

Court overload – What are the alternatives?

The Ministry of Justice has announced that 20 courts in the South-East of England and 10 in London are to close. The closure of these courts will undoubtedly have a profound effect on all areas of law, particularly family law.

The cases that each of the closing courts would have previously dealt with will now be redirected to remaining courts, which may be outside of the local area. Inevitably, this will mean that those who are going to court will be travelling further for their cases, which in itself is only one consequence to consider. The real concern however is that the remaining courts will become overloaded and cases will take a lot longer to get seen than they presently do. Our family team are already seeing cases delayed due to the existing budgeting limits and they are now set to take even longer.

The impact on a family case not being resolved can be devastating. Not only is there likely to be an increase in costs caused by the delay, but the stress of not knowing the outcome will occur at a time when it is least welcomed in a family crisis. This is likely to have emotional and possibly psychological consequences. Delay will not help reduce acrimony that can often exist between couples whilst they wait for decisions to be made to enable them to separate and resolve disputes. It is well recognised by the courts that delay can be extremely damaging for children.

With courts attempting to prioritise urgent matters, it is probable that many cases will still take a lot longer than they have done so before. All of this gives parties who have family disputes even more reason to use the court only as a last resort.

So what are the alternatives? There are many forms of dispute resolution available for families who would prefer to avoid taking their dispute to court. The most popular resolution forums in family law are:

- mediation
- collaborative family practice
- arbitration

Mediation

This is a process where a couple are encouraged to negotiate matters in issue between them face to face in the presence of a mediator who facilitates the meetings. The mediator is entirely neutral and cannot decide the matter for the parties but can help them explore options for a settlement and assist them in structuring an agreement. Mediators provide a record of any such agreement reached in a Memorandum of Understanding document which can then be converted into a legally-binding document (if required).

Collaborative family practice

This is a process where a couple each appoint a collaborative family practitioner who is retained only on the basis that they assist them in negotiating a settlement. Neither party may start legal proceedings unless it is agreed between them for an outcome everybody approves. If an agreement is not reached through this process, the two collaborative lawyers can no longer act on behalf of the couple and the parties will have to reappoint lawyers to

continue in their litigation. All negotiations take place in face to face meetings between the couple and the collaborative lawyers. All advice given is done in an open and transparent manner. Any agreement reached in this process is a legally-binding upon the parties.

Arbitration

This process most closely follows court proceedings. If a couple are unable to reach an agreement on any aspect of their dispute, they can agree to appoint a family arbitrator who will have authority to decide upon the issue. An arbitrator can consider this by hearing from each party (whether legally represented or not), or by reviewing submissions that are made to the arbitrator on paper. An arbitrator's award is legally-binding on the parties and is recognised by the court. The parties can choose the arbitrator if they wish or have one appointed for them. Their case can be heard at a time which is convenient (in contrast to what can be expected if the dispute went to court).

In all cases of dispute resolution a couple have the advantage of being able to choose the option that suits them best. They have far more control of the time it takes to resolve their dispute and will be able to dictate the outcome to a much greater extent than they can do by going to court. As a consequence, couples find that by using dispute resolution they can achieve the desired outcome without the hassle and anxiety of court litigation.

Using [mediation](#), [arbitration](#) and [collaborative law](#) techniques, our experienced team work with families to resolve issues that often arise during divorce and separation, financial settlements and property and children disputes.

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