

Non-Court Dispute Resolution (NCDR)



What is NCDR?

Non-Court Dispute Resolution (NCDR) is a collective term which encompasses any process that can be used to help people resolve issues without making a court application. Separating families are encouraged to use NCDR when they do not need court orders to be made, as there are significant advantages in doing so (they almost always save time and stress. Some save a significant amount of money, and allow you to retain control over the outcome). Unless there are special circumstances (for example, domestic abuse) the court will expect parties to have tried some form of NCDR before making an application to court to resolve issues about child arrangements, finance or property.

We have set out below a summary of the most common forms of NCDR, with links to more information and providers if you wish to find out more.

What do I need to know about the NCDR options?

All these services require the engagement of both participants. If one person fails to try any form of NCDR in the absence of special circumstances, a judge may be very critical of that, if there are then court proceedings. The judge can require that person to pay the other person's legal costs, particularly in cases about money and property.

The endpoint for all services is the same. For children matters, the goal is to create a parenting plan instead of getting a court order: this plan will not be approved by a judge, as the courts will not make an order about parenting issues unless it is absolutely essential to do so. For financial matters, particularly if you are or have been married, the endpoint is to have a court order. A solution can be found through NCDR processes, and then a draft order reflecting this can be prepared by the service provider, or by a lawyer separately, then submitted to a court for a judge to approve it on paper (i.e. you apply for a 'consent order'). The judge will check the request and examine a summary of your financial and other circumstances before making any order. Once made, the order is as valid as if you had been all the way through court. Only a court order can cut off the issues being raised again (which is called a 'clean break').

Sometimes the NCDR services link with one another. So, for example, some of the issues may have been agreed in mediation, but one or two remain outstanding. The participants can go from mediation into another service, such as arbitration, to get a binding decision in relation to the remaining points.

Almost all services will offer options and facilities for those feeling uncomfortable with dealing with the other participant, for example in situations of domestic abuse, mental health or personality disorders

issues or alcohol/drug misuse. The provider will discuss this with you during the intake process and assess if their process is the appropriate one for you and your circumstances.

A few services will also be able to see your children separately, if both parents agree. Certain mediators are specially trained in 'child inclusive mediation'. Most other NCDR providers are not yet offering this, but this may change, so it is something that you can ask the service provider about.

Most NCDR models can cover both children and financial matters, but neutral evaluation models tend to be used mainly for financial matters. It is best to check this before selection.

The models are each evolving and new ones are being created. Many services will encourage, where appropriate, the involvement of others. This can include lawyers, mediators, arbitrators, financial advisers, accountants, pensions experts, family consultants/coaches, parenting co-ordinators, independent social workers and others from a therapeutic background.

What are the costs and is funding available?

We have not set out specifics about the costs of models. Almost all services charge in a way that is linked to the time spent. Obviously having more than one professional involved means charges will be greater. It is currently not possible to find out from the current lists of arbitrators and neutral evaluators who are the ones who will take direct access. This may mean that you only pay for their costs, rather than for the solicitors who present your issues to them also. Most arbitrators and evaluators do not currently offer that model.

Family Mediation can be funded via legal aid if you are on a low income; for those not eligible for legal aid, the government currently makes a contribution of up to £500 towards the cost of mediation sessions through the Family Mediation Voucher Scheme. Legal aid is also available for a family law solicitor if you have experienced domestic abuse.

Questions to ask potential providers

- Will you be able to help us resolve issues relating to children and/or finances?
- What will it cost?
- How long will it take?
- Can you involve my children in the process?
- What happens once an agreement is reached or the issues are decided?
- What happens if we don't resolve all the issues? Do we have to go to court or could you refer us to another service?
- What are your qualifications? Is this a regulated service?

Type of Service	Description of Service	Find Out More
<p>Mediation</p>	<p>A mediator meets with participants, online or in person, with you together or separately. Over a series of meetings, the mediator facilitates your discussions and seeks to create a pathway to agreement. The mediator is a neutral third party, and can provide you with information about the law and your options. You can have legal advice alongside mediation, and this is particularly encouraged for financial issues.</p>	<p>Family Mediation Council familymediationcouncil.org.uk</p> <p>When choosing a mediator, make sure they are on the FMC Register.</p>
<p>Hybrid or integrated mediation</p>	<p>Solicitors will accompany the participants during the mediation, either online or in person. There tends to be only one meeting, held when both participants have enough information to feel ready to settle. The mediator meets with the parties (and if applicable their lawyers) in a series of meetings on the day and can hold confidences. The mediator can thus identify the real issues and obstacles to settlement, where there is overlap between the parties' positions and/or how any gaps may be bridged.</p>	<p>Family Mediation Council familymediationcouncil.org.uk</p> <p>When choosing a mediator, make sure they are on the FMC Register.</p>
<p>Arbitration</p>	<p>This is like appointing your own judge to decide matters. However the process is quicker, as it avoids the delays and practical inefficiencies of the court process. It is also a confidential process. As delays can cause costly setbacks, it can be less expensive than going to court. Both participants must understand when they choose this process, that the decision of the arbitrator is legally binding. It is therefore the only NCDR process where the participants do not agree to a negotiated outcome.</p>	<p>Institute of Family Law Arbitrators ifla.org.uk/public</p> <p>Choose an arbitrator from the IFLA directory</p>

<p>Neutral evaluation</p>	<p>Early neutral evaluation usually involves an independent and neutral specialist family lawyer looking at your situation and providing you with their view as to what a judge might decide. This can be done on paper, in an informal meeting or in a mock-up of a court-style evaluation hearing (in finance matters this is called a private FDR). That view taken by the evaluator is not binding, but it will greatly assist in settlement discussions.</p>	<p>Resolution resolution.org.uk</p>
<p>Collaborative law</p>	<p>You would each appoint a collaboratively trained family lawyer. Work is carried out in a series of meetings with participants and lawyers working together in a positive and solution-focussed manner. Everyone signs an agreement preventing the collaborative lawyers from representing either person at court, should the collaborative process break down.</p>	<p>Resolution resolution.org.uk</p>
<p>Solicitor negotiation</p>	<p>You each have a lawyer, and they communicate by email and telephone, and may have one or more round-table meetings to assist the negotiations. Sometimes only one person has a lawyer, who then writes direct to the other person.</p>	<p>Resolution resolution.org.uk</p> <p>Find a solicitor from the SRA Directory</p>
<p>Other options</p>	<p>The models available are changing and evolving, so something may be suggested to you that is not on this list. Contact a mediator or solicitor to find out what options may be available to you.</p>	<p>Family Mediation Council familymediationcouncil.org.uk</p> <p>Resolution resolution.org.uk</p>