

## **Dispute Resolution Call for Evidence**

### **Resolution's response to the Ministry of Justice**

Resolution's 6,500 members are family lawyers, mediators, collaborative practitioners, arbitrators and other family justice professionals, committed to a non-adversarial approach to family law and the resolution of family disputes.

The essence of good Resolution family practice is to assist people through their family dispute in a way that best serves their personal and family interests, especially if there are children involved.

Resolution members commit to our Code of Practice, which promotes a constructive and collaborative approach to family law issues. Their commitment to the Code means they believe the process of separating, sorting out finances and making arrangements for children can be done in a way that minimises conflict and promotes amicable agreements. Resolution members are required by the Code to work in ways that 'reduce or manage any conflict and confrontation' within separating families. This lends itself to the use of a range of skills to assist people to resolve matters in different ways both outside of and in the family court.

Resolution supports and promotes a wide range of out of court dispute resolution processes. Our members help clients reach agreement through mediation, the collaborative process, solicitor negotiation, arbitration, roundtable discussions, private FDRs and other processes.

Resolution is a leading provider of training for family lawyers in dispute resolution. We introduced mediation training in 1996 and Collaborative practice training started in 2003.

Our current records indicate that over 700 of our members are mediators, with over 280 of those involved in offering legal aid family mediation services; over 1,000 are collaborative practitioners; and 150 are arbitrators. Our lawyer members may practice as both mediators and collaborative lawyers. They may also be accredited by the organisation as specialists in particular aspects of family law.

Our current Resolution Future Practice programme of work aims to ensure that, in living our Code, all our members will be issue resolvers. Whether negotiating, mediating, litigating or otherwise, they will be doing so in a principled and 'collaborative' way (collaborative in its usual sense, not related to the collaborative process) involving:

- a) taking a child-centred approach;
- b) carrying out appropriate screening and making an assessment of risk factors in relation to safeguarding issues relating to the protection of any child or adult from harm;
- c) taking a holistic approach which takes into account the emotional state of the parents concerned and their ability to resolve issues;

- d) understanding how parents may be supported to resolve issues following separation and provide advice and information accurately and consistently on all and what forms of issues resolution are available and guide their clients to use the most suitable approach or blend of approaches for them (which may be court);
- e) helping clients to deal with their conflict and/or signpost to suitable support;
- f) taking a problem-solving approach; and
- g) working together in a multi-disciplinary way to provide clients with the services that meet their needs.

Our unified Resolution Future Practice approach is also intended to break down some of the current barriers within and between different dispute resolution processes that currently prevent Resolution and our members from supporting families in new and innovative and more seamless ways.

Resolution surveyed its members from 9 September to 8 October 2021 about their experience of dispute resolution processes over the last 12 months (through conducting these processes themselves or referring clients to them). 367 members responded to the survey in full. The 12 month period was largely during a period of Covid restrictions. 88% of respondents were solicitors, barristers or chartered legal executives; 27% were mediators; 22% were collaborative practitioners; and 5% were arbitrators (there is obviously overlap between these figures). The full results are annexed at the end of this paper.

## **Responses to Call for Evidence Questions**

### **DRIVERS OF ENGAGEMENT AND SETTLEMENT**

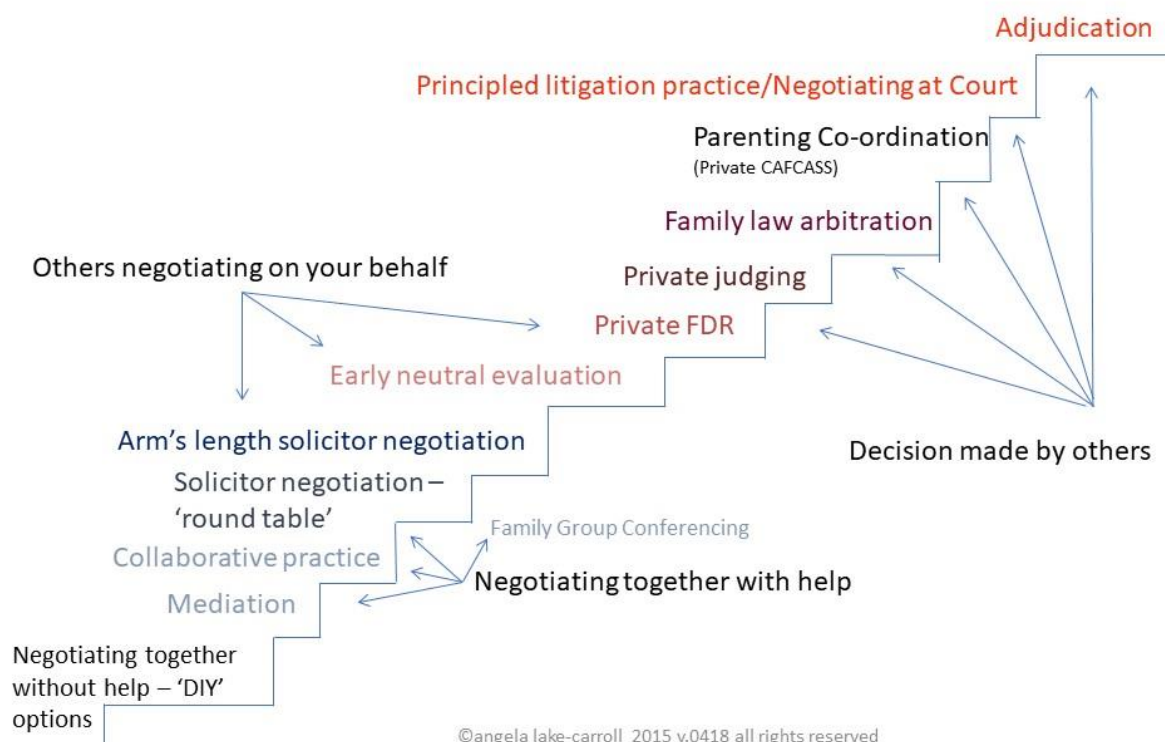
#### **1. Do you have evidence of how the characteristics of parties and the type of dispute affect motivation and engagement to participate in dispute resolution processes?**

1.1 One of the many types of non-court dispute resolution (DR) processes available in the family jurisdiction could, in principle, be suitable for most people and types of private family law dispute, especially if other resources are available to support the parties and underpin the resolution of any dispute. But many circumstances (more than the characteristics of the parties and the generic type of dispute) can make non-court DR unsuitable in the particular case (please see further detail below).

1.2 Mediation is an important and successful DR process in suitable cases. But even if mediation is not suitable this doesn't mean that a dispute necessarily needs to go through court. A broad spectrum of DR options is already available, with a number of others developing or potentially developing with Resolution members at the forefront. Guiding clients through all the DR opportunities available to them is an important part of the Resolution Code of Practice. Our members offer a conciliatory approach which of itself is often a form of DR, resulting in settlement without or during proceedings.

1.3 The diagram below outlines the scope of the processes that already exist. Further information on the main processes and their benefits is [here](#). It is worth noting that in addition to there being many forms of DR aside from mediation, there are different types of family mediation itself. It is possible to move between different out of court processes and use another process to overcome 'roadblocks' so that the main process doesn't fail.

# Family Dispute Resolution



1.4 Through our Resolution Future Practice programme, we are currently looking at ways of providing more seamless services to families that involve a broad range of the available DR processes, all based on not going to court.

1.5 We are also considering where it may be appropriate to give separated couples the opportunity to access jointly beneficial family law advice or guide them together to the best issues resolution process for them as a couple, and any regulatory or other changes that that would require (a 'one lawyer, two clients' model within regulated solicitor practice).

1.6 As stated above, many circumstances can make non-court DR unsuitable or inappropriate, or unsafe in the particular case, meaning for example that one or both parties do not want to engage.

1.7 In our DR Committee's experience those circumstances can include where:

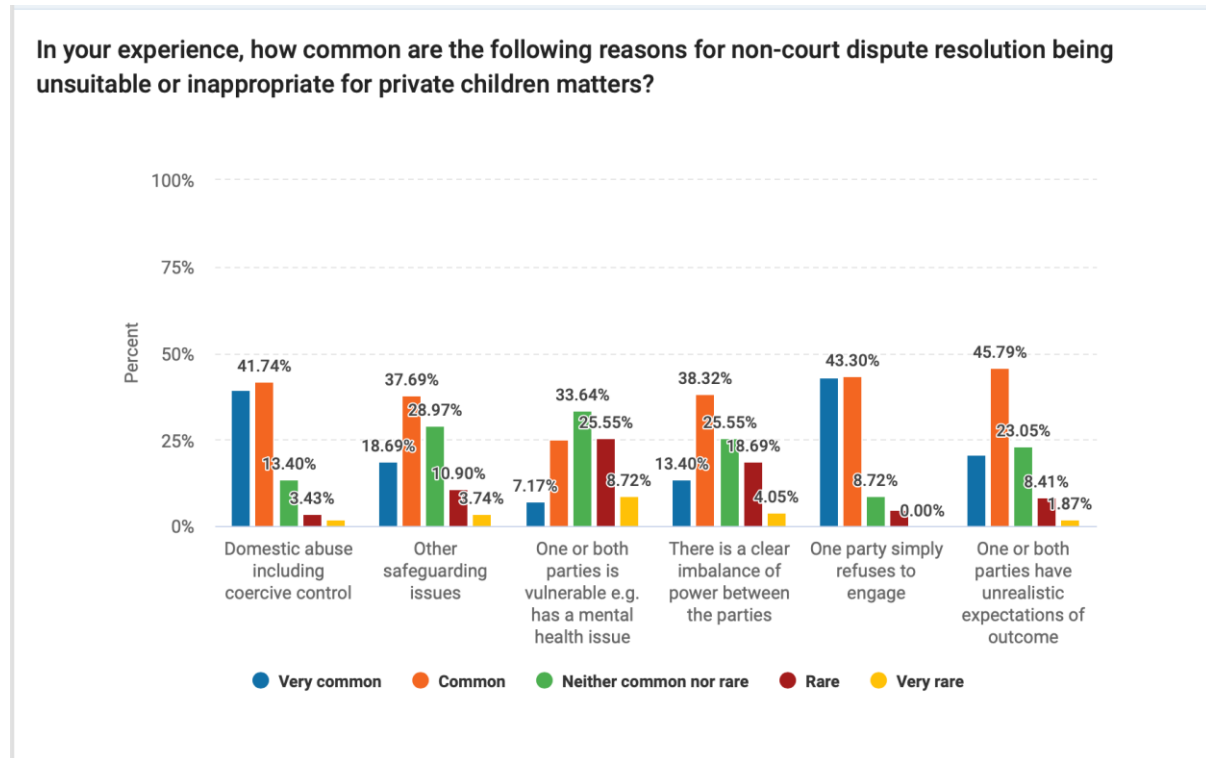
- a) There are domestic abuse, child protection or other safeguarding issues in play.
- b) The parties are already very entrenched.
- c) The emotions of those who feel that there is not a level playing field between themselves and the other party are in play.
- d) There is a lack of practical preparedness and/or emotional readiness, or the potential participants' emotional readiness to mediate or use another process is not aligned.

Factors b) to d) may be addressed or minimised if they are identified early enough in the process.

1.8 Our member survey asked how common certain reasons for non-court DR being unsuitable or inappropriate are.

1.9 In private law children matters the following were most frequently cited as a common or very common reason for non-court DR being unsuitable or inappropriate:

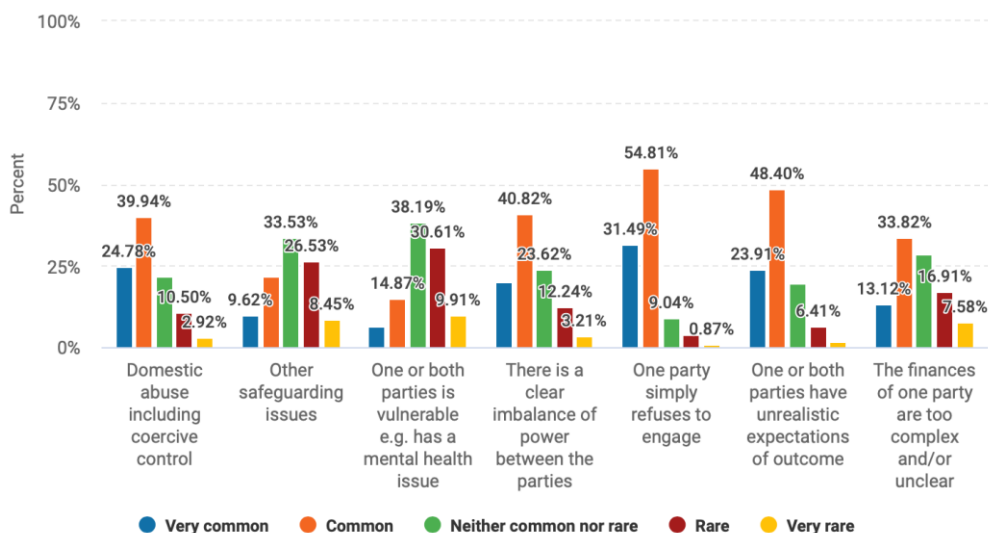
- a) 86% of those who responded cited one party simply refusing to engage;
- b) 81%, domestic abuse including coercive control;
- c) 67%, one or both parties having unrealistic expectations of outcomes;
- d) 56%, other safeguarding issues; and
- e) over 50%, a clear imbalance of power between the parties.



1.10 In financial matters:

- a) 86% said one party simply refusing to engage;
- b) 72%, one or both parties having unrealistic expectations of outcomes;
- c) 65%, domestic abuse including coercive control; 61% a clear imbalance of power between the parties; and
- d) 47%, the finances of one party were too complex or unclear.

**In your experience, how common are the following reasons for non-court dispute resolution being unsuitable or inappropriate for private finance matters?**



1.11 Please see the responses to questions 7 and 16 of our survey for the full results.

1.12 [Mapping Paths to Family Justice](#) provides an evidence base about the parties and cases suited to particular family DR processes (solicitor negotiations, mediation and collaborative law) and the relative merits of each. A key finding was that parties need to be emotionally and practically ready to engage in DR.

## **2. Do you have any experience or evidence of the types of incentives that help motivate parties to participate in dispute resolution processes? Do you have evidence of what does not work?**

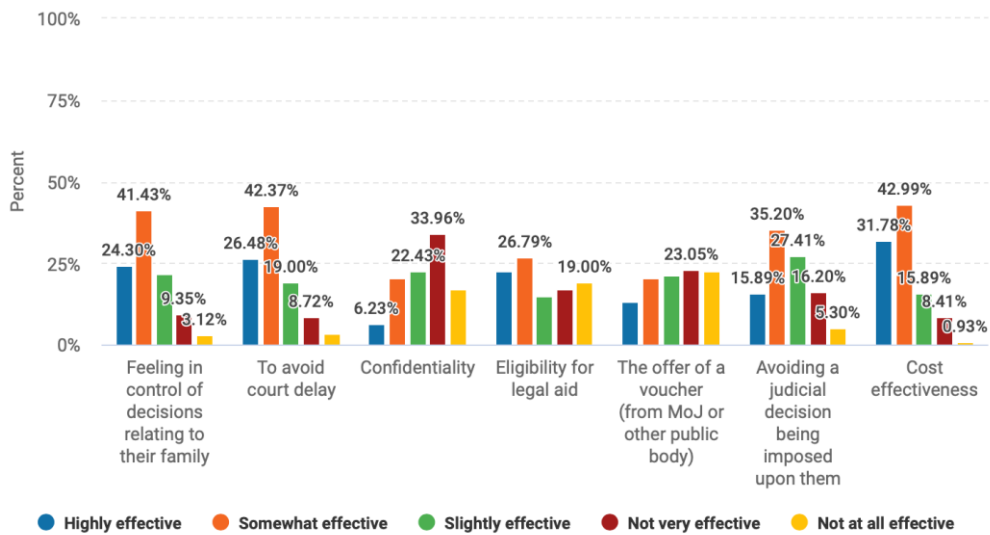
2.1 Our members find that their clients take into account and balance some of the following factors when deciding what DR process (court or otherwise) to participate in:

- a) Finding the safest option for them and their children.
- b) Feeling in control of the decisions being made about their family's future.
- c) Whether their financial affairs are complicated and unclear.
- d) Being up against a powerful personality, and not dealing with things on their own.
- e) Believing they will need support to secure an outcome that is fair.
- f) Needing to keep control of the costs.
- g) Avoiding delays or a lengthy battle.
- h) Finding an option that will bring certainty and closure.
- i) Looking for a process that is as painless as possible.
- j) Having the opportunity to understand and influence what is happening.
- k) Whether they qualify for legal aid.

2.2 Our member survey asked how effective certain 'incentives' are in encouraging parties to participate in non-court DR.

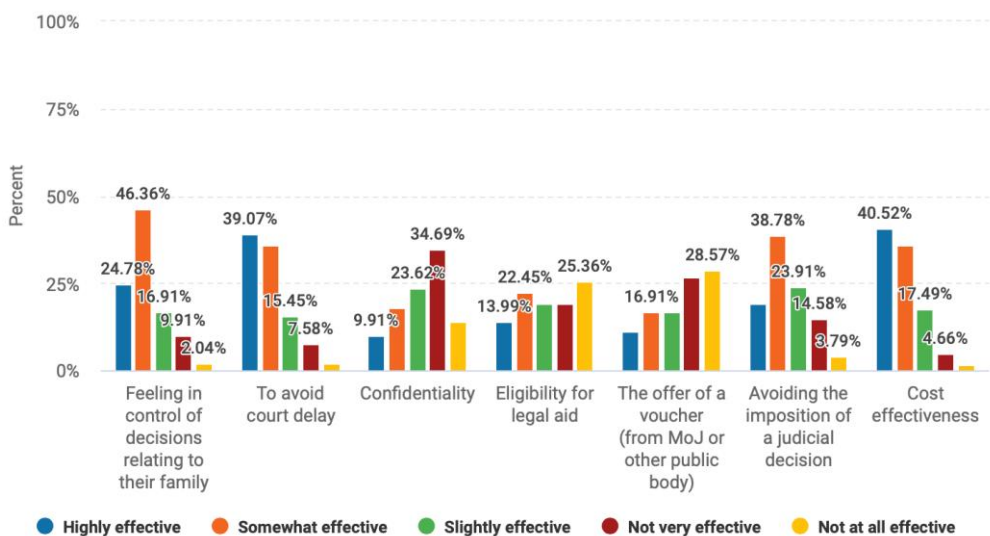
2.3 In private law children matters the following were most frequently cited as highly or somewhat effective in encouraging parties to participate: cost effectiveness (75% of those who responded); to avoid court delay (69%); feeling in control of decisions relating to your family (66%). Responses on the effectiveness of the offer of a voucher were quite evenly mixed.

**In your experience, how effective are the following incentives in encouraging parties to participate in non-court dispute resolution?**



2.4 In private finance cases: cost effectiveness (76% of those who responded); to avoid court delay (75%); and feeling in control of decisions relating to your family (71%).

**In your experience, how effective are the following incentives in encouraging parties to participate in non-court dispute resolution?**



2.5 Please see the responses to questions 8 and 17 of our survey for the full results.

2.6 Otherwise, other than the current Mediation Voucher Scheme data, we are not aware of much existing evidence of the types of direct incentives that help motivate separating and divorcing parties to participate in DR processes.

2.7 The MoJ will have the data relating to the current Voucher Scheme, which indicates some evidence of success in helping to motivate parties to participate in mediation. The following information is from over 1500 cases: Mediators participating in the scheme are asked whether, in their view, if there was no financial contribution available the participants would have gone to mediation. Mediators answered no in 48% of cases (and yes in 52% of cases).

2.8 We understand from mediator members that this scheme has been particularly beneficial where one party is legally aided, in that it has meant the non-legally aided party could attend more mediation sessions free of charge which might otherwise be unaffordable for them.

2.9 We suggest however that a strong evidence base requires a longitudinal study on the longevity of agreements and outcomes from DR (for example, the long-term impact of mediated outcomes, including of those made as a result of the Mediation Voucher Scheme). [Mapping Paths to Family Justice](#) recognises that there can be a difference between why people settle and having a 'just' settlement.

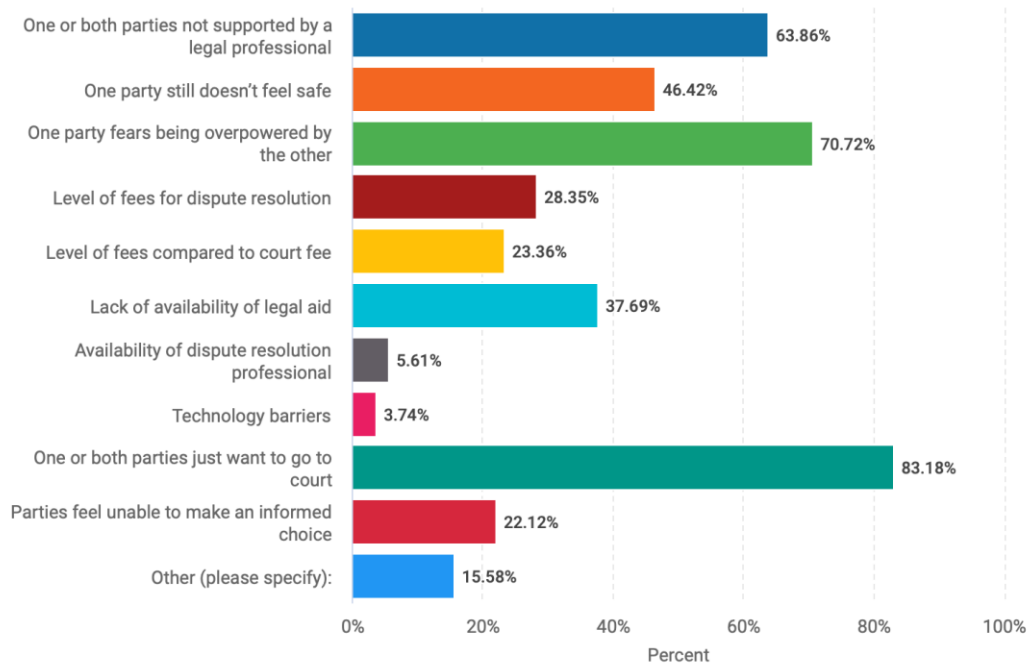
2.10 We support the FMC's calls for the Mediation Voucher Scheme to be extended and further data gathered. We suggest that vouchers for other out of court DR processes, for example arbitration, should also be tested, as these are additional opportunities to reduce the burden on the family courts, and get families to quicker resolutions.

2.11 We discuss in more detail in response to question 11 those factors which may not be direct incentives, but drive engagement with or support parties to properly understand and use non-court DR. For example, preparing clients for mediation is vital in making it work. That starts from the legal professional being positive about the process, reassuring the client that their voice will be heard in the mediation and that the process invariably encourages existing problems to be considered afresh by both parties.

2.12 We also asked in our member survey what are the main reasons for parties not taking up non-court DR, where it could resolve their private law children case.

2.13 In private law children cases, 83% of those who responded said that one or both parties just wanting to go to court was one of the main reasons; 71%, one party feeling overpowered by the other; 64%, one or both parties not being supported by a legal professional; and 46%, one party still doesn't feel safe.

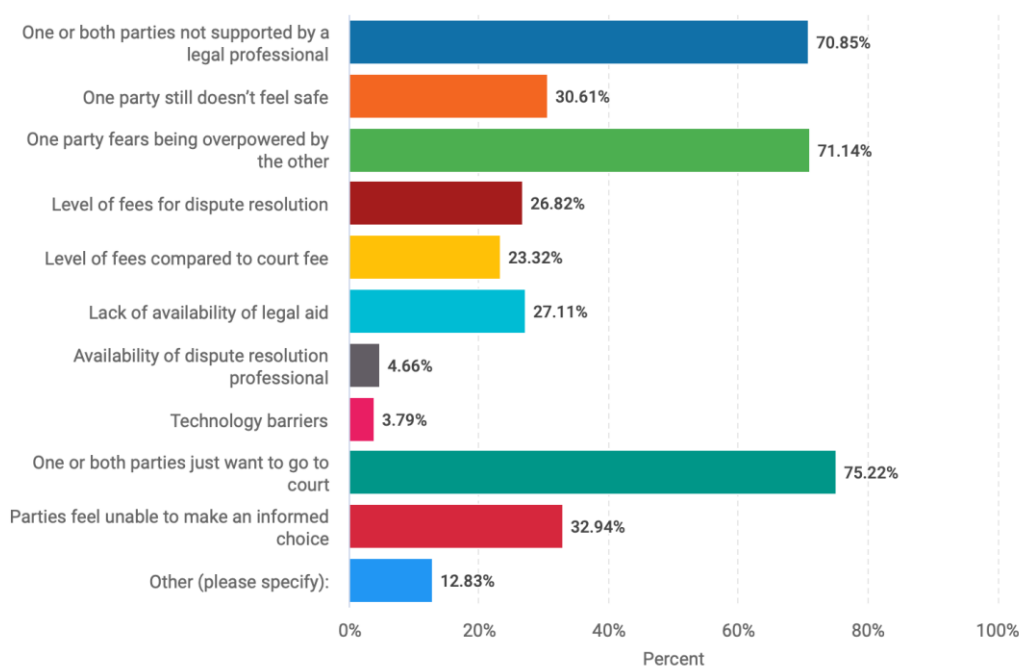
**What do you think are the main reasons for parties not taking up non-court dispute resolution where it could resolve their private children case? Please tick all that apply**



2.14 In finance cases, 75% of those who responded said that one or both parties just wanting to go to court was one of the main reasons for not taking up non-court DR; and 71% that both not being supported by a legal professional and one party feeling overpowered by the other were some of the main reasons.



**What do you think are the main reasons for parties not taking up non-court dispute resolution where it could resolve their private finance case? Please tick all that apply.**



2.15 Please see the responses to questions 9 and 18 of our survey for the full results.

**3. Some evidence suggests that mandatory dispute resolution gateways, such as the Mediation Information & Assessment Meeting (MIAM), work well when they are part of the court process. Do you agree? Please provide evidence to support your response.**

3.1 The statutory Mediation Information and Assessment Meeting (MIAM) (as set out in Rule 3.9 FPR 2010) is our only experience of a mandatory gateway as part of the family court process. We would urge caution around how well this works and whether the MIAM has steered families away from court as much as envisaged.

3.2 In practice the MIAM is used primarily as a route into mediation or as a stepping-stone to court. As part of the court process, the MIAM becomes part of positioning for that court application, often simply comes too late in the separation journey for mediation to appeal and be successful, or the MIAM process isn't enforced by the court.

3.3 In addition, there is no real evidence of assessment of suitability for DR other than for mediation, or of the impact of the MIAM on diversion to DR processes other than mediation – even where mediation is not suitable, a different DR process may be. This is no doubt in large part due to the fact that at present only accredited mediators can offer a MIAM, something that Resolution would wish to change.

3.4 In its [2020 report](#) the President's Private Law Working Group found that there is widespread recognition that the current MIAM system is not working as intended, and requires revisiting. We believe the main issues to be addressed are:

- a) The absence of a requirement for the respondent also to attend a statutory MIAM.
- b) An insufficiently robust framework and application.

- c) That the MIAM is perceived as a siloed hurdle to court proceedings.
- d) That parties are potentially uncertain about the purpose of the MIAM and sometimes wrongly think that their only options are mediation or issuing a court application.
- e) The need for a wider choice of providers and easier access to providers.
- f) Whether there is a need for practitioners to be accredited to conduct a MIAM. We do not think so, on the basis that a MIAM is not mediation and mediators receive robust MIAMs training as part of qualifying as a mediator.

3.5 Resolution (and IFLA) recommend that people have access to a broader Advice and Information Meeting (an AIM) earlier in the separation process, before minds are set on court and an application to court is considered, about the different ways of proceeding and to help them make an assessment of what might fit best for their circumstances and produce a fair and lasting outcome. Access to a range of information and assessment from a broader range of suitable family justice professionals at any stage before or during separation, not presented as a hurdle to court, needs to be tested to evidence whether this would:

- a) make more people aware of mediation than would otherwise be the case;
- b) be more effective than MIAMs to provide pre-assessment of other potentially suitable options without being guided down any specific process route simply because that is the professional's preferred option and/or the option they are trained in;
- c) increase the number of referrals to all forms of DR (including those not available when policymakers were developing the MIAM); and
- d) reduce any inappropriate accessing of the family court whilst providing quick access to court where necessary.

3.6 Family lawyers, collaborative practitioners and arbitrators, as well as mediators, would be well-placed to provide AIMs or the content of such at early legal advice meetings, subject to having completed and attended an appropriate (affordable) course and ongoing appropriate monitoring and training.

3.7 It is important to recognise that there are still those who will go first and possibly very early to a solicitor, well before any focus on court gatekeeping. Legal advice on an individual's legal rights and responsibilities on separation and divorce helps to manage expectations on outcomes and is a point of appropriate referral away from court (as evidenced in our response to question 11). A first advice meeting with a solicitor would be one of the ways to provide an AIM, as well as providing initial and individualised legal advice. It is what solicitors should already be doing.

**4. Anecdotal evidence suggests that some mediators or those providing related services feel unable to refer parties to sources of support/information - such as the separated parents' information programme in the family jurisdiction – and this is a barrier to effective dispute resolution process. Do you agree? If so, should mediators be able to refer parties onto other sources of support or interventions? Please provide evidence to support your response.**

4.1 Yes, we agree, on the basis that all appropriately qualified family issues resolvers should be able to refer to other sources of support (and assuming this question does not relate to the gatekeeping of applications to court). We agree with the principles of a framework of support services, a holistic approach and integrated services as recommended by ["What about me? Reframing Support for Families following Parental Separation" 2020](#).

4.2 In our members' own experience, including that of our Dispute Resolution and Parenting after Parting Committees, early access to co-parenting support and SPIP-type content can be extremely useful to mediation clients and those using DR processes and facilitate agreement or settlement.

[Building Bridges?](#) (An evaluation of the costs and effectiveness of the Separated Parents Information Programme (PIP)) recommended PIP should be made available at an earlier stage. This should be as voluntary self-referral and also linked with mediation as a mandatory step before court proceedings in appropriate cases.

4.3 We agree that an inability to refer to other DR or support services and resources is a barrier to effective DR. This can be due to a lack of knowledge, lack of availability, or lack of joined-up thinking between different disciplines and types of professional. We believe that opportunities for joining mediation with other DR processes and vice versa can potentially assist even some of the most entrenched parties.

4.4 All family dispute resolvers, whether mediators or otherwise, should familiarise themselves with professional networks who are able to assist in the resolution of family issues, with a view to being able to give consideration to the same in the course of their everyday work. The loss of the Help and Support for Separated Families (HSSF) Mark within local communities has not been helpful on the ground, or in relation to the national mapping exercise needed.

4.5 Despite this, anecdotal evidence suggests that there are pockets of excellent interdisciplinary practice, and this is taking place across all current DR practices.

**5. Do you have evidence regarding the types of cases where uptake of dispute resolution is low, and the courts have turned out to be the most appropriate avenue for resolution in these cases?**

5.1 For less complex cases and those not involving any strict legal principles or legal issues, the lack of promotion of processes other than mediation may mean that uptake of other processes is not as high as it could be with further education and promotion.

5.2 It will be critical to future policy development to not underestimate the number of cases involving circumstances or serious or complex issues where court is usually the most appropriate avenue for resolution and protection, requiring access to court and safe and robust triage.

5.3 We suggest that serious and complex cases include those involving:

- a) Coercive control (although it may be possible to collectively build an appropriate DR model to manage some cases).
- b) Serious/penetrative sexual offences.
- c) Significant physical/psychological/psychiatric harm.
- d) Harmful cultural practice such as honour-based abuse, forced marriage, FGM.
- e) Gender identity issues.
- f) Complex finance especially where financial disclosure is lacking and/or a party cannot trust their partner to make full disclosure, or to keep to any proposal reached in their discussions.
- g) An international element.
- h) Cases involving binary issues such as relocation with children.

5.4 The findings from [Mapping Paths to Family Justice](#) confirm that not all cases can be resolved by family DR processes. Where cases were not resolved by FDR, they were either so intractable that they had to be adjudicated or otherwise settled at the door of the court.

5.5 Cafcass's 2018 Manchester 'Support with Making Child Arrangements' pilot indicated that only up to an estimated 20% of cases coming to court may be suitable to resolve without the need for court, but the majority of those 20% of cases have a high level of conflict when they come to court and cannot be diverted.

5.6 The [NFJO resource on who is coming to court](#) indicates a significant shift towards more challenging and contentious private law cases coming to court.

5.7 [Previous research](#) also indicates high numbers of cases with either allegations of domestic violence (49%), serious child welfare concerns (45%), or with both these complicating factors present (29%). The researchers concluded that the majority of cases could not have been successfully dealt with through mediation and the decision to apply for the court order was seen as a last resort.

5.8 Please see the responses to questions 12 and 21 of our member survey which asked in what types of dispute is court generally the most appropriate avenue for resolution. It is of note that 72% of those who responded said that for relocation in the UK and abroad cases, court is generally the most appropriate avenue for resolution; 43% that court is generally the most appropriate avenue for resolving where the child(ren) live(s). Less than 20% said court is the most appropriate avenue for sorting out holiday arrangements.

**6. In your experience, at what points in the development of a dispute could extra support and information be targeted to incentivise a resolution outside of court? What type of dispute does your experience relate to?**

6.1 In principle, DR can be used at any stage of a dispute. But in family cases our members' general experience is that the earlier support and information is provided, the better, before the parties become positioned and before anger and distress becomes a dispute.

6.2 It is easiest for our members to explain the benefits of mediation and collaborative practice at the outset and before an application to court is made. It can be difficult to tell when the most effective next or other times to effectively introduce the use of DR in an individual case will be. An effective diversion is less likely after an application to court is made, but it is still very possible. The focus is likely to be more on arbitration, ENE or a private FDR at this stage, certainly in finance cases. The court and any legal representatives should have in mind that DR opportunities are possible throughout.

6.3 Anecdotally, some parties fare better in and are more emotionally equipped to deal with mediation if there has been a period of time between separation and mediation (especially for the party who didn't instigate the separation).

**7. Do you have any evidence about common misconceptions by parties involved in dispute resolution processes? Are there examples of how these can be mitigated?**

7.1 Anecdotally, misconceptions include that:

- a) Mediation relates to reconciliation and is an attempt to put marriages or relationships back together, but this is much less so than in the past.
- b) People just cannot make sense of the terms used, for example, if more user-friendly language such as 'ways of sorting things out', 'speak to someone who can help you sort things out' rather than 'see a mediator' it might work better.
- c) If the other partner chooses the mediator and/or pays their costs, s/he will have influence over the mediator and the process.
- d) A court order is the only means of ensuring that arrangements agreed will be held to. By the time people find out that isn't necessarily the case, they are going to be pretty caught up in continuing conflict. There remains a concern for some (which is not a misconception) that mediation doesn't necessarily result in a legally binding outcome via a consent order.
- e) If the process stalls or fails you have to go to court and cannot try another way.
- f) People are unaware that Help with Mediation is available to get their agreements approved (albeit access to such is an issue).

- g) That arbitration is 'only for big money cases'.
- h) They have to have solicitors to participate in DR processes.
- i) It is cheap. Although any DR process is invariably cheaper than going to court, it is important that providers are able to convey the worth of their work, and be able to charge accordingly, if they are to offer viable models.

7.2 In our members' experience, some misconceptions can be difficult to mitigate. People are often driven by what they think should happen, the experiences of their family (their own parents or grandparents may have divorced or separated), their friends and what they see played out on social and other media or even in soap operas. Overall, there are a lot of social and behavioural drivers that aren't easily modified or changed except over time and with education.

7.3 The introduction of no fault divorce will assist the development of a more general understanding of the need to simply 'sort things out' as far as parenting and money post-separation is concerned. We see the removal of the fault-based grounds and the possibility of contesting the decision to divorce from the divorce process, and the ability to make a joint application, as key to reducing conflict between the parties to a couple so increasing the co-parenting abilities of those with children, and the chances of success for mediation and other out of court processes in resolving children and finance matters.

## QUALITY AND OUTCOMES

### **8. Do you have evidence about whether dispute resolution processes can achieve better outcomes or not in comparison to those achieved through the courts?**

8.1 Our member survey asked whether, overall, respondents think non-court DR processes or court are more likely to be successful in achieving better and lasting outcomes. Views were mixed but weighted towards DR processes being more likely to be successful, overall, in relation to both private law children outcomes and finance outcomes for couples. Please see the responses to questions 11 and 20 of our survey.

8.2 Resolution has always believed that there is a better way. Mediation and other DR processes are effective processes in the right circumstances. There is no doubt that they can provide more bespoke and creative solutions than court, again in the right circumstances. And it must be the case that some of those self-representing in court (for example, where their case did not involve strict legal principles, or serious or complex issues) would be less in conflict and distress if they had made use of or been able to make use of other DR.

8.3 However, it would be helpful to have longitudinal research to reach firm conclusions on whether DR processes can achieve better outcomes (which needs to be defined) or not in comparison to those achieved through the courts, and around long-term impacts.

8.4 The [NFJO resource on who is coming to court](#) shows that about a quarter of applications are returned to court within 3 years of a final order. We are not aware of data comparing the incidence of parties returning to DR or going to court when their outcome was achieved out of court.

8.5 In future policy development, it will be important to recognise that various reports including [Mapping Paths to Family Justice](#) (built on in [Creating Paths to Family Justice](#)), and most recently [Assessing Risk of Harm to Children and Parents in Private Law Children Cases](#), raise the occurrence of unsafe mediation and the need for better and more consistent screening into and out of appropriate DR.

**9. Do you have evidence of where settlements reached in dispute resolution processes were more or less likely to fully resolve the problem and help avoid further problems in future?**

9.1 We suggest that the issue of the avoidance of problems in future requires further research. There are no checks on how child arrangements agreed in DR or ordered by the court work for children themselves.

9.2 We think that the closest relevant research is [The longer-term outcomes of in-court conciliation \(2007\)](#) which recognises the nature of relationships between parents and their ability to deal with conflict between them, even after reaching some level of agreement. This research indicated that in court conciliation appointments did get a high level of agreement but that they didn't deal with underlying conflict. There are risks of achieving only short-term agreements, that one or both parents don't want to comply with, and trapping parents in continuing conflict and dependence on the court.

9.3 The only current ways of helping to move parents from the point of any agreement to making it work and 'stick' by keeping arrangements in place, are mediation and/or parenting co-ordination. The former cannot be funded by legal aid because effectively there is no 'conflict' at that point, and the latter is outside the scope of any public funding.

9.4 In finance cases, properly drafted consent orders are essential once a settlement has been reached to achieve certainty and finality in divorce, Schedule 1 or TOLATA matters, to maintain a framework for the parties concerned and to ensure suitable enforcement action should there be inadequate adherence to settlement. For example, drafting workable pension sharing arrangements can be complex. Effective symbiotic partnerships operating between mediators and solicitors or arbitrators produce lasting, effective, implemented, mediated settlements.

**10. How can we assess the quality of case outcomes across different jurisdictions using dispute resolution mechanisms, by case types for example, and for the individuals and organisations involved?**

10.1 We suggest that this requires a full literature review and further research.

10.2 Relationships Australia has recently completed a large [study](#) aimed at generating evidence on the outcomes of FDR services but the full research report is not yet available.

**11. What would increase the take up of dispute resolution processes? What impact would a greater degree of compulsion to resolve disputes outside court have? Please provide evidence to support your view.**

***Increasing take up***

***Raising awareness***

11.1 Education and awareness of the various approaches must affect take up. For our Good Divorce Week 2020 between 13th and 18th November 2020, Resolution commissioned YouGov polling of over 1,000 divorcees to find out more about the current state of divorce in the UK. This showed a widespread lack of awareness about out of court DR, with just 21% of divorcees knowing about arbitration and 36% mediation. Just over half (53%) of parents who responded to the survey said that they wanted to put the best interests of their children at the heart of the process but found it difficult.

11.2 As evidenced by [Mapping Paths to Family Justice](#), the scope and choice of DR approaches needs to be more widely known and publicised. Government has tended to promote primarily just one out of court option for separating families, mediation, when [it is known](#) that it might just not be suitable or appropriate for all cases. Another approach might be more suitable and provide another way to reduce the burden on the family courts. Many users of the family courts are litigants in person and may simply believe that the current choice is between court and mediation only and/or be unaware that the outcome they want from the court will not be achieved or speedy. An advantage of mediation, collaborative practice and arbitration is that you can of course resolve both children and finance issues within the same process.

11.3 For many people seen by our members it isn't necessarily the case that they have a 'dispute' in the first place, they just want a clear means of sorting things out between them. Going to court, and the nature of the adversarial process, often creates conflict where none existed. If there was greater clarity on DR offers, then it is unlikely so many people would make certain applications to court. The MoJ may wish to explore the learning from the current development of an online DR education and recommendation tool by the makers of [Engage](#).

*Signposting, encouraging and implementing via early individualised legal advice*

11.4 People need to have access to other support, including early advice that is pertinent to their individual circumstances (and not just generalised). Trained legal professionals can actively identify and encourage use of DR processes, or can provide them as part of the services they offer. They are the *gatekeepers* to alternatives to court, not the barriers. Our survey results indicate that lack of support from a legal professional is one of the main reasons for parties not taking up non-court dispute resolution where it could resolve their case (64% of those who responded cited this as a main reason in private law children cases, and 71% in private finance cases).

11.5 In their July 2021 [Future of Legal Aid](#) report, the House of Commons Justice Committee, having heard evidence from Resolution about our proposal for a form of "family law credit" (where anyone who meets the criteria for legal aid for family mediation is able to have an initial meeting with a family lawyer) and from others, recommended investing in *early* legal advice to help people to avoid court: that the government should consider developing and piloting an early legal advice scheme, funded through legal aid, to help families understand their legal position and access other DR options, where appropriate. In net terms, that would likely create a greater service for the public purse than continuing to deprive people of funding for early legal advice, meaning that they either become a burden on the court service (by taking unmeritorious cases to court) or on the state (because they claim benefits having not pursued financial remedies they are entitled to on divorce).

11.6 The importance and positive impact of early access to legal advice (which advice is not representation) is well recognised<sup>1</sup>. Early legal advice helps people understand their legal rights and

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<sup>1</sup> Academics including [Anne Barlow](#) and [Mavis Maclean](#), recommend from research, including [Mapping Paths to Family Justice](#), that early legal advice would help more families to make use of mediation, and avoid the risks of escalating problems.

[A review of the Child Arrangements Programme June 2019](#) (para 73).

[Law for Life's Affordable Advice Service pilot September 2021](#) confirms that there is potential for the advice provided by this pilot service, involving Resolution members, to reduce conflict when a potential / LiP reaches that service at earlier stages, and by empowering LiPs to get a better grasp of the parameters of family law proceedings. The recent introduction of the 'Where do I stand?' advice session, which provides a broad overview of the divorce process for LiPs at an earlier stage, was also successful, with positive impacts on the emotional preparedness of clients, particularly those who were less advanced in the process.



responsibilities and where court is inappropriate, manage expectations on outcomes and is a point of appropriate referral away from or to court to resolve issues. It can help people feel empowered and confident that they don't necessarily need a judicial decision and about going to mediation or other DR.

11.7 Signposting to and encouraging the use of certainly legally aided family mediation, via early individualised legal advice, is lacking. National Statistics show that Legal Help has fallen significantly to a small fraction of the pre-LASPO level<sup>2</sup>. This was the major point of referral to out of court dispute resolution<sup>3</sup> so some of those who might have benefitted from direction to legally aided mediation will have simply missed out. Whilst Mediation Assessments and Starts have risen significantly in the latest National Statistics when compared to the same quarter in 2020, they still stand at under a half of pre-LASPO levels<sup>4</sup>.

11.8 In response to our survey, 69% of those who responded thought that one or both parties not being supported by legal advice alongside the process was one of the main reasons for non-court DR not resulting in settlement of a finance dispute. Supporting mediation with legal advice from an early stage supports participants to use mediation to find a full, workable and effective settlement, and to have legal advice on any legal issues arising within the mediation with which the FMC Code of Practice prohibits their mediator from assisting. The majority of mediators themselves encourage parties to have independent legal advice to support and inform the mediation process, as a protective measure, and to facilitate implementing their proposals via a binding consent order, including in complex situations, which is more cost-effective if a solicitor has been involved from the outset. But Help with Mediation for a financial consent order to be drafted is rarely used – even if a family client is aware of such, it is not viewed as commercially viable for legal aid providers to deliver and there are very few solicitors offering it.

11.9 The [NFJO resource on who is coming to court](#) also suggests that the increase in enforcement applications may reflect greater difficulties with making contact arrangements work, possibly in the post-LASPO absence of solicitors who might find other routes to addressing contact difficulties.

#### *Scope of legal aid*

11.10 Cost is a factor for people to consider when entering any DR process. For mediation both MIAM appointments are legally aided if one party is eligible for legal aid, and the non-legally aided party can receive one session free of charge, but the average length of mediation is three sessions, which many cannot afford.

11.11 More people should have access to legal advice and information at an earlier stage, in order to make them aware of their options and, if appropriate, be signposted to alternatives to court; and legal aid should be available for a wider range of family out of court dispute resolution options than solely mediation. The scope of legal aid fails to cover a broader range of approaches to issues

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<sup>2</sup> Legal Aid Statistics England and Wales bulletin: April to June 2021 Table 5.1.

<sup>3</sup> The LASPO PIR found that “Prior to LASPO, the majority of referrals to mediation were made by legal aid funded solicitors. The removal of private family law from the scope of legal aid removed the opportunity to refer cases towards mediation.” (Para 613).

<sup>4</sup> Legal Aid Statistics England and Wales bulletin: April to June 2021 Tables 7.1 and 7.2.



resolution than family mediation or litigation only, for example, it could fund out of court resolution for mediation, collaborative practice or other solicitor-led processes, or court representation.

11.12 Resolution commissioned research in 2008 into the process of collaborative family law conducted by independent socio-legal researcher Mark Sefton which found that some respondents had clients eligible for public funding that would have been suitable for the collaborative process had public funding been available. In October 2009 the then Legal Services Commission in fact launched a consultation to add collaborative law to the scope of family legal aid. The LASPO Act 2012 provides that other forms of dispute resolution may be brought within scope.

11.13 The way the legal aid system works can also work against access to and take-up of DR. For example, it is the experience of our members that the LAA is pressing for more MIAMs to be joint for the purposes of approving payment. This approach risks individuals being coerced into attending with an abusive partner. It is also the case that the thought of a joint meeting can be a deterrent to some respondents, who might otherwise attend and benefit from an individual meeting.

#### *Court fees*

11.14 There is no real incentivisation to use non-court DR within the court fee system. For those over the threshold for legal aid, it is cheaper to issue and attend court in person than to mediate or use other DR. A reduced court fee for making a consent order application in Children Act matters (like for finance matters) could be considered, and it might be worth exploring the impact of court fees in more detail.

#### *In court*

11.15 It is important – and we are sure this will be pointed out by other organisations as well - to highlight the failure to apply Part 3 FPR 2010 and existing protocols among the judiciary and the legal profession. In our members' experience, there often simply isn't sufficient enforcement of MIAMs by the court, or ongoing reappraisal and promotion of the use of other processes to resolve non-legal issues which might be better resolved outside of the court process. The court fails to engage with mediation or other DR in a formal way other than via statutory MIAMs.

11.16 The judiciary could do more to encourage parties to use pauses in the court process and periods between court activity/ hearings to pursue other options, especially during foreseen long periods of court inactivity. We do not recommend putting the court process on hold as mediation or other efforts at issues resolution take place; the two processes should operate in tandem, without adjournments (so not causing delay). It would be useful to produce some standard court order clauses to support the use of any out of court process complementary to the court process.

11.17 The current standard orders (relating to finance) don't refer to non-court options beyond the MIAMs requirement; draft orders should be developed to help remedy this. And standard recitals around why out of court DR is inappropriate would be a potential nudge for less informed parties.

11.18 The current costs regime, as set out in Part 28 FPR 2010, should also be used and applied. A formal further encouragement of out of court dispute resolution could be included in Part 28 by adding a specific reference to Part 3. The use of Ungley orders may be considered also.

## *Future Practice*

11.19 Out of court services should not be presented as a series of isolated options. No one service (for the time being) can necessarily deal with everything and approaches should not be regarded as competing with one another but as relatable and joined for the benefit of families.

11.20 Regulatory structures can currently inhibit the appropriate blending of issues resolution practices and integrated practice. The 'rules' which currently govern processes like mediation and collaborative practice have separated these opportunities from one another and from everyday practice. They are perceived by Resolution members and others as 'competing' and are hard to explain to those who are just looking for the most appropriate solution to their problem. For example, family mediation has a set of standards and principles agreed by the members of the FMC (of which Resolution is a member). Whilst we continue to work with the FMC to ensure that mediation remains a relevant and appealing choice for consumers, the constraints imposed by the FMC's approach to standards, accreditation and the development of practice inhibit innovation and development in the client's interests.

11.21 If it were possible to move more seamlessly to other issues resolution opportunities, or to have an opportunity to negotiate together with greater assistance from family justice professionals, processes such as mediation may become a more popular and effective choice.

## ***Compulsion***

11.22 Compulsion to *find out about* the different methods of DR is different to compulsion to *participate* in out of court DR. People should never only be left with the single option of engaging with out of court DR, which may be unsuitable in the circumstances of the particular case.

11.23 Any element of compulsion to take part would be wrong where there is any risk of domestic abuse or other safeguarding issues are in play. Presently DR such as collaborative practice and mediation are voluntary. It is essential they remain so. Their use is not automatically precluded in every case where there has been abuse. But a victim of domestic abuse should never be put in any position of being forced, or having no real alternative, but to enter into mediation. Abuse, particularly controlling and coercive behaviour can continue within the process (as it can within and during court proceedings). It is essential that the abuse does not affect a party in the process, their judgment and decision-making.

11.24 For non-court DR to work, it must be something both or all parties are genuinely willing to do, albeit having been properly informed and encouraged. It is the voluntary nature of out of court issues resolution which makes these approaches more effective and maintains their reputation. Our mediator members report that most of their clients in successful mediations come to them because someone who has already been through the process has recommended it, or via a supportive introduction to mediation and then referral by a solicitor or barrister. National Statistics<sup>5</sup> show that the annual volume of uncontested financial remedy applications consistently far outweigh contested applications, which must largely be as the result of the use of out of court DR in all its forms. In the period April to June 2021 75% of such applications were by consent, with the proportion of uncontested applications at the highest level recorded.

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<sup>5</sup> Family Court Statistics Quarterly: April to June 2021 Table 15.

11.25 In our members' experience it can take time for parties to a separation to internalise that there is another way to resolve their dispute. People also need to be helped to deal with their emotions and any conflict, as well as to make an agreement, so that an agreement is more likely to last well.

11.26 There is a difference between coercion *into* mediation (such as the statutory MIAM which is unfortunately not a statutory obligation for respondents) and coercion *in* mediation. Whilst some who may have been unwilling to consider mediation have achieved outcomes once made to find out about it, there remains a need to monitor the quality of mediation provided and the outcomes achieved. If people are broadly coerced in mediation to reach 'an outcome', or what has been agreed is of poor quality or doesn't address the conflict between them, then any children risk being left caught in the continuing conflict (and the resentment) between their parents and 'revolving door' children disputes.

11.27 We believe there is a better way, but people should not have to use out of court DR because they cannot access the court.

## **12. Do you have evidence of how unrepresented parties are affected in dispute resolution processes such as mediation and conciliation?**

12.1 We believe that many people cannot currently find information on and a pathway to out of court services together with the additional professional support they may need, or to assist them with post-litigation life. If the family justice system is going to redirect cases away from court to other processes that are not properly supported, resourced or available in a timely way then this will not improve matters for the litigant in person.

12.2 It is well recognised that mediation works well when supported by parallel legal advice. In financial remedy matters, if people aren't represented in mediation, there is a danger that they could end up with unfair or unequal outcomes, especially if 'dispute resolvers' are insufficiently trained and/or knowledgeable, including about the parameters of the law (setting aside the potentially difficult professional issues for the mediator themselves). In our members' experience, unrepresented participants come to the process with no real idea about what they should be offering/asking for, as the case may be. In "pure mediation" the facilitator cannot offer legal advice on likely outcomes, and many may not have the knowledge/training to assist. The FMC Principles and Code of Practice for mediators sets out that the provision of any advice to either client by the mediator is prohibited and would be a breach of the Code. A much more directive approach is required as with a private FDR or ENE process. In mediations concerning children, unrepresented parties are far less likely to be affected.

12.3 IFLA arbitrators are well-placed to assist self-referring litigants in person.

## **13. Do you have evidence of negative impacts or unintended consequences associated with dispute resolution schemes? Do you have evidence of how they were mitigated and how?**

13.1 [Mapping Paths to Family Justice](#) points to the need to overcome feelings of being subjected to a sales pitch or having insufficient opportunity to discuss concerns and reservations (which might be mitigated by more independent, impartial information about DR options), and negative impacts where people felt pressured to participate.

13.2 As referred to in our response to question 8, without robust and consistent screening into and out of appropriate DR, there is a risk that it might not be safe.

13.3 Consideration also needs to be given to the impact that the nature of conflict between parents and their ability to deal with that, even after reaching agreement, might have as discussed in [The longer-term outcomes of in-court conciliation](#).

13.4 It is possible for the same factors as sometimes play out in litigation to play out in other DR. For example, one party can delay and prolong, coercion can continue, control by the financially stronger party can continue, and there can be incomplete disclosure. A mediator should be alive to these issues and if concerns arise, they should deem the mediation not suitable. In terms of an IFLA family arbitration, the arbitrator and others involved are subject to the scheme's rules.

13.5 It is possible for a party to come to a DR process with a totally fixed agenda on what they seek and/or with the real intention of making a court application. Their participation is generally not helpful, particularly if weaponised by the threat of litigation. It is extremely difficult to mitigate this sort of attitude.

13.6 According to our survey the behaviour of one or both parties is a significant factor in non-court DR not resulting in settlement, particularly in finance disputes (as many as 85% of those who responded thought this was one of the main reasons for non-settlement).

13.7 Anecdotally, we believe that the Mediation Voucher Scheme is having a potentially negative impact on the motivation of some legal aid mediation providers to continue to deliver this service for the most vulnerable. There is some concern that the Scheme helps those who might have been able to afford mediation in any event whilst funding has not been made available to bring more people into financial eligibility for legally aided mediation and/or to increase the rates paid to hard pressed providers working under the administrative and audit burden of legal aid contracts.

13.8 Please also see our response to question 9.

**14. Do you have evidence of how frequently dispute resolution settlements are complied with, or not? In situations where the agreement was not complied with, how was that resolved?**

14.1 Our members report seeing that where parties have voluntarily engaged in a process they will "buy in" and are less likely to return to that or another process, but we do not think that hard evidence is available. Generally, those using family mediation services are encouraged to return to their mediator if they subsequently run into difficulties getting to a binding outcome and/or if things go wrong between them for any reason.

**15. Do you have any summary of management information or other (anonymised) data you would be willing to share about your dispute resolution processes and outcomes? This could cover volumes of appointments and settlements, client groups, types of dispute, and outcomes. If yes, please provide details of what you have available and we may follow up with you.**

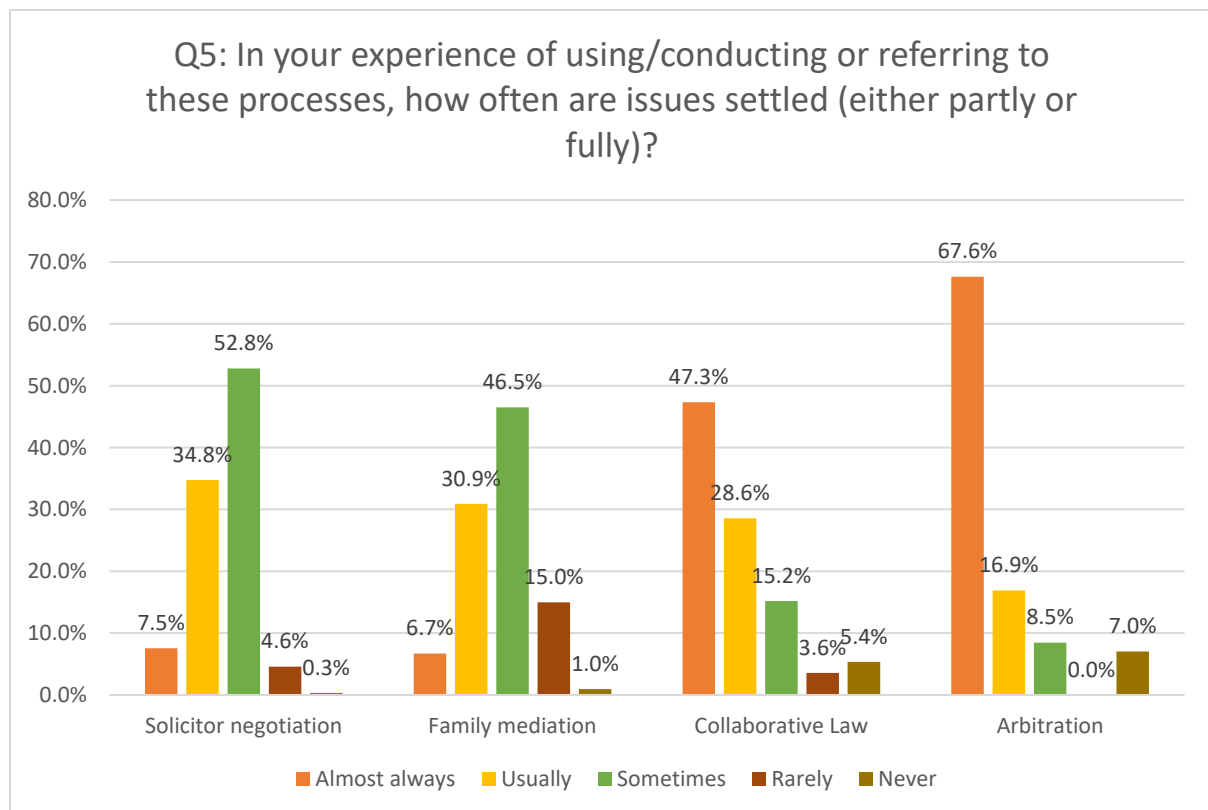
15.1 [Mapping Paths to Family Justice](#) provided much-needed evidence on the outcomes of DR processes (solicitor negotiations, mediation and collaborative law) including resolution rates.

15.2 Our member survey demonstrates the range of effective DR methods which help people avoid court on some or all issues; mediation is not the only effective one.

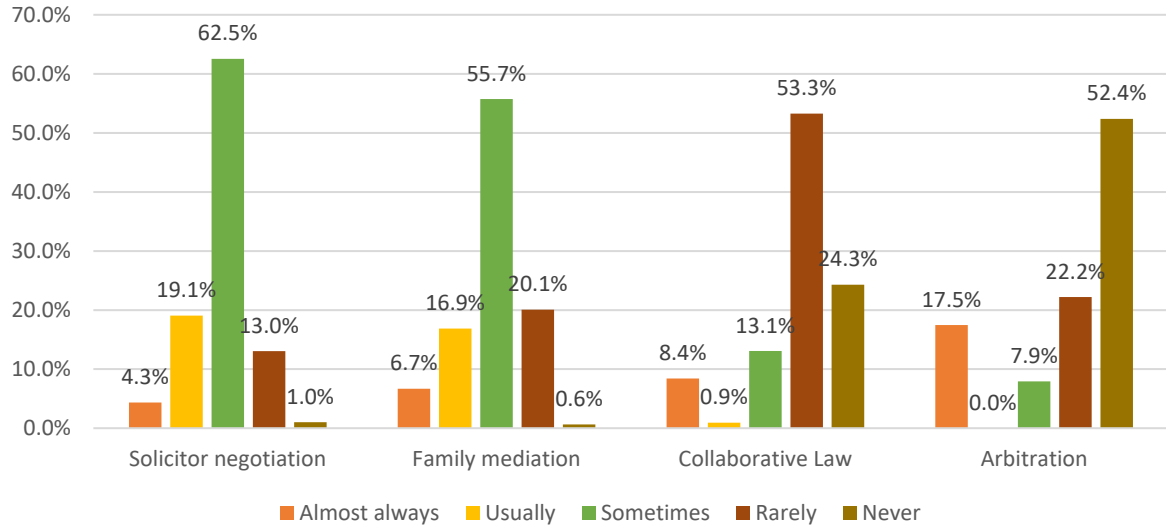
15.3 Our survey asked members how often issues are settled (either partly or fully) in their experience of using/conducting or referring to certain processes. Please see the responses to questions 5 and 14 of our survey for the full results.

15.4 In private law children cases:

- a) 40% of survey respondents said issues are almost always or usually settled partly or fully in solicitor negotiations; 50% said this happens sometimes.
- b) 37% said that issues are almost always or usually settled partly or fully in mediation; 45% said this happens sometimes.
- c) The majority of respondents had not had experience of arbitration or collaborative practice but where used the majority of respondents said these almost always resulted in issues being partly or fully settled. The vast majority also said that there is never or rarely a subsequent court application other than by way of consent or a contested court hearing post engagement in collaborative practice or arbitration (question 6).



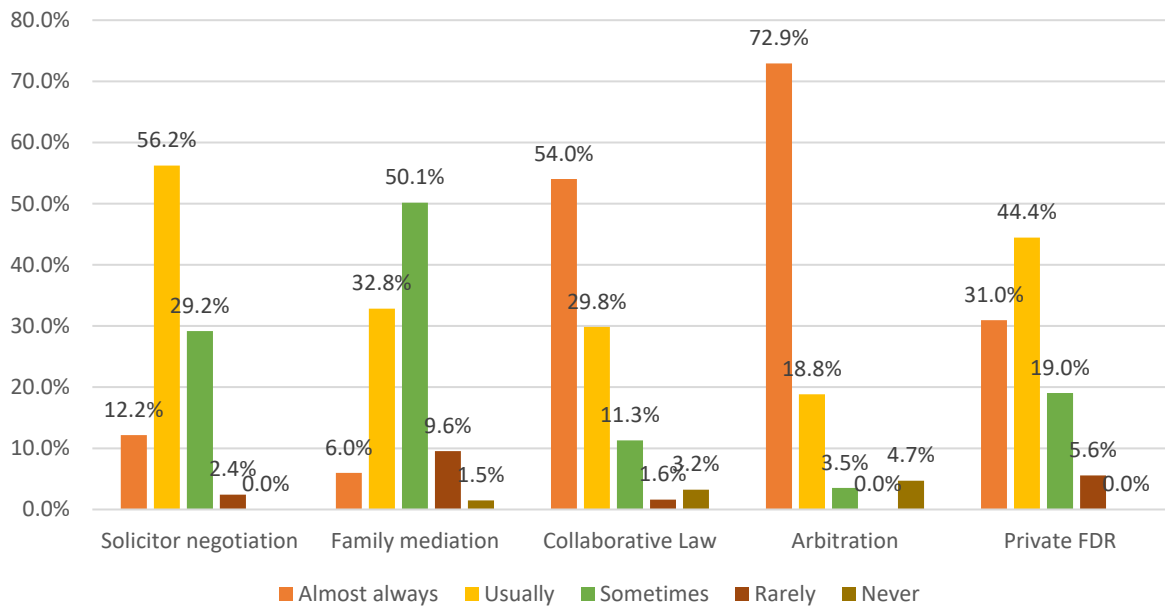
Q6: In your experience of using/conducting or referring to these processes, how often is there a subsequent Court application other than by way of consent or a contested court hearing?



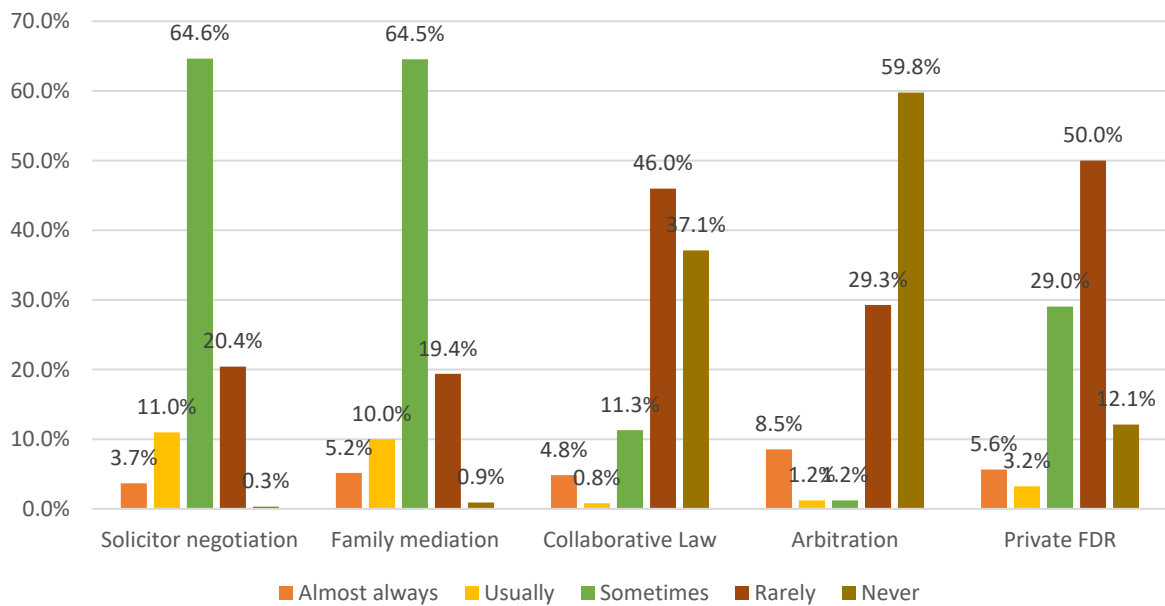
15.5 In finance cases:

- 66% of survey respondents said issues are almost always or usually settled partly or fully in solicitor negotiations; 28% said this happens sometimes.
- 38% said that issues are almost always or usually settled partly or fully in mediation; 50% said this happens sometimes.
- The majority of respondents had not had experience of arbitration or collaborative practice but where used the vast majority of respondents said these almost always resulted in issues being partly or fully settled. The vast majority also said that there is never or rarely a subsequent court application other than by way of consent or a contested court hearing post engagement in collaborative practice or arbitration (question 15).
- The majority of those who had used private FDRs said most usually or almost always partly or fully settled issues.

Q14: In your experience of using/conducting or referring to these processes, how often are issues settled (either partly or fully)?



Q15: In your experience of using/conducting or referring to these processes, how often is there a subsequent Court application, other than by way of consent or a contested court hearing?



15.6 We believe that some of our individual members may also offer to share relevant data.

## 15.7 Other information:

The IFLA Family Arbitration Scheme began in 2012 for finance cases and 2016 for children cases. As at 2 September 2021, there were 404 requests for appointment of IFLA finance arbitrators (with well over a quarter of those made in 2020 and 2021) and 47 children arbitrations.

The main findings from our 2008 study into collaborative practice (which we would be happy to repeat) were as follows:

- a) Over 2,800 cases were opened and almost 2,000 were completed during the 2 years period surveyed.
- b) At least 2/3 of the cases settled earlier than they would have done had they been dealt with traditionally.
- c) 85% of cases settled.
- d) 1/5 of the lawyers taking part reported that they had dealt with cases where the total family assets were valued at less than £100,000.
- e) Over 1/3 of the lawyers taking part had dealt with cases where the assets were between £100,000 and £250,000.
- f) The process allows the parties to achieve more flexible and creative solutions adapted to their particular family circumstances. Lawyers reported that some outcomes could not have been achieved via litigation or conventional negotiations.

We are aware of the MoJ's own analytical report on MIAMS and mediation in private family law disputes: both [Quantitative](#) and [Qualitative](#) research findings.

The MoJ will have the management data from the Mediation Voucher Scheme. The headline data from over 1,500 cases allocated a voucher is as follows:

77% Whole or partial agreement reached.

23% No agreement reached.

72% of cases that go to mediation under this scheme do not go to court at all (other than to get a consent order).

9% go to court with narrowed issues.

9% go to court not having settled any issues in mediation.

## **DISPUTE RESOLUTION SERVICE PROVIDERS**

### **16. Do you have evidence which demonstrates whether the standards needed to provide effective dispute resolution services are well understood?**

16.1 We cannot be sure exactly what saturation of information there is about standards amongst the general public. But we doubt that they are well understood as, anecdotally, they may not be well understood by the wider family justice profession, particularly as the landscape develops and changes.

16.2 Careful consideration would need to be given to how standards and training of dispute resolution service provider requirements (as well as the contract requirements of legal aid mediation providers) would impact on the numbers prepared to conduct relevant work.

16.3 The FMSB's training and accreditation processes are onerous and expensive. We know from reports from our members that the FMC's complexity of standards and route to qualification currently inhibits new entrants to mediation and statutory MIAMs providers from our membership.



Our members report that conducting MIAMs, together with the pre and post work involved, has proven to be not economically viable at legal aid or private rates (when so many people are not financially eligible for legal aid but have little disposable income, and even if undertaken remotely).

16.4 Those mediators with legal aid contracts are already subject to heavy and sometimes unnecessary administration and audit requirements which, together with the rates of legal aid pay (which have not increased for many years), impact the sustainability of providing legal aid services.

**17. Do you have evidence of the impact of the standard of qualifications and training of dispute resolution service providers on settlement rates/outcomes?**

17.1 National Statistics for this year to date<sup>6</sup> point to the training and supervision requirements for mediators resulting in 62% of legally aided outcomes with successful outcomes (partial or full agreement). 77% of mediations conducted under the Voucher Scheme to date have resulted in whole or partial agreement.

17.2 We would also point generally to the results of our member survey in terms of how often issues are settled partly or fully across the range of DR service providers (see the responses to questions 5 and 14).

17.3 Anecdotally, the competence of some of those who are not also legally qualified may be an issue, especially when seeking to resolve finance cases. Qualified lawyers are well placed to draw on their legal knowledge and practice to 'assist' settlement.

**18. Do you have evidence of how complaints procedure frameworks for mediators and other dispute resolution service providers are applied? Do you have evidence of the effectiveness of the complaints' procedure frameworks?**

18.1 Our members who are solicitors are regulated by the SRA. Resolution deals with complaints against our own members relating to non-compliance with our Code of Practice, and we may refer complaints about DR practitioners to an external regulator.

18.2 Each of the FMC membership organisations has its own complaints procedure (with an appeal process to the FMC in relation to technical irregularities); complaints are governed by the FMC Code of Practice taking into account the standards for FMC registered member mediators (complaints about poor service are outside this scope of that Code and those relating to mediation lawyers are generally referred to the Legal Ombudsman in appropriate circumstances). There are plans for the FMC to take on all complaints against registered mediators later this year so we and other membership organisations will no longer be required to deal with these. More importantly, more users will be clear about where to make a complaint. Please see the FMC's response to this Call for Evidence.

18.3 Those mediators not registered with the FMC (not accredited or working towards accreditation) who are members of Resolution are regulated professionals and have specialist legal training and experience. The SRA will accept complaints about mediators working within a regulated solicitors' practice who are not FMC registered, but we are not aware that any such complaint has been taken up by them to date.

**19. Do you think there are the necessary safeguards in place for parties (e.g. where there has been professional misconduct) in their engagement with dispute resolution services?**

19.1 Generally, yes, where they are subject to a regulatory framework. The problem arises if they are not regulated at all and the public may not know who is regulated and who is not.

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<sup>6</sup> Legal Aid Statistics England and Wales bulletin: April to June 2021 Table 7.2.

**20. What role is there for continuing professional development for mediators or those providing related services and should this be standardised?**

20.1 Generally, there should be rigorous (which does not mean complex, costly or difficult to attain) standards and there is a need to balance standards (and CPD requirements) with the needs of dispute resolution businesses and the wellbeing of individual dispute resolvers so that they can continue to meet the needs of families and children. There is of course a role for continuing professional development. There is an existing structure, with existing CPD requirements in place for different types of family justice professional. We see no need to change this approach or standardise CPD for all family DR providers.

20.2 We suggest though that, whilst there is much safeguarding good practice, how better the mediator profession identifies the more subtle forms of domestic abuse - coercive and controlling behaviour- and associated manipulating behaviour needs to be addressed in a more joined up way.

**21. Do you have evidence to demonstrate whether the current system is transparent enough to enable parties to make informed choices about the type of service and provider that is right for them?**

21.1 No, the number of unrepresented parties reflected in the National Statistics<sup>7</sup> must evidence that at least some parties have not had the necessary information to make informed choices. There is no clear 'pathway' and a general lack of education and currency of knowledge in some practitioners as well as the general public. There is change happening all the time now which probably makes this even harder.

**FINANCIAL AND ECONOMIC COSTS/BENEFITS OF DISPUTE RESOLUTION SYSTEMS**

**22. What are the usual charges for parties seeking private dispute resolution approaches? How does this differ by case types?**

22.1 Charges at private rates vary quite widely, certainly for mediation and collaborative practice services depending on how complicated the matter is, the amount of work involved and the practice model within which the individual dispute resolver works. For mediation, it is probably between around £1000 divided between the parties for a simple and straightforward case where the parties are fairly amicable to several (or even tens of) thousands of pounds for the most complex.

22.2 Costs estimates for collaborative practice are likely to be on a par with mediation with parallel legal advice.

22.3 As a general rule, depending on the number of issues to be resolved, the work involved and whether an on paper or in person exercise, it is estimated that arbitration costs around £4,000 divided between the parties. IFLA arbitrators often offer different levels of charging and costs can be limited if used carefully with another process. There is scope for affordable services which some of our members are seeking to offer families.

**23. Do you have evidence on the type of fee exemptions that different dispute resolution professionals apply?**

23.1 Aside from the current voucher scheme and allowances where one party is eligible for legal aid, we don't believe that routine fee exemptions are applied per se.

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<sup>7</sup> Family Court Statistics Quarterly: April to June 2021 Table 11.

23.2 We ask our members to indicate whether they offer free initial interviews or fixed fee interviews in their profiles on our website and those may be under used, but there are limits to the amount of exemptions, pro bono and unpaid work they can economically deliver.

23.3 Some NfP mediation providers offer a sliding scale of fees for those who are not eligible for legal aid, and we know many solicitors, providers in collaborative, ENE, and private FDR offer fixed fees. All arbitrators offer fixed fees and the costs are shared.

23.4 In messaging to users, we think it is important to not present one particular option as 'cheap' or 'cheaper' than other processes and going to court, as this can devalue a process, put people off and lower their expectations of what the relevant professional's costs are likely to be estimated at and worth. Processes are different and provide good value in different ways.

#### **24. Do you have evidence on the impact of the level of fees charged for the resolution process?**

24.1 Court application fees act as a perverse incentive as it looks to individuals that on comparison it is 'cheapest' to use the courts. In that sense we believe that cost is a major issue. The level of fees quoted will never appear to consumers as cost-effective as going to court on their own.

#### **25. Do you have any data on evaluation of the cost-effectiveness or otherwise of dispute resolution processes demonstrating savings for parties versus litigation?**

25.1 We believe this would require a further study. DR processes are more cost-effective than 'full blown' litigation which proceeds to final hearing. But DR is not necessarily less expensive than litigation. And parties have to weigh up the whole range of benefits, including cost, in deciding how to resolve their dispute, for example, there can be good value in using mediation as a quicker process than court and agreeing your own outcome; in using the collaborative process involving lawyers and as a springboard to mediation or arbitration; or in using arbitration to avoid the costs of delay associated with litigation and the consequences of delay, or of side issues, and to keep matters confidential.

### **TECHNOLOGY INFRASTRUCTURE**

#### **26. Do you have evidence of how and to what extent technology has played an effective role in dispute resolution processes for citizens or businesses?**

26.1 As an organisation, we believe that technology works best alongside a level of human professional intervention at appropriate voluntary jumping off points.

26.2 Remote DRS processes can and do work but the interaction between the participants themselves, as well as them and the facilitator, is different to meeting face to face.

26.3 The MoJ may wish to explore the experience of mediators and their clients of delivering and receiving mediation services online and remotely during the pandemic. The introduction of remote working for mediation has meant that in some respects, it is more accessible for some people, although there is not necessarily evidence that it universally works well.

26.4 There are some 'onboarding' software programmes, [Settify](#) and [Engage](#), designed to engage potential clients, gather data and provide an analysis of their needs. Engage is used at the beginning of the solicitor/client relationship and ahead of the client seeing a professional in person (who will then have an indication of the client's state of mind, level of understanding, any red flags to be aware of in advance of a first meeting and what will be most important to address in the meeting.) The experience of developing and learning since launch of this tool may provide policy makers with

some useful insight. A version of Engage for family mediation, for mediators to use at the outset with potential clients or where mediation is stalling, is in development. We would encourage the MOJ to explore how this service is being tested and future learning from it.

**27. Do you have evidence on the relative effectiveness of different technologies to facilitate dispute resolution? What works well for different types of disputes?**

27.1 It may be worth exploring the Australian tools [amica](#) (which will be monitored by Australian officials and their Legal Services Commission) and [Adieu](#) and how these were developed. Adieu is the focus of a research project with the University of Newcastle (Prof. Tania Sourdin, Dean of Law and Foundation Chair and Director Australian Centre for Justice Innovation). However, in considering these (or approaches in other jurisdictions generally), there is a need to take into account if and how other jurisdictions have taken a wider cohesive, structural and strategic approach to education, early interventions and advice for families and the level of success in finding the right 'pathway' for the more conflictual and vulnerable.

**28. Do you have evidence of how technology has caused barriers in resolving disputes?**

28.1 Poor technology can cause barriers to anything. There does need to be attention to detail in building any system that delivers or aids any dispute resolution system, or information about it. The proliferation of websites and Apps is also problematic because people really need a readily recognised, accessible, trusted and accurate tool for their needs.

28.2 Anecdotally, barriers for individuals involved in family disputes have included not having easy access to or being unfamiliar with the relevant technology, feeling at a disadvantage where the other party is more tech savvy, and not having a private space for privacy.

28.3 Learning from the [NFJO's research on how parents and professionals have experienced family justice during Covid](#) may helpfully transfer across.

28.4 [Creating Paths to Family Justice](#) draws on research findings to develop best practice in online and offline family mediation and information services.

**29. Do you have evidence of how an online dispute resolution platform has been developed to continue to keep pace with technological advancement?**

29.1 We do not have direct experience to share.

**30. Do you have evidence of how automated dispute resolution interventions such as artificial intelligence-led have been successfully implemented? How have these been reviewed and evaluated?**

30.1 Please see our response to question 27.

**PUBLIC SECTOR EQUALITY DUTY**

**31. Do you have any evidence on how protected characteristics and socio-demographic differences impact upon interactions with dispute resolution processes?**

31.1 We suggest this requires much more understanding and research, both in terms of protected characteristics and socio-demographic differences. Families themselves are changing and how DR meets the needs of different types of families' needs to be understood.

31.2 The greater impact, in terms of the ability to resolve disputes, on those amongst lower socioeconomic and vulnerable groups who don't have family or others who can fund them or support them is evident to our members.

31.3 The [NFJO resource on who is coming to court](#) explains the need for greater exploration of regional and local variations in rates of private law applications, including possible drivers, including levels of deprivation and the availability of mediation and other support services.

**32. Do you have any evidence on issues associated with population-level differences, experiences and inequalities that should be taken into consideration?**

32.1 Diversion and conversion rates must vary within the jurisdiction because of the demographic, socio-economic mix of the population and any number of other factors.

32.3 [Mapping Paths to Family Justice](#) found that levels of awareness of out of court DR were associated with age, gender and class.

32.4 The experiences of domestic abuse victims and those at risk of abuse should be taken into consideration. In light of the lack of national standards for what constitutes an appropriate assessment process and for 'shuttle mediation' (there is no research around its benefits and risks), there are issues and mixed views around whether mediation (in particular) is appropriate in cases where there has been or might be issues of domestic abuse. DR is not necessarily ruled out in cases involving issues of domestic abuse - sufferers of abuse are not required to use these services, but what is necessary is that appropriate screening for risk factors should take place of **all** those considering the use of DR, together with assessment of the capacity of the individuals concerned to take part in a process (including their capacity to speak freely and to negotiate on their own behalf) and its suitability, with necessary appropriate safeguards where the parties agree, for resolving their particular dispute.

32.5 Cost and the availability of and accessibility to sustainable services, including legal aid mediation providers now and in the future, are a significant issue. It is also the case that legally aided mediation is probably very different from that provided to private clients.

**ADDITIONAL EVIDENCE**

**Please share additional evidence in relation to dispute resolution, not covered by the questions above, that you would like to be considered as part of this Call for Evidence.**

1. Other relevant reports are:

[Key findings from the Legal Problem and Resolution Survey](#)

[The Varying Paths to Justice](#)

[Help and Support for Separated Families Innovation Fund Evaluation](#)

[Guiding parents through separation: Family Matters - an innovative support service from Resolution](#)

[Learning from the DWP's Reducing Parental Conflict programme](#)

[An evaluation of 'Mediation in Mind'](#)

2.The Call for Evidence does not directly ask for evidence of if and how DR processes work where there is or has been domestic abuse (as defined in the Domestic Abuse Act 2021) or there is a risk of it (including if there are advantages in certain cases to proceeding with DR, such as a carefully prepared and constructed shuttle mediation, where there has been abuse). Research and consultation should be undertaken in relation to safeguarding and DR and what circumstances, if any, exist where there could be DR when there has been controlling and coercive behaviour. We would be happy to work with the MoJ, other DR providers and specialist domestic abuse organisations to consider what defined processes and ongoing risk assessment might look like.

3.We suggest that separate consideration would need to be given to the issue of the use of out of court DR in family cross-border cases involving England and Wales, and the advantages and/or disadvantages of such. The call for evidence doesn't seem to capture cross-border cases, but it would be helpful to have clarity around whether this is within the scope of the MoJ's work.

4.Anecdotally, if parties are prepared to engage in DR before any legal action is taken, they have more chance of getting an overall holistic settlement at an early stage that can reduce conflict and be implemented safely in all relevant jurisdictions. If supported by legal advice, the ability to enforce provisions agreed in a DR process can correctly be put in place with consent orders in respective jurisdictions. The expansion of remote options (without which DR can be difficult in international cases) and hybrid models (offering more flexible and creative solutions) may be suited to some international cases where there would otherwise be a hard outcome for one or other party. The main difficulty in engaging parties in an international case is the race to secure jurisdiction in the belief that by doing so one party's case will have a financial advantage, despite the potential legal complexities and costs involved. There are however also cases where there are international aspects but no dispute over which country's law will apply.

5.Resolution does not have any additional evidence but would be happy to seek to assist with filling evidence gaps through any future work and research. There are clearly areas where evidence is not available or there is a need for further evidence.

For further information please contact:

Rachel Rogers, Head of Policy, [rachel.rogers@resolution.org.uk](mailto:rachel.rogers@resolution.org.uk)








Resolution, October 2021











## Annex

### Dispute Resolution Call for Evidence – Results of Resolution survey





Some of the questions also asked for other or additional comments. For the sake of brevity, these are not included, but Resolution is happy to provide further detail on request.

#### About you

1. What is your professional role? Please tick all that apply.				
Answer Choices			Response Percent	Response Total
1	Solicitor		76.02%	279
2	Family mediator		26.70%	98
3	Collaborative Lawyer		22.34%	82
4	Family arbitrator		5.45%	20
5	Barrister		4.63%	17
6	Chartered Legal Executive		7.36%	27
7	Other (please specify):		7.08%	26
			answered	367

2. In which region do you mainly practice?				
Answer Choices			Response Percent	Response Total
1	North East		3.00%	11
2	North West		7.08%	26
3	Yorkshire & the Humber		8.72%	32
4	West Midlands		4.36%	16
5	East Midlands		6.54%	24
6	East of England		7.63%	28
7	London		19.89%	73
8	South East		28.61%	105
9	South West		11.99%	44
10	Wales		2.18%	8
			answered	367

### 3. What type of work do you do?

Answer Choices			Response Percent	Response Total
1	Private children work		4.09%	15
2	Private finance work		10.08%	37
3	Both		83.38%	306
4	Neither		2.45%	9
			answered	367

#### Private children cases

4. Please provide an estimate of the number of private children cases you have been involved in over the past 12 months where the parties used any of the following processes (without, before or after the making of a court application). You may have conducted these processes yourself or referred your client to them - we are simply building a picture of their use across our membership.

Answer Choices	None	1-2	3-5	6-10	11-20	21-30	30+	Response Total	
Solicitor negotiation	6.54% 21	12.46% 40	22.12% 71	23.36% 75	18.69% 60	8.72% 28	8.10% 26	321	
Family mediation	6.54% 21	14.02% 45	26.17% 84	21.81% 70	14.33% 46	7.48% 24	9.66% 31	321	
Collaborative Law	85.98% 276	9.66% 31	3.43% 11	0.62% 2	0.00% 0	0.00% 0	0.31% 1	321	
Arbitration	88.16% 283	10.90% 35	0.62% 2	0.00% 0	0.00% 0	0.00% 0	0.31% 1	321	
								answered	321

5. In your experience of using/conducting or referring to these processes, how often are issues settled (either partly or fully)?

Answer Choices	Almost always	Usually	Sometimes	Rarely	Never	Not applicable - no experience of this process	Response Total
Solicitor negotiation	7.17% 23	33.02% 106	50.16% 161	4.36% 14	0.31% 1	4.98% 16	321
Family mediation	6.54% 21	30.22% 97	45.48% 146	14.64% 47	0.93% 3	2.18% 7	321
Collaborative Law	16.51% 53	9.97% 32	5.30% 17	1.25% 4	1.87% 6	65.11% 209	321
Arbitration	14.95% 48	3.74% 12	1.87% 6	0.00% 0	1.56% 5	77.88% 250	321



**5. In your experience of using/conducting or referring to these processes, how often are issues settled (either partly or fully)?**

answered 321

**6. In your experience of using/conducting or referring to these processes, how often is there a subsequent Court application other than by way of consent or a contested court hearing?**

Answer Choices	Almost always	Usually	Sometimes	Rarely	Never	Not applicable - no experience of this process	Response Total
Solicitor negotiation	4.05% 13	17.76% 57	58.26% 187	12.15% 39	0.93% 3	6.85% 22	321
Family mediation	6.54% 21	16.51% 53	54.52% 175	19.63% 63	0.62% 2	2.18% 7	321
Collaborative Law	2.80% 9	0.31% 1	4.36% 14	17.76% 57	8.10% 26	66.67% 214	321
Arbitration	3.43% 11	0.00% 0	1.56% 5	4.36% 14	10.28% 33	80.37% 258	321
						answered	321

Private children cases - Suitability and incentives

**7. In your experience, how common are the following reasons for non-court dispute resolution being unsuitable or inappropriate for private children matters?**


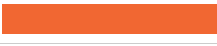









Answer Choices	Very common	Common	Neither common nor rare	Rare	Very rare	Response Total
Domestic abuse including coercive control	39.56% 127	41.74% 134	13.40% 43	3.43% 11	1.87% 6	321
Other safeguarding issues	18.69% 60	37.69% 121	28.97% 93	10.90% 35	3.74% 12	321
One or both parties is vulnerable e.g. has a mental health issue	7.17% 23	24.92% 80	33.64% 108	25.55% 82	8.72% 28	321
There is a clear imbalance of power between the parties	13.40% 43	38.32% 123	25.55% 82	18.69% 60	4.05% 13	321
One party simply refuses to engage	42.99% 138	43.30% 139	8.72% 28	4.98% 16	0.00% 0	321
One or both parties have unrealistic expectations of outcome	20.87% 67	45.79% 147	23.05% 74	8.41% 27	1.87% 6	321
					answered	321

**8. In your experience, how effective are the following incentives in encouraging parties to participate in non-court dispute resolution?**

Answer Choices	Highly effective	Somewhat effective	Slightly effective	Not very effective	Not at all effective	Response Total
Feeling in control of decisions relating to their family	24.30% 78	41.43% 133	21.81% 70	9.35% 30	3.12% 10	321
To avoid court delay	26.48% 85	42.37% 136	19.00% 61	8.72% 28	3.43% 11	321
Confidentiality	6.23% 20	20.56% 66	22.43% 72	33.96% 109	16.82% 54	321
Eligibility for legal aid	22.43% 72	26.79% 86	14.95% 48	16.82% 54	19.00% 61	321
The offer of a voucher (from MoJ or other public body)	13.08% 42	20.25% 65	21.18% 68	23.05% 74	22.43% 72	321
Avoiding a judicial decision being imposed upon them	15.89% 51	35.20% 113	27.41% 88	16.20% 52	5.30% 17	321
Cost effectiveness	31.78% 102	42.99% 138	15.89% 51	8.41% 27	0.93% 3	321
					answered	321

**Children - Reasons for DR not being taken up/resulting in settlement**





**9. What do you think are the main reasons for parties not taking up non-court dispute resolution where it could resolve their private children case? Please tick all that apply**

Answer Choices	Response Percent	Response Total
1 One or both parties not supported by a legal professional 	63.86%	205
2 One party still doesn't feel safe 	46.42%	149
3 One party fears being overpowered by the other 	70.72%	227
4 Level of fees for dispute resolution 	28.35%	91
5 Level of fees compared to court fee 	23.36%	75
6 Lack of availability of legal aid 	37.69%	121
7 Availability of dispute resolution professional 	5.61%	18
8 Technology barriers 	3.74%	12
9 One or both parties just want to go to court 	83.18%	267
10 Parties feel unable to make an informed choice 	22.12%	71
11 Other (please specify): 	15.58%	50

**9. What do you think are the main reasons for parties not taking up non-court dispute resolution where it could resolve their private children case? Please tick all that apply**

answered 321

**10. Where it is used, what do you think is the main reason for non-court dispute resolution not resulting in settlement of a private children dispute?**






Answer Choices			Response Percent	Response Total
1	Lack of other support, services and resources		8.41%	27
2	One or both parties not supported by legal advice alongside a process		35.20%	113
3	Behaviour of one or both parties		56.07%	180
4	Technology barriers		0.31%	1
			answered	321

Private children cases - Final thoughts



**11. Overall, do you think better and more lasting outcomes for children are likely to be achieved via the use of non-court dispute resolution processes; or through the courts? Please place your answer on the scale below, with 1 = non-court DR processes more likely to be successful; 10 = court more likely to be successful.**

Answer Choices	1	2	3	4	5	6	7	8	9	10	Response Total
Non-court DR processes	18.38 % 59	17.45 % 56	19.63 % 63	6.54 % 21	11.84 % 38	3.12 % 10	6.54 % 21	10.28 % 33	3.43 % 11	2.80% 9	321
										answered	321

**12. In what types of private children dispute is court generally the most appropriate avenue for resolution? Please tick all that apply.**

Answer Choices			Response Percent	Response Total
1	Where the child(ren) live(s)		42.99%	138
2	How much time the child(ren) spend(s) with each parent		34.27%	110
3	Decisions over education		25.86%	83
4	Holiday arrangements		18.69%	60
5	Travel abroad		29.28%	94

**12. In what types of private children dispute is court generally the most appropriate avenue for resolution? Please tick all that apply.**

6	Relocation in the UK and abroad		71.65%	230
7	Other (please specify):		16.82%	54
			answered	321

**Private finance cases**

**13. Please provide an estimate of the number of private finance cases you have been involved in over the past 12 months where the parties used any of the following processes (without, before or after the making of a court application). You may have conducted these processes yourself or referred your client to them - we are simply building a picture of their use across our membership.**

Answer Choices	None	1-2	3-5	6-10	11-20	21-30	30+	Response Total	
Solicitor negotiation	4.08% 14	4.08% 14	7.87% 27	17.78% 61	25.66% 88	19.24% 66	21.28% 73	343	
Family mediation	5.54% 19	16.33% 56	21.87% 75	20.70% 71	16.33% 56	7.87% 27	11.37% 39	343	
Collaborative Law	73.18% 251	15.74% 54	5.25% 18	0.87% 3	0.58% 2	0.00% 0	4.37% 15	343	
Arbitration	74.93% 257	15.45% 53	2.62% 9	0.87% 3	0.87% 3	0.00% 0	5.25% 18	343	
Private FDR	60.35% 207	17.49% 60	7.87% 27	6.71% 23	2.04% 7	0.87% 3	4.66% 16	343	
								answered	343

**14. In your experience of using/conducting or referring to these processes, how often are issues settled (either partly or fully)?**

Answer Choices	Almost always	Usually	Sometimes	Rarely	Never	Not applicable - no experience of this process	Response Total
Solicitor negotiation	11.66% 40	53.94% 185	27.99% 96	2.33% 8	0.00% 0	4.08% 14	343
Family mediation	5.83% 20	32.07% 110	48.98% 168	9.33% 32	1.46% 5	2.33% 8	343
Collaborative Law	19.53% 67	10.79% 37	4.08% 14	0.58% 2	1.17% 4	63.85% 219	343
Arbitration	18.08% 62	4.66% 16	0.87% 3	0.00% 0	1.17% 4	75.22% 258	343
Private FDR	11.37% 39	16.33% 56	7.00% 24	2.04% 7	0.00% 0	63.27% 217	343

**14. In your experience of using/conducting or referring to these processes, how often are issues settled (either partly or fully)?**

answered 343

**15. In your experience of using/conducting or referring to these processes, how often is there a subsequent Court application, other than by way of consent or a contested court hearing?**

Answer Choices	Almost always	Usually	Sometimes	Rarely	Never	Not applicable - no experience of this process	Response Total
Solicitor negotiation	3.50% 12	10.50% 36	61.81% 212	19.53% 67	0.29% 1	4.37% 15	343
Family mediation	4.96% 17	9.62% 33	62.10% 213	18.66% 64	0.87% 3	3.79% 13	343
Collaborative Law	1.75% 6	0.29% 1	4.08% 14	16.62% 57	13.41% 46	63.85% 219	343
Arbitration	2.04% 7	0.29% 1	0.29% 1	7.00% 24	14.29% 49	76.09% 261	343
Private FDR	2.04% 7	1.17% 4	10.50% 36	18.08% 62	4.37% 15	63.85% 219	343
						answered	343

Private finance cases - Suitability and incentives

**16. In your experience, how common are the following reasons for non-court dispute resolution being unsuitable or inappropriate for private finance matters?**

Answer Choices	Very common	Common	Neither common nor rare	Rare	Very rare	Response Total
Domestic abuse including coercive control	24.78% 85	39.94% 137	21.87% 75	10.50% 36	2.92% 10	343
Other safeguarding issues	9.62% 33	21.87% 75	33.53% 115	26.53% 91	8.45% 29	343
One or both parties is vulnerable e.g. has a mental health issue	6.41% 22	14.87% 51	38.19% 131	30.61% 105	9.91% 34	343
There is a clear imbalance of power between the parties	20.12% 69	40.82% 140	23.62% 81	12.24% 42	3.21% 11	343
One party simply refuses to engage	31.49% 108	54.81% 188	9.04% 31	3.79% 13	0.87% 3	343
One or both parties have unrealistic expectations of outcome	23.91% 82	48.40% 166	19.53% 67	6.41% 22	1.75% 6	343

**16. In your experience, how common are the following reasons for non-court dispute resolution being unsuitable or inappropriate for private finance matters?**







The finances of one party are too complex and/or unclear	13.12% 45	33.82% 116	28.57% 98	16.91% 58	7.58% 26	343
					answered	343

**17. In your experience, how effective are the following incentives in encouraging parties to participate in non-court dispute resolution?**






Answer Choices	Highly effective	Somewhat effective	Slightly effective	Not very effective	Not at all effective	Response Total
Feeling in control of decisions relating to their family	24.78% 85	46.36% 159	16.91% 58	9.91% 34	2.04% 7	343
To avoid court delay	39.07% 134	35.86% 123	15.45% 53	7.58% 26	2.04% 7	343
Confidentiality	9.91% 34	17.78% 61	23.62% 81	34.69% 119	13.99% 48	343
Eligibility for legal aid	13.99% 48	22.45% 77	19.24% 66	18.95% 65	25.36% 87	343
The offer of a voucher (from MoJ or other public body)	11.08% 38	16.91% 58	16.91% 58	26.53% 91	28.57% 98	343
Avoiding the imposition of a judicial decision	18.95% 65	38.78% 133	23.91% 82	14.58% 50	3.79% 13	343
Cost effectiveness	40.52% 139	35.86% 123	17.49% 60	4.66% 16	1.46% 5	343
					answered	343

Finance - Reasons for DR not being taken up/resulting in settlement







**18. What do you think are the main reasons for parties not taking up non-court dispute resolution where it could resolve their private finance case? Please tick all that apply.**

Answer Choices	Response Percent	Response Total
1 One or both parties not supported by a legal professional	 70.85%	243
2 One party still doesn't feel safe	 30.61%	105
3 One party fears being overpowered by the other	 71.14%	244
4 Level of fees for dispute resolution	 26.82%	92
5 Level of fees compared to court fee	 23.32%	80
6 Lack of availability of legal aid	 27.11%	93

**18. What do you think are the main reasons for parties not taking up non-court dispute resolution where it could resolve their private finance case? Please tick all that apply.**

7	Availability of dispute resolution professional		4.66%	16
8	Technology barriers		3.79%	13
9	One or both parties just want to go to court		75.22%	258
10	Parties feel unable to make an informed choice		32.94%	113
11	Other (please specify):		12.83%	44
			answered	343

**19. Where it is used, what do you think are the main reasons for non-court dispute resolution not resulting in settlement of a private finance dispute? Please tick all that apply.**







Answer Choices			Response Percent	Response Total
1	One or both parties not supported by legal advice alongside a process		68.80%	236
2	Lack of other support, services and resources		19.53%	67
3	Behaviour of one or both parties		85.13%	292
4	Technology barriers		2.33%	8
5	Financial affairs of one or both parties are too complex and/or unclear		53.94%	185
6	Other (please specify):		6.71%	23
			answered	343

Private finance cases - Final thoughts

**20. Overall, do you think better and more lasting financial outcomes for couples are likely to be achieved via the use of non-court dispute resolution processes; or through the courts? Please place your answer on the scale below, with 1 = non-court DR processes more likely to be successful; 10 = court more likely to be successful.**

Answer Choices	1	2	3	4	5	6	7	8	9	10	Response Total
Non-court DR processes	15.16 % 52	18.08 % 62	16.91 % 58	8.75 % 30	17.78 % 61	4.37 % 15	5.83 % 20	8.16 % 28	1.75 % 6	3.21% 11	343
										answered	343

**21. In what types of private finance dispute is court generally the most appropriate avenue for resolution? Please tick all that apply.**

Answer Choices			Response Percent	Response Total
1	Global finances capital, pensions, maintenance and children		55.39%	190
2	Maintenance and capitalisation thereof		41.11%	141
3	Children only finances including school fees		25.95%	89
4	Cohabitation – mainly property		31.20%	107
5	Pre- or Post-nuptial agreements		27.41%	94
6	Other (please specify):		25.07%	86
			answered	343