



Andrea Woelke

Andrea is an accredited expert in family law with particular expertise in international family law, child abduction and cohabitation. He takes the view that family law does not have to be about litigation in the courts, stuffy procedures and language only lawyers understand. If court proceedings are necessary he takes a robust approach without losing the overall picture of the issues including the costs of the litigation.

Andrea is a trained collaborative lawyer and works together with a variety of mediators.

Andrea regularly writes and lectures on family law. He is an expert on civil partnership and the author of the leading textbook "Civil Partnership".

There is more free information and advice on these and other topics online

www.alternativefamilylaw.co.uk

email or call to find out more without any obligation

Alternative Family Law

3 Southwark Street
London SE1 1RQ

T: 020 7407 4007

F: 020 7407 4008

E: andrea@alternativefamilylaw.co.uk



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This is an outline of the law, practice and procedure in England. It should not be taken as specific advice. All families and couples are different. The law may have changed since this was written and we therefore accept no liability for inaccuracies. Where examples are given, your personal circumstances may vary slightly, but the difference may be significant for the outcome of the legal process. Contact us for specific advice on your own circumstances.

Alternative Approaches to Family Law



Alternative Family Law

Court Proceedings

Sometimes court proceedings are inevitable. Often they can be avoided. Many people find the prospect of having to appear before a court of law daunting at the best of times; combined with the emotions resulting from separation or disagreements about the upbringing of children, it becomes the last thing most people want.

It is not necessary to go to court and have a judge decide on what should happen when you separate or divorce. There are a range of other options.

Direct Discussions

You can try and discuss issues with your former partner direct - with or without guidance from lawyers - and come to an agreement. This usually works for couples where the issues are limited and emotions are low, for example childless couples where both are working and who have both come to the conclusion that the relationship is over. If you feel that this is something you want to try, you will find professional advice and guidance will help you along the way. This is the exception and many people simply do not want to face their former partner or find it difficult to talk directly.

Negotiations through Solicitors

Matters are in many cases resolved through solicitors, usually in correspondence. Unfortunately this way often tends to put both solicitors and clients into the mindset of litigation and so the focus is on what the court would order. Correspondence can be seen as hostile and entrenched positions. The final agreements may therefore not be the best for the family. It is best to try to keep the focus on solutions rather than litigation and open up the thinking while keeping your interests in mind.

Litigation

Although only about 5-10% of cases go all the way to a final hearing and the rest settle earlier in the process, solicitors' and clients' mindsets are focussed on litigation outcome and the solutions the court can provide. Negotiations are outcome-based and tend to focus on percentages in the division of the capital and income.

If the focus is on the litigation, there is often no room for lateral thinking to find an alternative solution which may be better for the family. Sometimes litigation is unavoidable, for example if one party is trying to hide assets. In such cases it is important that your solicitor represents you with specialist expertise without losing sight of the overall costs, which can be considerable.

Mediation

This has been around since the late 1980s in this country and is now well established. It involves the couple meeting with a mediator, who can be a qualified family solicitor-mediator, and matters are resolved during mediation meetings between the three of you. Mediation can be on all issues or, say, only on contact with the children. This works in a number of cases and is very cost-effective. Both parties can of course discuss matters at the same time with their own lawyers.

The mediator is independent and cannot be a member of either lawyer's firm. Mediation does not work for everyone. For example one partner may not feel supported in the meetings and therefore feels left alone. Generally, both partners have to be very committed and function well. The particular mediator needs to be the right person for the couple and should be chosen carefully.

Mediation often works best if both former partners have supportive advice and guidance from their own solicitors.

Collaborative Law

This is well established in the US and Canada and started in this country in 2003. When a couple agrees to collaborate and both have solicitors who are trained collaborative lawyers, all issues are resolved during round-table meetings with all four of them. If appropriate, other people, such as experts or financial advisers may also attend a meeting.

Both former partners and both solicitors work on this process together and all four agree not to litigate. This means if the collaborative process broke down, both partners would need to go to new solicitors. This is a strong incentive for all four to make it work and the failure rate is low. In the same way as with mediation the process allows for an alternative solution outside of what the law and the court can provide. It therefore allows for solutions that both partners can accept and that enables both of them to come out of the process with a working relationship intact or re-established.

Even in the rare cases that the process breaks down the disclosure that has been put together can be used in negotiation or litigation and there should be no duplication of work or costs. Andrea Woelke is a trained collaborative lawyer and can suggest other specialists who can work with your former partner. Although not as cheap as mediation, collaborative law is a cost-effective way to find the best solution for the whole family.

