



Information on keeping you out of court

Virtually all cases involving family Issues are best kept out of court. The only exception would be where there have been incidents of domestic abuse. At Chafes Hague Lambert, we encourage both parties to reach agreement between themselves and there are many ways to achieve this:-

- Reaching an agreement directly between yourselves
- Mediation
- Collaborative law
- Arbitration
- Lawyer led negotiation

If it's not possible to reach an agreement then ultimately the court will have to make the decision for you. We actively encourage clients to discuss ways forward with their partners or former partners as to where the likely parameters of settlement will lie.

Why is it best to keep out of court?

The court process is stressful for both parties to any dispute. The process is essentially an adversarial one where lawyers must put the best case they can for their client and at the same time find holes and areas of weakness in the other parties' case.

The court process puts the parties in diametrically opposed positions which often fuels adverse feelings about the other party to the case. In children's cases this invariably has an adverse impact upon the emotional wellbeing of the children involved, something which sadly is all too frequently forgotten by the parties.

Litigation through courts is also expensive and very often unnecessary. Parties who reach agreement save themselves a lot of emotional stress and money.

When parties reach an agreement in relation to the financial aspects of their divorce then the terms of the agreement can be put into documentary form and submitted to the court for approval without, in most cases, the physical need to go to a court hearing.

Agreements which are reached between the parties usually work well because both parties have bought into the agreement and find it acceptable to them. If the matter proceeds to a court hearing and a court decides what is to happen then invariably at least one if not both of the parties will in some way be disappointed which can cause further resentment between the parties.

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Mediation

We may suggest clients attend meetings with mediators. Mediators are independent and impartial and are often experienced family solicitors. Over a series of meetings the mediator helps the parties in reaching an agreement. For mediated agreements to be successful there must be full and frank disclosure of financial circumstances in financial cases. Often mediation can be cheaper and quicker than more traditional negotiations.

If agreement is reached during mediation then the mediators draw up a Memorandum of Understanding and invite both parties to seek legal advice concerning the agreement reached.

These agreements may be fine-tuned by lawyers and then put into further legal documents including consent orders. Mediation isn't a substitute for having legal advice. For mediation to be successful we strongly advise you have legal advice throughout the process. We can support you by providing advice throughout the mediation process.

Collaborative law

Collaborative law is a relatively recent development. Both parties to a family dispute and their respective collaboratively trained lawyers, sign up to an agreement. Everyone concerned commits themselves to resolving issues without going through the court process. No proceedings are formally issued without agreement between all parties and their advisors. In the event that an agreement is not reached then the collaboratively trained lawyers will no longer act for their respective clients and the parties will need legal representation.

Arbitration

Both parties to a family dispute appoint an independent arbitrator to make a decision about the financial and property issues arising from the breakdown of your marriage or relationship.

There is no fixed procedure and the stages of the case will depend on the issues that need to be resolved. In most cases there will be an arbitration hearing.

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Lawyer led negotiation

At Chafes Hague Lambert we strive to reach an agreement for our clients without the need for contested court proceedings. More often than not agreements are reached through correspondence and communication between the parties' solicitors.

We encourage negotiation to continue even if proceedings are issued to avoid the case having to be decided by the court at a final hearing.

If all else fails then litigation and court hearings must be regarded as a measure of last resort.

At Chafes Hague Lambert, we have an experienced family team that can guide you through all the family issues without unnecessary attendances to court. To discuss your situation please contact any member of our team.

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