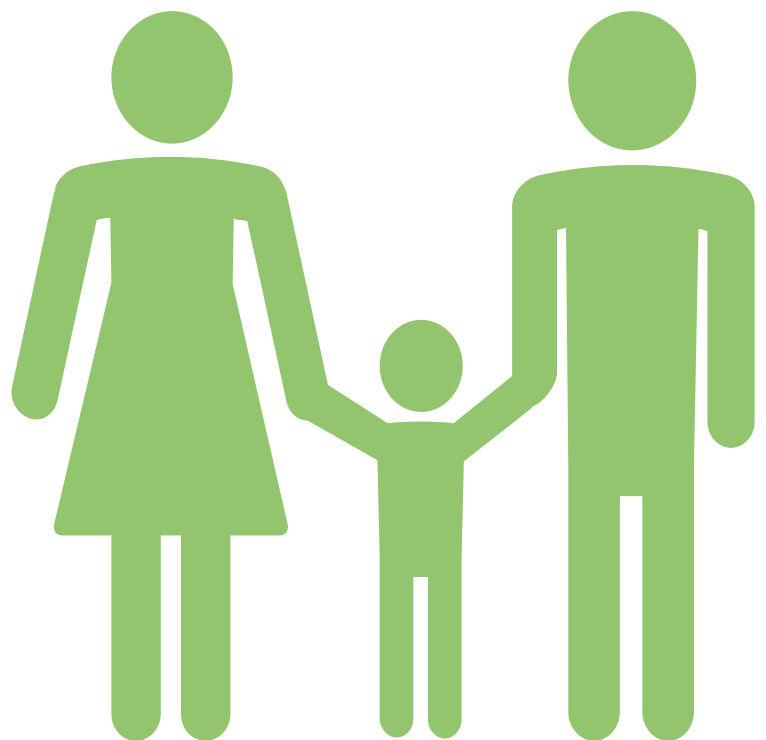


Information for Family Law Practitioners and Advisers

May 2020



Welcome

The Family Online Mediation and Arbitration Service (FOMAS) was established to provide an accessible and easy to use platform for facilitating Mediation, Alternative Dispute Resolution and Out of Court Resolution in private family law matters.

There are many reasons why we thought this was important. Firstly, despite being an option for dealing with family disputes for a number of years, uptake has been relatively low. There are of course obvious reasons for this such as the perceived high cost of Private FDRs and Arbitration, reluctance to move away from traditional court proceedings and a general lack of proper understanding of the approach to Alternative Dispute Resolution.

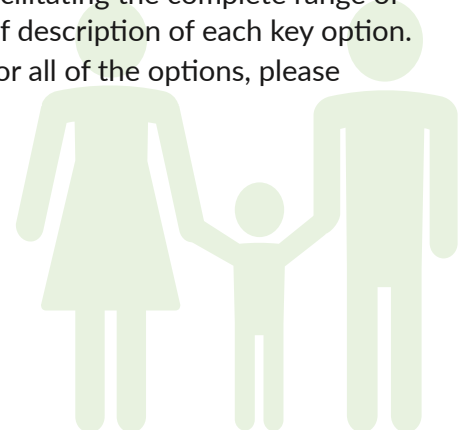
Secondly, the current pressures being faced by the court system in England and Wales is unsustainable and we believe more can be done to alleviate these pressures and free up court time for those who really do have no other alternative.

“We need to divert many more private law cases away from the family court before they ever get there. That is the Government’s policy and it is, in principle, something I have always believed is necessary. It is something at the heart of the Private Law Working Group’s thinking. Plainly, there are cases where a judicial resolution in the family court is essential, for example, cases where there are significant issues in relation to domestic abuse, mental health, or drug or alcohol abuse. But there are many cases which do not require the involvement of a judge and where, to be blunt, exposure of the parties to the court process can sometimes only make matters worse.”
Sir James Munby, The Transparency Project, February 2020

Last but by no means least, there are numerous benefits to alternative dispute resolution, namely less protracted proceedings which, in turn can lead to less contention and a negative impact on parties and their children. The ability to choose ones ‘Judge’ can also encourage more open and engaging negotiations, with the parties not feeling they have been ‘dragged’ to court.

Family Online Mediation and Arbitration Service can assist with facilitating the complete range of Alternative Dispute Resolution, the following pages provide a brief description of each key option. If you or your client requires a more comprehensive guide on any or all of the options, please contact us directly.

Email: booking@fomas.co.uk
Telephone: 020 7117 6205
Web: www.fomas.co.uk



ADR Options

Mediation

It is well known that litigious action can be time-consuming, emotionally draining, and can result in significant legal fees for both sides. Parties that can reach an agreement voluntarily are often more likely to comply with an order. The first consideration in Alternative Dispute Resolution is Mediation, to attempt to settle disputes as peacefully, efficiently and cost-effectively as possible. While, it may be necessary to take matters further through the process in order to ensure that a client's best interests can be fully protected and that any award or arrangement can be formalised in an order. To this end, statutory rules have placed emphasis on encouraging parties to explore non-court solutions in family cases. Section 10(1) of the Children and Families Act 2014 outlines that before making a relevant family application, a person must attend a family Mediation Information and Assessment Meeting ('MIAM'), in which they will be advised about the prospect of resolving the matter through Alternative Dispute Resolution. As of 31st March 2020 the parties must demonstrate to the court that they have explored ADR as an option.

A mediator will initially provide parties with the opportunity to discover how mediation works, what the associated costs are and if ADR is appropriate in the circumstances of the issues being disputed. Should the parties decide to proceed with mediation, we are fully equipped to facilitate that process. Mediation through FOMAS is carried out online via video conferencing; we can recommend mediators with varying skills and experience, depending on the issues and complexities of the situation. There are various benefits to mediation as a method of resolving disputes, such as the

flexibility of conducting the process at their own pace and how it encourages preserving amicable relations. It also allows parties to consider a broader range of personal factors when coming to an agreement, which might not otherwise be considered in court proceedings. The Family Mediation Council code outlines that mediation must be voluntarily participated in by each party. Furthermore, mediators cannot seek to impose a preferred outcome, must always be impartial, and as with all forms of ADR the process remains completely confidential.

Early Neutral Evaluation (Child Arrangements)

This is a method whereby the parties agree to employ a senior lawyer, or appropriate expert to consider the strengths and weaknesses of the parties' evidence and arguments and to provide the parties with a decision, or opinion, on a particular question, or issue, in order to assist the parties in reaching an agreement or determine the potential outcome of the case.

Both parties will normally be represented by their respective solicitors and counsel as they would be in court proceedings. The process is flexible but is normally based on the procedure set out in The FPR 2010.

The parties to the Early Neutral Evaluation need to agree to submit to it and be bound by its decision in order for the evaluator to have jurisdiction to determine the issues. In absence of this the decision of the Evaluation cannot be legally binding.

In order for the decision to be enforceable, the contents of the decision needs to be drafted into a consent order, the parties having already agreed to be bound by the decision of the evaluator. Once the court has approved and made the consent order, it can be enforced as

any other court order. There is no mechanism in place to appeal the decision of the evaluator should one party consider the decision to be wrong. In these circumstances, it is expected that the court will uphold the decision where it follows an impartial adjudication following a recognised process the objective of which is to achieve a fair result. However, the court in approving the order will, as with any consent order, have to consider and apply s 1(1) of the Children Act 1989.

FOMAS can currently arrange and facilitate Early Neutral Evaluations remotely at very short notice, subject to the evaluator's availability.

Family Arbitration (Child Arrangements and Financial Remedies)

In this option, the parties enter into an agreement under which they appoint a suitably qualified person to act as an arbitrator to adjudicate a dispute and make an award. It is similar to court proceedings in that an arbitrator will produce a decision after hearing the evidence and each party's case. In financial cases the decision is called an award and in children cases it is called a determination. The Family Arbitration Scheme takes its authority from the Arbitration Act 1996, the rules and the agreement to arbitrate. Form ARB1FS is used in financial cases and Form ARB1CS is used in children cases. These forms will be issued at the start of the process to complete and submit.

You can either nominate an Arbitrator that has already been selected by the parties, or you can ask FOMAS to provide a shortlist of suitable arbitrators with relevant experience based on the issues surrounding the dispute.

Family arbitration is distinct from all other methods of Alternative Dispute Resolution in that a decision on the award or determination of the dispute between the parties may be imposed by the family arbitrator. It is therefore legally binding upon the parties in the dispute.

Once the arbitrator has made a decision the award or determination it will then be converted into an order and submitted to the court. Once approved and made, the consent order can be enforced as with any other court order.

The decision of the arbitrator can only be appealed to the court on a point of law, or if there has been a serious irregularity which has or could result in a substantial injustice. As with all of the current Alternative Dispute Resolution options currently facilitated by FOMAS, the Arbitration will take place online via video conferencing. These can also be arranged at fairly short notice on a date convenient for both parties, subject to the arbitrator's availability.

One Couple One Lawyer

A relatively new option but one that is proving to be extremely successful in achieving a fair outcome in a very short timescale. The parties instruct one impartial family law barrister, an expert who is in court frequently and knows what a judge is likely to do in circumstances similar to those being faced by the instructing parties. The process is fixed fee (starting at £4,750 plus VAT) and lasts 6-8 weeks. It is suitable for couples who need advice either on division of their finances or arrangements for their children. Currently the only regulated provider of this service is The Divorce Surgery. The process can be conducted entirely by telephone or video link, and is available nationwide.

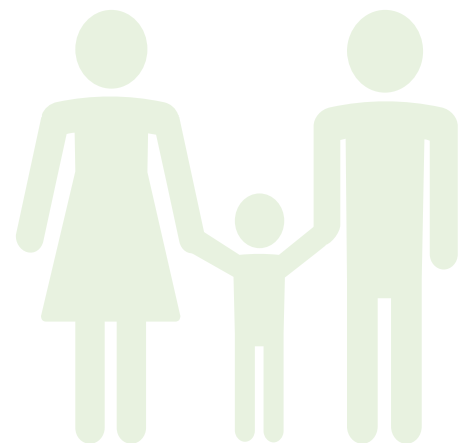
The service comprises three main components.

The first is a free-of-charge telephone or video-link Introductory Session with each party individually. This serves to ensure that the dispute is suitable for the process and allows the parties to ask any questions they may have. Following those short meetings the couple is sent a fixed fee quote for the service.

After the Introductory Sessions follows disclosure, where parties will be advised of the issues in the case and the information required to proceed to the Advice Session. During the disclosure outside expert assistance may be required on issues such as pensions, tax etc. Where such assistance is required, FOMAS will provide a list of vetted and qualified professionals for each issue.

The final stage is the Advice Session, this is a 2-3 hours meeting, either in person or by video-link, with both parties and the barrister at a date and time to suit. Both parties will, together, be given specialist legal advice on what specific outcomes a court would consider to be fair in their particular situation. This is followed by a detailed written advice, so everyone is clear about the advice given and can proceed to a focused negotiation. If settlement is reached, The Divorce Surgery can also draft a consent order, again for a fixed fee.

the
divorce
surgery.



Why use FOMAS?

The benefits and advantages of each of the methods of Alternative Dispute Resolution have been briefly outlined in the previous pages but what are the additional benefits to the FOMAS platform?

Our Aim

To promote and encourage the use of Alternative and Out of Court Dispute Resolution as a means to resolving disputes in Family Law cases. Offering an unbiased, independent forum that enables parties to understand and evaluate the most suitable option for resolving their issues without the emotional harm, delays and costs that can be attributed to the court process.

FOMAS Advantages

The key additional benefits to using the FOMAS platform are;

- A Nationwide Network - Our extensive network of Mediators, Early Neutral Evaluators, Private FDR Judges and Arbitrators provides a quickly-accessible list of suitable experts for all case types.
- Extensive Availability – Our network of experts and the greater flexibility afforded by remote-access makes it easier than ever to accommodate a timescale to suit you, and your clients, even on short notice.
- Virtual Usher - Our virtual usher system utilises a range of remote communication platforms and will help choose the most appropriate one for your needs. Your virtual usher will attend to all the practicalities; leaving legal advisors to focus on their case and their client.
- Independent Service – All communication regarding the arrangements for online hearings are managed by FOMAS, therefore clients do not feel that one side is taking the lead or has any form of advantage.

Support for your practice

We are here to support you in helping your new and existing clients' explore the option of Alternative and Out of Court Dispute Resolution. We can provide co-branded literature and content for your individual marketing efforts. By becoming an affiliated partner, you will also benefit from our nationwide marketing efforts as we look to direct clients to legal practitioners that are competent in providing ADR solutions.



Additional Services

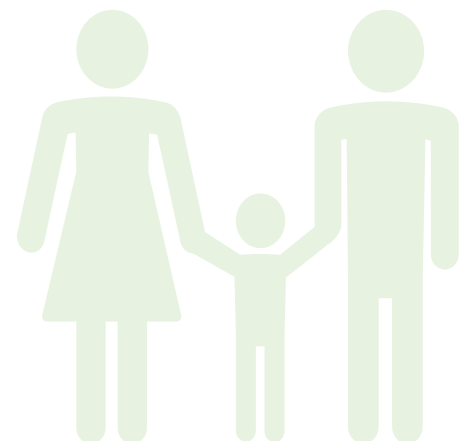
To compliment the Family Online Mediation and Arbitration Service offering of online remote Alternative to Dispute Resolution, we can also facilitate other online services to support you and your clients.

Digital case preparation and e-bundling
Our users can access HyperLaw's market-leading case preparation software via a range of packages from single use to subsidised annual subscription, exclusive to FOMAS members and users:

- Compile all of your case documents in one centralised digital case folder.
- Aggregate all your documents of any file types; whether emails, emails with attachments or elongated threads of communication, PDF's, MS Word, PowerPoint, Excel, images, scanned documents. No conversion to PDF required.
- Perform searches across your entire case repository for names, dates, titles, keywords and phrases.
- Build simple yet very effective annotations against your case arguments, as well as linking together to refine your workings.
- Share key workings with your client at any time to review progress, provide case updates and assessments.
- Create presentation ready bundles for arbitration using HyperLaw's formatting, indexing, pagination, bookmarking and chronologies.
- Digitally add, remove or re-engineer any case material at any time, with no need to ever duplicate work.

Litigation Support and Administration
Provided by our parent company, Integrated Dispute Resolution, we can provide a range of services to support you and your clients at all stages of case preparation including;

- Litigation Funding
- Tax Advice and Planning
- Forensic Accountancy
- Asset Tracing
- Independent Social Workers
- Remote Paralegal Support
- Wealth Management
- Education Advisers
- Independent Financial Advice
- Therapists/Counseling Services
- Career Advisers
- Specialist Counsel
- Investigators



Further Information

The information contained within this document is brief guidance only and was correct at time of publication. If you require further information, you can contact us on the details below. Alternatively you can find further more detailed information from the following resources;

Institute of Family Law Arbitrators

<http://ifla.org.uk>

Family Mediation Council

<https://www.familymediationcouncil.org.uk>

Courts and Tribunal Judiciary

<https://www.judiciary.uk>

Resolution

<https://resolution.org.uk>

The Law Society

<https://www.lawsociety.org.uk>

Solicitors Regulatory Authority

<http://www.sra.org.uk/>

The Bar Council

<https://www.barcouncil.org.uk>

Bar Standards Board

<https://www.barstandardsboard.org.uk>

Chartered Institute of Arbitrators

<https://www.ciarb.org>

FOMAS Contact Details

booking@fomas.co.uk

usher@fomas.co.uk

020 7117 6205

fomas.co.uk

