

## ADR – ALTERNATIVE DISPUTE RESOLUTION

- What does the term ADR, Alternative Dispute Resolution, mean?
- What is involved in Negotiation?
- What is Mediation?
- What is a mediator?
- Why choose Mediation?
- Why is Mediation more useful now than previously?
- Are there any recent changes in this area?
- What is Arbitration?

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### I HAVE HEARD OF THE TERM ADR, ALTERNATIVE DISPUTE RESOLUTION, WHAT DOES IT MEAN?

Before going down the legal/court route, ADR (Alternative Dispute Resolution) should be considered. Basically, alternative dispute resolution is an alternative to litigation/court. We always advocate, where possible and in the best interests of all concerned, taking a route which saves both the expense and stress involved in contentious litigation.

Particularly in sensitive family law matters such as separation, divorce, child custody and access, ADR does not add to the conflict in question, where a Court situation can. It is a less stressful method for the individuals who are already involved in stressful situation.

There are different aspects to ADR:

- Negotiation
- Mediation
- Arbitration

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## WHAT IS INVOLVED IN NEGOTIATION?

The traditional method used to negotiate Family Law Disputes is by way of negotiation between the parties resulting in a Separation Agreement or when Proceedings are issued negotiation again between the parties and their Solicitors resulting in a settlement of the case and that settlement been made an order of the courts.

1. There are a number of ways that negotiation can be dealt with e.g. collaborative law or structured negotiations which essentially set out a formula that must be followed. I am a trained Collaborative Lawyer as is John Lynch. Collaborative law may not always be suitable for all clients and other models of alternative dispute resolution may be more suitable for particular cases.
2. The process is initiated when the couple signs a contract (called the "participation agreement"), binding each other to the process and disqualifying their Solicitors right to represent either one in any future family related litigation.

One of the criticisms made of the family law system is that there is no system or process for trying to negotiate solutions to problems other than in the context of court proceedings. At Lynch and Partners we recognise this and we offer structured negotiations as an option for our Clients.

Structured Negotiations are a solution-driven advocacy and dispute resolution method conducted without litigation. What the structured negotiation process seeks to do is to establish ground rules for negotiation to enable parties to be clear about what they can expect from the process and also what is expected of them.

It differs from collaborative law / practice in that the lawyer doesn't make a commitment not to go court on behalf of the client if the negotiations fail.

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## WHAT IS MEDIATION?

Mediation is a swift, cost efficient method of dispute resolution. It is based on the principle that people can resolve their own disagreements if given the right support. Mediation is a non-adversarial method of dispute resolution, one which facilitates the wishes of all parties involved in order to produce an appropriate result.

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## WHAT IS A MEDIATOR?

A mediator is not the decision maker but an independent, third party to the process. The function of a mediator is to facilitate a resolution between the parties. A mediator does not judge who is right or who is wrong, but works with parties to help them arrive at a solution to satisfy their interests. The mediator in a case will always remain impartial and act for all parties objectively.

The Managing Partner at Lynch and Partners John M. Lynch is an Accredited Mediator and often meets with people who are in dispute. His function at Mediations is to aid an agreement between the parties, not to decide the outcome for them. There can be two separate rooms for the parties and if they are working well they can be brought together to deal with their dispute in a civil way. One of the advantages of mediation is that the decisions are made by the parties themselves and this affords the parties much more flexibility than a Court hearing.

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## WHY CHOOSE MEDIATION?

Mediation provides a confidential, quicker, more cost effective and more satisfactory outcome than going to Court. An outcome can be achieved in the course of a DAY! It may take months and sometimes years to resolve a disagreement in court, mediation can be paced according to the parties' needs and schedule. Mediation is voluntary and requires both parties agreement to make a final resolution.

In mediation, the parties are able to customise the resolution agreement to meet their needs rather than being constrained by the limited options available in court. Most importantly, parties are more likely to preserve an amicable relationship in the future, particularly because of the confidentiality of mediation.

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## WHY IS MEDIATION MORE USEFUL NOW THAN PREVIOUSLY?

The Family Mediation Service (FMS) has noted diversity in family profiles in dispute. Traditionally, family law disputes involved a married couple who decided to separate. More recently, family disputes involve:

- Married couples who are separating
- Unmarried couples who are separating
- Same-sex couples who are separating
- Parents who never lived together
- Couples in a second or third relationship who are separating
- Step parents and children

As litigation is not the most suitable route for all of these parties, ADR is an important alternative in resolving family disputes.

It depends on the case – some cases should be resolved in court, ADR is more suitable for other cases.

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## ARE THERE ANY RECENT CHANGES IN THIS AREA?

Yes indeed, recent changes to the Court Rules allow the Court of its own volition to adjourn proceedings and to invite/encourage the parties to attend mediation. Also the Mediation Act 2017 now makes it mandatory to offer mediation as an alternative to litigation.

I have seen it used in recent months where a Divorce hearing commences and the Judge then enquires from the parties as to whether they would attend mediation and in one case the parties both said that they would and the Judge then went to far as to nominate and appoint a mediator to ensure that it would be mediated as quickly as possible and while both parties were in the frame of mind to deal with it

The Law Reform Commission proposes that ADR is under-utilised in Ireland for family law disputes, many of which would be far more suited to mediation and conciliation.

In all Divorce and Judicial Separation Proceedings we the Solicitors who are acting for the parties are obliged to file a certificate advising the Court that we have advised our Client of Mediation. The Court will not deal with the proceedings unless and until this certificate is filed.

I believe that other family law proceedings before Court, including custody, access and maintenance, should have the same opportunity to engage in mediation. We regularly mediate in custody/access

situations and achieve a parenting plan which is in essence a mediated agreement between the parties.

It is "a carefully devised schedule which lays out how to share time with the children, how to manage responsibilities, and how to make decisions about the children. School arrangements, child care, holidays, and pocket money can all be part of a parenting plan.

It is a plan that is individual to each family and takes into account everyone's needs and interests."

Parenting Plans reduce family conflicts. Mediation is the key to resolving issues involving children, generally, as such the purpose is to create workable arrangements for the parents and the children.

By going down the route of Mediation, families start trying to resolve their dispute earlier than if they wait for settlement discussions on the day of their hearing in court.

The Mediator does not have a role as legal adviser, financial adviser, counsellor, accountant or child psychologist in a family mediation.

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## WHAT IS ARBITRATION?

Arbitration as a means of dispute resolution is an option, which is built into most legal agreements. Its main advantages to Court are speed, cost and confidentiality.

However, while it is a more inexpensive, speedy and confidential method of dispute, it remains the second option for most lawyers. It is a model of dispute resolution that we as a firm recommend to our clients and offer a special expertise. As well as cost and time advantages it carries with it the benefit of confidentiality.

For many years the system of arbitration has been a popular method of dispute resolution for building contracts and consumer contracts such as holiday packages and motor vehicle purchases. Instead of going to Court, the parties can agree to present their case to an arbitrator who will rule on the dispute.

This alternative to Court has many advantages, chief among which are low cost, speedy resolution and confidentiality. Arbitration is used for the following:

- Consumer Contracts

- Building Agreements
- Compulsory Purchases
- Commercial Agreements – especially those valuing confidentiality

As a means of dispute resolution, it is an option that can be built into most legal agreements. Lynch and Partners recommends its use to our clients and offers a special expertise.

John M. Lynch is also an Arbitrator. Again, Arbitration is instead of going to Court, however in these situations, unlike with Mediation, John, as Arbitrator, will decide the outcome of the dispute. The main advantage of Arbitration is that it is in private, takes less time and is less expensive than Court.

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