

Collaborative law – how it is different

Collaborative law is fundamentally different to traditional negotiation between solicitors. Its purpose is to produce a fair outcome for all members of the family – not just for one individual.

When solicitors negotiate in their usual role, their aim is to do the best for their client. Necessarily, that means by trying to outwit, outfox or outdo their opponent. They are pushing as hard as they can against the other solicitor. This need not be done aggressively (though sometimes it is) but the usual discussions are adversarial. It is one against another.

The participation agreement

In the first four-way meeting, the couple go through the participation agreement in some detail. This is to reinforce the way the process works.

Negotiations are in good faith – nobody is trying to trick the other or outwit them. There is a genuine sharing of ideas and information. If either person is not prepared to be wholeheartedly open and candid about their situation, then they should not be in the collaborative law process.

The couple also agree not to go to court, unless it is to do something that they are both happy with. That might be to go forward with an agreed divorce or to put a financial agreement to the court in a court order.

If somebody breaks that agreement and goes to court unilaterally, then the collaborative process comes to an end. Also – and significantly – both lawyers are sacked.

This may seem drastic, but it underpins the collaborative process. Both lawyers are committed to an agreed outcome. Neither lawyer wants to lose a client, so there is an incentive for everyone to sort things out.

Financial disclosure

As with all discussions about finance, this is a process that has to be gone through. However, collaborative law can be more flexible. Things can be agreed and discussed much more quickly and easily.

For example, it is possible to agree very early on what the home might be worth or whether it needs to be valued.

The couple are often referred to financial experts, perhaps those who help with pensions or with other types of investment. In some cases, that can help. with both of them getting the same advice at the same time. It can also save on legal fees.

Is it suitable for everyone?

Sometimes, in straightforward cases, the couple already know what they want to achieve. The arrangements for the children may be easy and obvious, and the division of assets and income is also obvious.

For them, collaborative law may not be worthwhile. A single meeting between solicitors – or a simple exchange of letters – may be enough. That would be quicker and less expensive. However, where children are involved, there is likely to be a need for some ongoing professional support. Setting up the collaborative process can be worthwhile in those cases. An alternative might be to use mediation for arrangements for children.

Certainly, if there are issues that need to be discussed, then collaborative law does provide an ideal setting. But both parties must be prepared to be open and candid. They must be flexible and not have fixed ideas about what the outcome should be.

The great benefit is the quality of the outcome. Because the couple have reached agreement themselves, in a way that they both know is fair, it often sets up their post-divorce life together.

If they are parents, this can be invaluable.