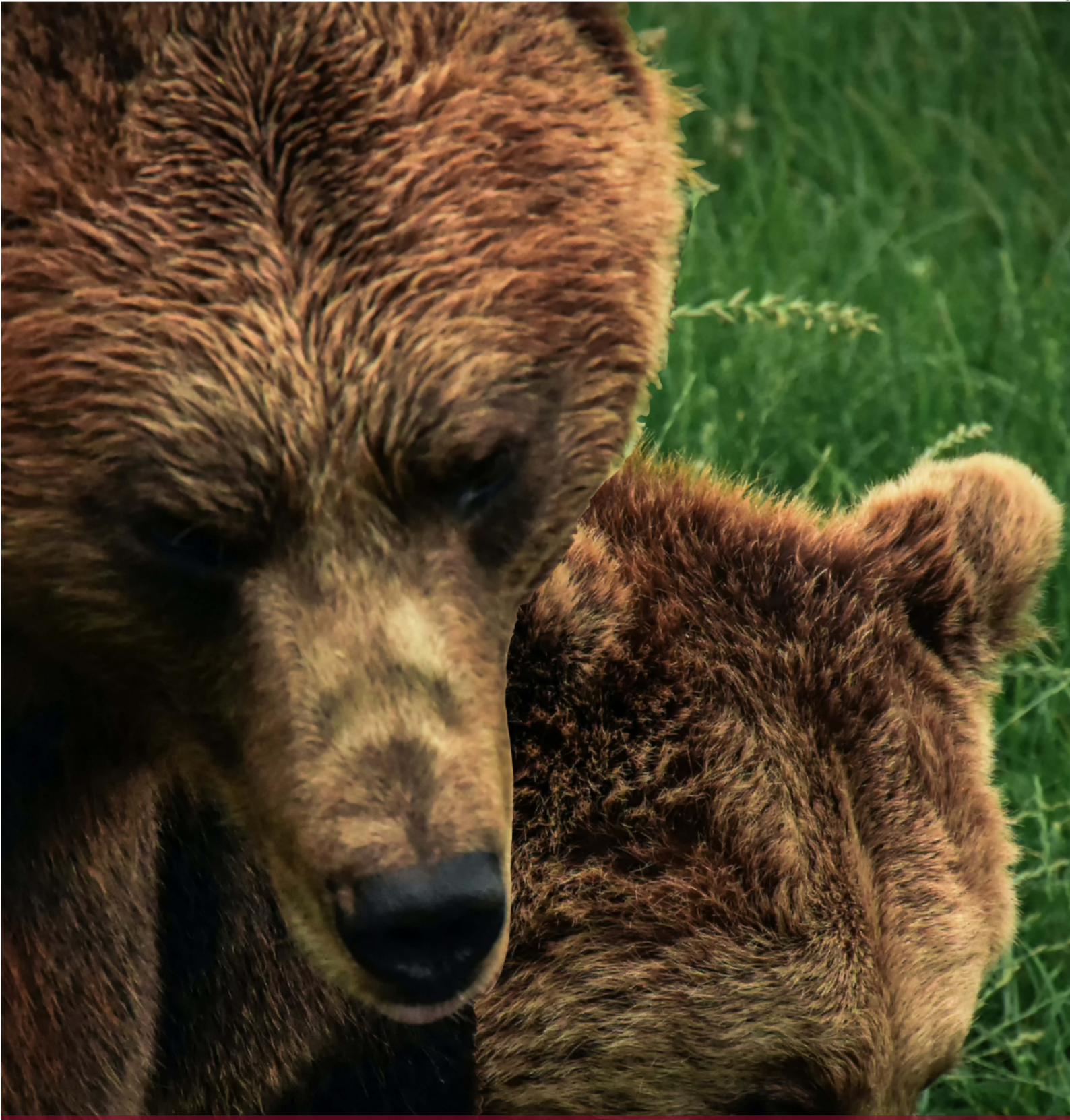

A GUIDE TO NON-COURT DISPUTE RESOLUTION

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Court should be the last option

Amendments to the Family Procedure Rules ("FPR"), came into effect on 29 April 2024. The FPR are the rules that govern how cases are managed and the procedure to be followed, throughout the court process. The amendments to the FPR now provide the court with more robust tools with which to direct litigants to Non-Court Dispute Resolution ("NCDR"). NCDR is defined as "*methods of resolving a dispute other than through the court process, including but not limited to mediation, arbitration, evaluation by a neutral third party (such as a private Financial Dispute Resolution process) and collaborative law*." Here is an explanation of each of those options:

1. Mediation

Mediation is a process whereby both parties agree to appoint an independent third party, who is trained and has expertise in family law, to act as a go-between. The parties will have a series of joint sessions with the mediator to help them come to an agreement in relation to their dispute. The mediator will allow the parties to reach their own agreement but will offer them some guiding principles. The mediator is not permitted to provide legal advice.

Traditionally, the parties would sit together in a room with the mediator, and while this is still an option, there is now more flexibility in how mediation can be delivered:

- **Remote mediation** where the sessions are provided via video (e.g. Zoom).
- **Shuttle mediation** where each party is in a separate room with the mediator moving between them (this can occur either in person or via video).
- **Child-inclusive mediation** where the mediator will speak to the child to ascertain the child's wishes and feelings before sharing these with the parents (but only with the child's permission).
- **Hybrid mediation** where the mediator is able to have separate confidential meetings with both parties and can only share with the other party what they have been authorised to share. Usually, solicitors are more heavily involved in this process.
- **Co-mediation** where two mediators work together to help the parties reach an agreement. Often, the two mediators will be from different disciplines, such as a family law mediator and a financial mediator, for example.

If the parties reach an agreement in mediation, they can then ask their solicitors to put any agreement into a binding legal document or court order. Until that point, the agreement will be confidential and non-binding.

Mediation is particularly good for parties with equal bargaining power who wish to avoid going to court, which is a lengthier and costlier process. As the mediator is not able to provide legal advice, it is always a good idea for the parties each to be independently advised by a solicitor, to ensure the agreement reached in mediation is a fair one.

2. Collaborative law

The collaborative law approach requires each party to have a solicitor and for the two solicitors and the two parties to have a series of meetings to try to reach an agreement. The aim is for the

parties to reach that agreement themselves. Unlike the usual role for the solicitors, which is not to share their advice with the other party and his or her solicitor, in collaborative law the solicitors will discuss what they think the scope of a reasonable outcome could be. The solicitors share with each other an outline of the advice they have given their clients. In the event that they cannot agree on a point of legal principle, they can seek help from an independent third party, such as a barrister.

At the beginning of the process, the parties sign up to an agreement in which they commit to using the collaborative process and not applying to court. In the event that one of the parties then applies to court, the collaborative process will end and both parties will need to appoint new solicitors.

If an agreement is reached it can be put into a legally binding document or court order.

The collaborative law approach is a good one for parties who are able to negotiate well between themselves and would like the full support of their solicitors in any settlement meetings.

3. Collaborative 'lite'

The so-called collaborative 'lite' approach differs from the fully collaborative approach in that the parties do not sign up to an initial agreement that they will pursue the collaborative route and commit to changing solicitors if the process breaks down. This route is less prescriptive in the number and type of meetings that are required and so can be cheaper than the formal collaborative process.

The aim of the collaborative 'lite' approach is really to have parties and solicitors reaching an agreement in a series of meetings but without the solicitors necessarily sharing their advice. The parties would not sign up to avoiding court and so the possibility of court proceedings remains, for better or for worse.

If an agreement is reached, it can be put into a legally binding document or court order.

The collaborative 'lite' approach is ideal for parties who hope to resolve matters amicably through solicitors, but who might not feel confident enough to negotiate a settlement themselves, or trusting enough to remove altogether the threat of court proceedings.

4. Arbitration

Arbitration is like a private court with a private arbitrator (judge). Both parties will need to commit to having their dispute resolved by the arbitrator and to agree to being bound by the decision. The advantage is that this process will be much shorter than the court process and probably less expensive overall, although the arbitrator's costs and other incidental costs will also need to be met by the parties. Both parties may want a barrister and/or solicitor to represent them as they would do in court.

The arbitrator's decision can be converted into a court order and will almost certainly be binding in all but exceptional circumstances.

Arbitration can be a flexible and tailor-made procedure and so is ideal for those who do not wish to spend the time that would be spent in the court process, but who are unable to come to an agreement through the above alternative routes.

5. Early neutral evaluation by a third party e.g. Private FDR

The Financial Dispute Resolution hearing ("FDR") is the middle, negotiations hearing in the court process. A private FDR is conducted by an FDR 'judge' who is usually a barrister appointed jointly by the parties to act as a judge. The parties will need to pay the judge's costs. An FDR is never binding but the judge helps the parties come to an agreement by giving an indication of what a court at a Final Hearing would order.

The advantage of a private FDR is that it can replace a court FDR or be held independently and unrelated to any court process. It is likely to speed up any court process considerably.

If an agreement is reached at the private FDR it can be converted into a legally binding court order.

A private FDR is an ideal way to reach an agreement if you are not confident that you can do so without the input of an independent third party (it may be that your former partner needs robust recommendations and simply will not listen to anyone other than a judge), in which case collaborative law or mediation may not be for you. You may also feel you do not have equal bargaining power and so the recommendations of an experienced judge, who may also sit as a deputy judge in court, can be very effective in resolving an impasse. A private FDR could also be used to start the arbitration process as well as being part of the court process.

Getting legal advice early in the process is essential.

Please contact us at enquiries@tandsfamilylaw.com if you would like to discuss your situation.