately.

Non-legal professionals are also often brought in, such as financial advisors and family therapists. This enables couples to reach an outcome which addresses not only the legal aspects but also other issues, such as tax consequences or emotional aspects.

The number of sessions will depend on your personal circumstances. Sometimes a couple need three to five mediation sessions to reach an outcome. Where time was of the essence, we have conducted a mediation over a whole day.

Mediation can be used to complement any other process and it is never too late to mediate. Mediation is often successfully used to deal with issues following a court order being made, for example the division of household contents or the practicalities around selling a property. It can also begin during court proceedings.

SUITABLE CIRCUMSTANCES

You both need to go into the process with an open mind, listen to your ex and be prepared to compromise. The mediator will help you to work through all the options to reach a creative solution.

Some situations in which mediation may be considered especially suitable:

- ▶ where the couple wish to create an agreement on their own terms, as opposed to a third party imposing a decision, and who are relatively amicable with one another

However, an experienced mediator will be able to mediate even high conflict cases as a separating couple will often share a common goal that a mediator can help them work towards, e.g. wanting what is best for the children or wishing to avoid litigation. Usually a couple need to feel comfortable being in the same room as one another, but this is not essential. 'Shuttle' mediations are possible – where clients are in separate rooms and the mediator 'shuttles' between the rooms.

- ▶ to deal with issues outside of the court's remit, for example, working out the detail of child arrangements e.g. introducing the children to new partners or parenting styles
- ▶ where there is a significant degree of trust, for example each person must be confident that the other will fully disclose their finances.

BENEFITS



'Confidential and without prejudice' – this means that ideas/possible compromises discussed cannot later be used against either party if there are future court proceedings, so negotiations are more open.



Cost-effective – when successful, the costs can be much lower than alternative processes. Each party ought to have independent legal advice alongside the process, which will incur additional costs; however not every couple choose to do so.



Work at your pace – the separating couple set the pace of the mediation process and the agenda.



On your terms – the separating couple play a direct role in reaching an outcome, rather than leaving it to a judge or feeling that solicitors have taken over. This often means the agreement sticks in the long-term, both parties feel more positive about the future, and are able to remain relatively amicable.



Ongoing dialogue – where children are involved mediation can be used on an on-going basis to deal with co-parenting issues e.g. in relation to holidays or choice of schools.



Improved communication – it can help a separating couple to communicate more effectively with one another in the long run, to enable effective co-parenting.



Children's voice – some mediators are accredited to speak directly with children where they are old enough and both parents agree. This ensures that the children's voices are heard, which can be very powerful in helping clients to reach a resolution which works for the whole family.

OUR INSIGHT

If you go into mediation with an open mind, a willingness to listen to what your ex has to say and a commitment to find a resolution which works for the whole family, you will have every chance of reaching a successful outcome.

Where mediation is successful it is an empowering and cost-effective process.

CASE STUDY

A couple with young children were in the process of an acrimonious divorce through the courts. With their children's best interests in mind, they were keen to keep the children matters away from court by attempting mediation.

We acted as their mediator and over a series of meetings, guided the couple through an array of children issues, from how they should spend time between their parents' houses to how the children's nannies and holidays should be funded.

Over the course of the process the couple began to communicate more constructively and focus on the children's best interests rather than their own individual objectives. They were able to come to an agreement on the details of how best to co-parent going forward.

At Forsters we can act as the mediator or as a solicitor supporting you in mediation. We can facilitate sessions of mediation between couples; or act for one party to the divorce or separation as their solicitor, helping you through the process, sense-checking ideas discussed in mediation and drafting/implementing agreements reached.



COLLABORATIVE PRACTICE

IN MANY INSTANCES, SOLICITORS ARE ABLE TO ASSIST A COUPLE TO REACH AGREEMENT THROUGH NEGOTIATION

THE PROCESS

Collaborative practice involves both parties and their respective solicitors coming together in a series of face to face meetings to work out an agreement regarding their financial and/or children matters.

At the start of the process everyone signs a 'participation agreement', which commits parties to resolving matters without going to court. This means that if the process breaks down, the parties' solicitors cannot represent them in any future court proceedings. Each party also has the chance to set out their objectives in an 'anchor statement'. If an agreement is reached it can be embodied in a consent order or parenting plan.

Non-legal professionals are often brought in to assist during the process, such as financial advisors, accountants and family therapists.

Separating couples often choose collaborative practice over solicitor negotiations/round-table meetings as it gives them a greater say in the process and more control of it. The 'disqualification clause' in the participation agreement creates a safe space for discussions without the threat of court.

SUITABLE CIRCUMSTANCES

The focus of the process is on the whole family and keeping future-focused, rather than dwelling on the past. It can be especially useful in resolving arrangements for children, where couples wish to co-parent.

Collaborative practice is particularly suited to separating couples:

- ▶ who wish to create an agreement on their own terms, as opposed to a third party imposing a decision
- ▶ who feel comfortable discussing issues directly with each other, albeit with the support of their solicitors
- ▶ where there is a significant degree of trust for example each party must be confident that the other has fully disclosed their finances (or will do so)
- ▶ in complex cases, where technical legal (or non-legal) advice is required, as this can be provided by the parties' solicitors (and other professionals) during the process and shared with everyone.

If there are discrete issues, e.g. relating to the children arrangements, that the couple wish to discuss without solicitors, they could discuss these through mediation. Alternatively, in higher conflict cases, a mediator can even be brought into the collaborative process in a 'five-way' meeting. If discrete issues are not capable of being resolved, they may be referred to arbitration.

BENEFITS



Privacy – the venue can be far more discreet than a busy court building.



On your terms – both parties are directly involved in the discussions whilst also being supported by their solicitor. As a result they often feel empowered and more positive moving forward.



Improved communication – the collaborative process can enable clients to improve their communication with one another, which can be particularly beneficial where they need to continue working together as co-parents.



Work at your pace – as the process is not driven by a court timetable, it can move at the required pace of the parties' needs and priorities.



Open advice – because collaborative practice is all about the sharing of advice and non-positional discussions, there is less 'posturing' and common ground tends to be identified more quickly.

CASE STUDY

A couple had separated due to the husband's affair but maintained a civil relationship in order to co-parent effectively. There were a number of complex issues to resolve relating to the valuation of the husband's business in order to settle the financial arrangements. The wife was also still dealing with the emotional aspects of the husband's affair.

Whilst the couple wanted to find a solution that avoided court, the wife in particular, wished to have the support of her solicitor in discussions. Collaborative practice enabled the couple to agree a financial settlement after five meetings, where we supported them. During the process an accountant and family therapist attended some of the meetings to assist.

OUR INSIGHT

In order for the collaborative process to be successful, both parties need to be committed to working out a solution away from court and prepared to invest the time and energy into doing so, as the meetings can be labour and time-intensive.

It is the process with which most separating couples have expressed satisfaction.

When the collaborative process succeeds (which the vast majority do), separating couples are typically highly satisfied with the outcome, as they have played a central role in achieving a resolution, whilst maintaining amicable relations with the other party.



ARBITRATION

ARBITRATION INVOLVES THE SEPARATING COUPLE APPOINTING A FAMILY ARBITRATOR – A PRACTISING BARRISTER, SOLICITOR OR RETIRED JUDGE – TO MAKE A DECISION ON THEIR FINANCIAL AND/OR SOME CHILDREN MATTERS

THE PROCESS

A family arbitrator will act fairly and impartially, giving each party an opportunity to put forward their views. The arbitrator's decision will almost always be binding in the event of challenge, although it is possible to appeal an arbitral award in court.

A key difference between arbitration and court is that the couple can choose their arbitrator whereas the allocation to a judge in court is usually random. Proceedings will also be private whereas sometimes court is not.

In most other respects an arbitration will be like a court hearing. The arbitrator can take evidence and make a reasoned decision in the same way that a judge can.

The arbitration process starts with the completion of an application form ARB1, this sets out the scope of what is agreed to be decided.

SUITABLE CIRCUMSTANCES

Arbitration is suitable for almost all circumstances including determination of discrete issues such as ownership of art or other property to contact arrangements for children.

Arbitration is particularly suited to separating couples who:

- ▶ wish to avoid the court process but are unlikely to come to an agreement through negotiation or have tried and failed to do so
- ▶ Would benefit from a neutral third party making a final decision about some/all of their issues; sometimes having previously narrowed the issues in negotiation, mediation or collaborative practice
- ▶ need privacy and cannot run the risk of press being in court, or the proceedings being heard in open court
- ▶ wish to litigate in civilised surroundings in the hope that this might make the process less painful and stressful.

BENEFITS



Guaranteed decision – unlike other alternatives to court, the two parties are not required to reach a mutual agreement; the arbitrator's decision is binding.



Faster process – you can fix a date for your arbitration as soon as both sides are able once disclosure and valuation evidence has been obtained, whereas court proceedings can take months.



Choose the arbitrator – with specialist expertise in the issues arising in your case.



Attention – unlike a busy judge, the arbitrator's sole focus will be the case before them. They will have the appropriate time to consider the case properly and therefore are more likely to be sensitive to both parties.



Comfort – many law firms and barristers chambers have arbitration suites. The setting is more comfortable than formal court proceedings, which can make the process less stressful.



Privacy – it offers far more privacy as the venue will be far more discreet than a busy court building.



Cost saving – parties pay the arbitrator a fixed cost, which is usually offset by savings on respective solicitors due to time savings.

OUR INSIGHT

As the court system is increasingly over-populated and couples demand more time than resources permit, parties who are able to should consider arbitration as an option.

The critical issue is almost always the identity of the arbitrator, where both sides agree to arbitrate but disagree who it should be.

It can never be guaranteed which judge you get in court, let alone on whose side they might be on. By participating in choosing an arbitrator, a client is guaranteeing a professional with a large number of skills relevant to the case being determined, even if the outcome can never fully be predicted.

CASE STUDY

The couple had reached an agreement in correspondence to settle their financial arrangements.

However, one party sought to pull out of the agreement, citing that they had made a mistake.

The parties agreed that the question could be determined on the papers by an arbitrator, with oral submissions if necessary (which there were).

That way, the parties would avoid the cost of new representation (as sometimes where there is a dispute about whether an agreement has been reached the solicitors have to step down as they are potential witnesses on the point).

The arbitrator, a QC, was able to resolve the issue and drafted the order to be submitted to the court.

The time from agreeing to arbitrate, to arbitration hearing and a decision, was about a week. If an application to court had been made, then this would have taken many, many months.

At Forsters we can explain the process, help you choose your arbitrator, and guide you through the arbitration proceedings. Once the proceedings are concluded, we will turn the arbitrator's decision into a court order (this has to be done to make the decision binding). This can be done quickly as a "fast-track" procedure exists.

A tight-knit team that works well together, focused on providing bespoke solutions for clients in the best and quickest way possible.

Legal 500 UK, 2020

“Clients get a bespoke service that is all-encompassing. They can deal with the children matters as well as the finances.”

Chambers UK, 2018



PRIVATE FDR

PRIVATE FDR (PRIVATE FINANCIAL DISPUTE RESOLUTION) INVOLVES THE SEPARATING COUPLE PRIVATELY HIRING A JUDGE FOR A DAY TO PROVIDE AN EVALUATION OF THE LIKELY OUTCOME OF THE FINANCIAL MATTERS

THE PROCESS

A private FDR is the private equivalent of the second hearing in financial remedy proceedings at court. The main differences are that the separating couple:

- ▶ choose their judge – a solicitor, senior barrister or retired high court judge
- ▶ pay the judge's fees
- ▶ the 'hearing' takes place out of court, at a more comfortable venue, such as a hotel conference room.

The judge will have read the case papers and on the day will listen to the representations of both parties' barristers, before providing an 'indication' as to the overall settlement and any particular areas of dispute. Unlike arbitration, the judge's indication is not binding: it is intended to be an aid to settlement.

Each party will go back to separate rooms and the respective barristers will go back and forth negotiating the agreement. The parties will not be required to speak or to give any evidence, save for through their lawyers.

Early Neutral Evaluation

In some cases involving children, the couple may decide at an early stage to seek an early neutral evaluation from a specialist judge or barrister, as to the likely outcome if the case was litigated.

SUITABLE CIRCUMSTANCES

Private FDR is particularly suited to separating couples:

- ▶ where both parties are far apart in positions but there is still a desire to try and reach an agreed settlement. The expert input of a neutral third party can be extremely useful in bringing the sides closer together
- ▶ where court congestion means that there is a significant wait for a court-based hearing
- ▶ in cases which have 'got stuck', paying for the judge and attending the hearing can focus everyone's minds
- ▶ where clients wish to negotiate in private and away from the public eye.

PRIVATE FDRS CAN COMPLEMENT COURT PROCEEDINGS. YOU CAN TRY A PRIVATE FDR AFTER THE FIRST ADMINISTRATIVE COURT HEARING AND IF IT FAILS, RATHER THAN HAVING ANOTHER COURT-BASED FDR, YOU CAN GET DIRECTIONS FOR A FINAL HEARING AT COURT.

BENEFITS



Privacy – it offers more privacy as the venue can be far more discreet than a busy court building.



Comfort – it is far more flexible and civilised than a court-based FDR.



Specialist judge – the judge will be a financial specialist (as opposed to judges at court who may be better versed in children matters). They will have read the papers and will have plenty of time to see you when you require their input, which is often not the case in court.



Without prejudice – this means that you are free to negotiate without any proposal you may make being repeated should your case ever go to a final hearing.



Speed – private FDRs can be booked on a date of your choosing (subject to the judge's availability) and at relatively short notice.

Around 80% of cases settle just after FDR/ private FDR stage.



On your terms – if successful, being able to agree an outcome is in general far preferable to having one imposed on you.

OUR INSIGHT

Other than the cost of the judge's fees, private FDRs are far preferable in our view to court-based FDRs. The judge will be a specialist in financial matters and will have time to read the papers and advise the parties.

CASE STUDY

A husband was advancing unrealistic arguments that money he inherited many years ago should be ring-fenced for his benefit; even though doing so would mean that the wife's housing needs could not be met. The separating couple agreed to private FDR.

Having the voice of an independent, authoritative expert explaining why that was a non-starter and how he would lose that point at a final hearing, removed a major obstacle to a negotiated settlement.

A private FDR or early neutral evaluation will stand the strongest prospect of success if the judge is well-prepared and commands the respect of the parties.

At Forsters, we work closely with the most able private FDR judges and are able to advise as to who will be most suitable in your case. We will ensure that all the necessary information is provided to the judge, that you understand the process and feel supported throughout.



COURT PROCESS

ANYONE GOING THROUGH DIVORCE OR SEPARATION CAN MAKE AN APPLICATION TO THE FAMILY COURT TO HAVE THEIR LEGAL DISPUTE RESOLVED

THE PROCESS

The Family Court seeks to resolve legal disputes between individuals in respect of divorce, financial claims and child arrangements on separation or divorce. The process varies depending on the nature of the issue.

Getting a divorce

In order to obtain a divorce or dissolution, one party must petition the court. The judge will consider the petition and dissolve the relationship by way of decree nisi, followed by decree absolute, or conditional order, followed by a final order (as appropriate). It is very rare for a petition to be contested, provided that it is drafted carefully.

Financial claims

In financial claims, the court is looking to make the financial order that it considers to be most fair, bearing in mind all the circumstances of the case. It has a wide range of powers. Before the court can distribute resources, it must calculate what they are, and so most financial claims involve detailed disclosure and valuation exercises, so that the court can allocate.

Child arrangements

In children cases, the court will look to make an order that best promotes the welfare of the child who is the subject of the application.

In all types of case, the court will encourage settlement wherever possible, but ultimately if parties cannot reach agreement then the court will decide for them. Some applications can be relatively simple to determine because they involve discrete issues, but others can be very complex, and can take months to be determined.

SUITABLE CIRCUMSTANCES

The certainty and finality of a court process is suitable for many circumstances but it is not necessarily the most proportionate use of time and money.

Family Court decisions are highly discretionary and different judges can take different views, making outcomes unpredictable.

The impact of contested court proceedings can be enduring. People often find court proceedings costly, stressful and difficult. There are nonetheless circumstances where court should be your first port of call. For example, if you suspect:

- ▶ risk of harm to a child in children proceedings
- ▶ the other party is dissipating assets in financial proceedings or adopting an unreasonable approach towards disclosure or negotiations
- ▶ risk that the other party might be able to initiate divorce and/or financial proceedings in another country which is less advantageous.

If it is necessary to seek court intervention it is often possible to limit the court's involvement to the issues where you require a judge's input. For example, you may require the court to grant orders to secure assets or to provide an indication about the likely outcome in financial proceedings but subsequently negotiate or mediate the remaining issues.

Starting court proceedings does not mean that the court then has to determine every issue between spouses. Court proceedings can in fact sometimes be a useful backdrop to, and provide a timetable for, other forms of dispute resolution.

BENEFITS



Finality – parties can often achieve finality. For the same reason, disputes resolved using other methods such as mediation and arbitration will usually need the seal of approval of the Family Court to become final and binding.



Certainty – separating couples have certainty to make decisions in reliance on the outcome.



Enforceability – for the same reason disputes resolved using other methods usually require an order to ensure that agreements can more easily be enforced.



Precedent value – sometimes one party can point to a judgment or court order to use as a precedent to bolster their position in subsequent proceedings.



A set timetable – can often help people to resolve their disputes using other methods, knowing that the court timetable is running in the background.

At Forsters we see court as one of a myriad of options for clients to resolve their divorce, financial and children issues. But we are also ready to deploy our highly experienced, market-leading solicitors and barristers to guide you through the court process, and any court hearings, should the need arise. We work as a team with our professional networks to ensure both a highly personal service and the very best results.

CASE STUDY

A separating couple are on relatively good terms and have agreed the shared care arrangements for the children. The husband has always been very secretive about his business interests and is keen to conclude a financial settlement as soon as possible.

As the wife's solicitors we would advise that, whatever process they elect, they will first need to provide financial disclosure. It will be essential that the wife has a proper understanding of the husband's business before she starts to negotiate a settlement. We suggest that it would be sensible to make an application to the court, and for the disclosure process to be dealt with in court proceedings. This has the advantage that the court will set a binding timetable and can make orders compelling the husband to disclose information.

If the disclosure process goes well and the husband is cooperative in providing information, they will then be in a position to select the negotiation process that is most likely to bring about settlement. After discussing the various options with their solicitors, they select a private FDR as being the most appropriate. The wife is worried that the husband will talk over her in mediation, and believes that he will be more receptive to hearing an indication from an experienced judge. She is reassured that if the private FDR is unsuccessful, they can return to court and a judge can determine the issue, before too much time and money is wasted.

OUR INSIGHT

The Family Court has unparalleled expertise in navigating family issues and addressing international family law issues.

The intervention of a Family Court judge can provide important impetus to parties to negotiate an agreement, particularly where they have become locked in negotiations and unable to progress.

The neutrality and fairness of a Family Court judge can also help parties to accept the outcome and conclude the issues, enabling parties to move forward in life.

CONTACT US

The award-winning Forsters Family team understand that dealing with divorce and separation can be highly sensitive and filled with emotion. Our trusted family lawyers can manage complex issues in a creative, constructive and pragmatic way while at the same time maintaining an empathetic manner.

Known for the highest quality service and achieving the best results for our clients, our focus is always on the needs of each individual. We take the time to understand your unique personal situations and we work with you to develop the course of action which best suits you and your family.

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They are very amicable; you can just pick up the phone and discuss the issues. I like them hugely, and if I was going to recommend a friend to a firm, I would recommend Forsters to them to have a friendly and amicable divorce.

Chambers HNW, 2018





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