Guide to neutral evaluation

Purpose: To provide a guide to advocates and to tribunals on suggested best practice when conducting a private neutral evaluation.

Scope of application: All barristers

Issued by: Alternative Dispute Resolution Panel of the Bar Council's Legal Services Committee

Issued: 22/11/2024

Status and effect: Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.

Contents

Why consider neutral evaluation ("NE")? 2
When to consider NE 3
Contrast to and relationship with other forms of NCDR 5
Selection of tribunal (to include tribunal impartiality) and costs 6
Length of the NE 8
Documents required – how much disclosure is required? 8
Can you have an NE where there are significant disputes of fact? 9
The position statement 9
Addressing the tribunal – before the hearing and on the day 10
Advocacy style in the NE setting 11
The style and manner of the indication 11
The typical timing of a one-day NE 12
How to conclude an NE 13
Further negotiation after the NE 13
Online NE 13

Soft skills which the advocates and the tribunal might have in mind 14
Special measures in NE 15
Relationship with the court 15
Further reading.. 16

Why consider neutral evaluation ("NE")?

1. From the decision of the Court of Appeal in *Churchill v Merthyr Tydfil CBC* [2023] EWCA Civ 1416 and the changes to be brought about by the Civil Procedure (Amendment No. 3) Rules 2024, to the changes already effected by the Family Procedure (Amendment No. 2) Rules 2023 and the publication of a substantially revised pre-application protocol for financial remedy cases in Family Procedure Rules 2010, PD9A, the clear direction of travel in both civil and family law is towards discouraging litigation and encouraging the more widespread use of alternative dispute resolution ("ADR") as it is described by the Civil Procedure Rules 1998 / non-court dispute resolution ("NCDR") as it is described by the Family Procedure Rules 2010).

2. Neutral evaluation ("NE"), often referred to as early neutral evaluation ("ENE"), is one form of dispute resolution ("DR"). Although it has historically been widely used in some practice areas, most notably in financial remedy cases, for which it has been a mandatory part of the court process since 2000, and also in certain highly specialised areas of civil practice, it has been surprisingly underutilised in many others.

3. In its simplest form, NE involves a suitably qualified, experienced and independent third party, the evaluator, considering the merits of a case and expressing their view, orally and/or in writing, with the aim of assisting the parties in achieving a consensual resolution.

4. In the form mandated as part of the court process for financial remedy cases, the financial dispute resolution appointment ("FDR"), it involves a meeting, for the purposes of *without prejudice* discussion and negotiation, at court with a judge on hand to fulfil the role of evaluator. Having heard the parties' *without prejudice* offers and given their view as to likely outcome, the judge is precluded from having any further involvement in the case, other than to approve an agreement, if reached, or otherwise to give case management directions.

5. The growth in popularity of NE has led to a seemingly exponential increase in the use of the private FDR ("pFDR") in financial remedy cases. Now typically conducted with the court's express encouragement and approval, pFDRs involve an FDR-style meeting, taking place away from court, usually in solicitors' offices or barristers' chambers, with a solicitor, barrister or retired judge as evaluator. Anecdotally, well conducted pFDRs are reported to produce high rates of settlement and client satisfaction.

6. NE affords parties the opportunity to decide for themselves how their dispute should be settled, whilst ensuring that their negotiations are really and truly conducted in the shadow of the law. This ensures that the underlying merits of their case are kept in mind throughout, alongside a realistic assessment of the likely risks and costs, financial or otherwise, of walking away from the negotiating table and taking up cudgels. In that respect, it offers parties the best of both worlds.

7. The move towards a wider use of ADR/NCDR is being encouraged through judicious judicial deployment of both carrot and stick. The prospect of arriving at much the same outcome that a trial/final hearing is likely to but more swiftly, amicably and inexpensively has very obvious attractions; that is the carrot. The stick is the threat in both the civil and family sphere of costs sanctions for those who decline to participate without good reason where DR would be safe and appropriate.

8. There are many reasons for practitioners to consider ADR/NCDR in preference to litigation and to consider NE, whether according to the pFDR model or otherwise, as a preferred form of ADR/NCDR, whichever area(s) of civil and/or family law they may specialise in. There is unquestionably a growing volume of interesting work available, for both advocates and evaluators in this context.

When to consider NE

9. Despite the widespread use of the term "ENE", there is in fact no necessity for NE to take place at an early stage, or at any other particular stage prior to or during proceedings, although unless the NE pertains to the merits of a pending appeal, which would be uncommon but not entirely unheard of, it must of course be scheduled to take place earlier than the expected trial/final hearing.

10. In financial remedy proceedings, the Family Procedure Rules 2010 provide for an FDR to take place after an initial case management hearing – the first appointment – but naturally prior to the final hearing. It effectively acts as stage two of a process intended to have no more than three stages. There is good sense in that approach since, as far as possible, it avoids FDRs being ineffective because the basic evidential building blocks of the case have not yet been assembled and any meaningful assessment of the merits is therefore impossible.

11. That is not to say that NE can only usefully take place once court proceedings are underway. Effective NE often take place outside of or prior to proceedings. However, for NE to have the very best possible prospects of achieving its intended result – an appropriate outcome, achieved comparatively swiftly and inexpensively – it needs to be timed carefully, not too early and not too late.

12. NE conducted earlier than is ideal offers significant costs savings but carries an increased risk of being unsuccessful for want of information which may be material to the merits. NE conducted later than is ideal is likely to be much better informed but, even if successful, may not achieve the costs savings that might otherwise have been hoped for. The trick, clearly, is to find the sweet spot, the point at which the best possible balance can be struck.

13. It is (almost) never too late to attempt NE; the judgment of Gwynneth Knowles J in *X v Y* [2024] EWHC 538 (Fam) records one instance of proceedings being adjourned for NCDR purposes at the conclusion of a pre-trial review, where financial remedy and child arrangement proceedings had both been ongoing for some time and were both listed for imminent, multi-day final hearings.

14. There is also much flexibility as to how an NE can be conducted. Although a hearing with oral submissions is likely to be the norm, it is possible to conduct an NE on the papers without oral submissions. One example where this may be appropriate is a case where there is a major point of principle being argued and where if that point were held to be correct, then the rights and obligations of the parties take one form; if that point were wrong, then the rights and obligations of the parties take another. Such an NE may be particularly suitable if in such circumstances the parties feel that if they know what their rights and obligations were they would be able to discuss and agree the consequences in terms of facts and figures.

Contrast to and relationship with other forms of NCDR

15. All forms of NCDR have different advantages and arguable potential disadvantages. For example, arbitration offers the obvious benefit of a certain final outcome by taking the ultimate decision out of the parties' hands, whereas the converse is true of mediation, where the parties retain control but a resolution is not assured.

16. In seeking to highlight the benefits of NE, this guide in no way seeks to disparage other forms of ADR/NCDR by comparison; each will be the most appropriate and attractive in some cases and not in others.

17. As indicated above, the particular benefit of NE is that the parties retain the ability to decide for themselves the most appropriate means of resolving their dispute and are empowered to do so with the benefit of a good knowledge and understanding of the merits of their case and the approach a court is most likely to take should the matter proceed to a contested trial/ final hearing.

18. The particular focus on the merits of a case which is achievable through NE assists in ensuring that any outcome achieved is likely to be objectively appropriate. It also discourages unprincipled, intransigent, attritional negotiation and so helps to avoid a stalemate.

19. Many practitioners are becoming increasingly creative in the ways in which they utilise different forms of ADR/NCDR in combination with one another. NE can be, and is being, used to complement other forms. For example, a morning of NE followed by an afternoon of mediation when the views expressed by the evaluator remain fresh in the parties' minds is sometimes used to maximise the prospects of a negotiated settlement. In others, NE is being undertaken on the basis that the parties have committed to agreeing all that they can, and then referring all that they cannot agree to arbitration, with the aim of ensuring a certain final outcome within a reasonable period of time and at proportionate cost, on terms which have been the subject of the fullest measure of agreement possible in the particular circumstances of the case. Parties to financial remedy proceedings may engage the arbitral process, but also agree to take part in a pFDR. There is seemingly also scope for parties already engaged in mediation to pause their discussions, engage in NE, and then return to mediation with renewed insight as to the likely outcome of any possible litigation.

Selection of tribunal (to include tribunal impartiality) and costs

20. Essentially, an evaluator must be sufficiently qualified and experienced to be able usefully to express an authoritative view as to the merits of the case. The evaluator must also be independent and neutral.

21. In principle, if a barrister, there is no reason why they should not come from the same chambers as one or more of the advocates. Where this is the case, it is important to ensure that this is disclosed at the outset of any proposed appointment with an opportunity for the other party to object.

22. In any case, it will be essential to ensure that all parties and their legal representatives are treated even-handedly and with the same courtesy and respect, and that all written communication with the evaluator is copied to all parties' legal representatives. The one possible time-limited exception being an email sending the evaluator any position statement or other analogous document which an advocate will later send to their counterpart by way of simultaneous exchange; even then, in the interests of transparency, it would be good practice for there to be timely disclosure of that email, as soon as an exchange has taken place.

23. Whilst a number of retired judges now offer their services as evaluators, there is no particular need for an evaluator to be a retired or, indeed, a part-time / fee paid judge, nor an arbitrator or mediator. Many who are may bring with them useful experience, but it is not a prerequisite. There is no specific qualification which evaluators can or must achieve, nor any particular membership organisation to which they should or must be subscribed.

24. Ultimately, an evaluator's personal qualities may be as important as their *curriculum vitae*. Certainly, a reasonable measure of experience in the relevant field; assiduous preparation; effective listening; analytical thinking, and the ability to articulate a point of view clearly and persuasively will all be essential.

25. An inexhaustive list of the other qualities likely to be exhibited by an effective evaluator might be said to include, in no particular order of importance and at some risk of repetition: calmness; clarity of thought; circumspection; diligence; empathy; energy; an even temper; humanity; humility; ingenuity; integrity; intelligence; patience; self-assurance; sensitivity and stamina.

26. The fees charged by evaluators may vary quite significantly, based on a wide range of factors. The market is a competitive one. Many barristers charge materially less than they might as advocates. This is in part, perhaps, because of a principled commitment to the rolling out of ADR/NCDR, and in part, perhaps, because they find that the work of an evaluator is particularly satisfying and brings with it other non-pecuniary rewards. The fees are usually split between the parties equally, although it is not uncommon for one party to agree to be responsible for the entirety of the fee.

27. Typically three or more possible evaluators are suggested by one party, with details of their charges provided, and the other selects from that list. It is good practice when preparing a list to have in mind diversity considerations.

28. The availability of competent and effective evaluators, of almost all levels of seniority and experience, and at almost every conceivable price point, means that it should generally be possible to find cost-effective means of taking virtually any case to NE. Despite the fees charged by the evaluator being an additional cost which would not be incurred in court proceedings, the costs saved should the NE lead to resolution will invariably be far greater. Indeed, it is often parties of the most modest means who have the most to gain from NE, or other forms of ADR/NCDR, by mitigating the corrosive costs consequences of litigation and preserving the greatest possible proportion of the available financial resources for other purposes.

Key terms in any contractual document setting up the NE

29. Not all evaluators will require parties to sign a formal written contract before entering into NE, but many do. Any document that parties are asked to sign is likely to be fairly similar in form and content to an agreement to mediate or an arbitrator's terms and conditions of appointment.

30. Such a document may, for example, state expressly that the NE will take place on a confidential, *without prejudice* basis; detail essential information about how the NE will be conducted; set out what the parties can expect from the evaluator and what the evaluator will expect of them in return; and, importantly, deal in as much detail as is necessary with how the evaluator's fees, including any late cancellation fees, for example, will be computed and required to be paid.

Length of the NE

31. In the vast majority of cases, one day will provide ample time for an evaluator to form and articulate a view, and for the parties to reflect upon it and then make meaningful, and hopefully conclusive, progress with their negotiations. In many cases in which a resolution is not achieved prior to the end of the day, it will follow in the days and weeks thereafter, often simply because the seed sown by the evaluator needed time to germinate.

32. In rare cases of particular complexity and/or where there is a particular advantage to a resolution being achieved within the time allotted for the purposes of NE, such as where an impending trial/final hearing or other external factors militate forcefully in favour of an urgent resolution, the view might be taken that it is reasonable and cost-proportionate to allow (up to) two days. This would typically involve the first day being given over to the making of the parties' oral submissions and the delivery of the evaluator's indication, and the second to discussion and negotiation, albeit with the evaluator remaining available to assist further, if possible, should they be invited to do so.

Documents required – how much disclosure is required?

33. There is no one-size-fits-all approach to the disclosure of documents in readiness for NE. The wider and deeper the disclosure exercise runs, the greater the body of documentary evidence the parties – and possibly the evaluator – will have to inform their thinking, but the greater the likely cost of the exercise, and the more modest the cost savings in comparison to traditional litigation.

34. In contrast, the more limited the disclosure exercise, the more modest the cost and the greater the savings, but, perhaps, the less solid the evidential foundations for the evaluator's indication.

35. Much will depend on the facts of the case and the nature and extent of the dispute between the parties, and will involve a judgment call for them and their legal advisors. What is essential is that all parties should feel that they have sufficient information and documentation on which to found a proper understanding of the implications of any deal which may be struck.

Can you have an NE where there are significant disputes of fact?

36. Much depends on the facts of a case and the nature and extent of the dispute. There will be cases in which a more or less binary dispute will be fundamental to the merits and likely outcome. There may be a substantial body of evidence to support each of the competing contentions, but it may be inappropriate, or, indeed, impossible for an evaluator to express a view without first having the benefit of hearing the relevant witnesses' evidence.

37. In many cases, disputes of fact and differences in recollection may actually to be of little or no material bearing on the merits of the case. In others, the dispute may be important, but the crucial evidence may be in the form of documents which can be read and considered by the evaluator, who can be invited to express a view based upon that evidence. This is provided, of course, that that view is suitably nuanced and couched in terms that reflect the fact that they have not had the benefit of hearing any relevant oral evidence and the testing of that evidence through cross-examination. It may sometimes be possible for the evaluator to express views in the alternative depending on how the factual dispute may be determined.

The position statement

38. Subject to any direction that may be given by the evaluator, there are no formal restrictions on the number of pages or format of a position statement. However, best practice would suggest complying with the restrictions, if any, that would apply to the equivalent hearing in court. In financial remedy proceedings, for example, twenty pages should be considered the absolute limit according to the rules, although it is good practice not to exceed fifteen pages in a case which would be suitable for hearing in the High Court, and twelve pages in all other cases, according to the relevant Statements of Efficient Conduct.

39. In NE hearings, the evaluator is usually, but not always, being asked to express a view between two competing offers which may have several constituent elements. It is usually helpful, therefore, for the competing offers to be presented in tabular form and thereafter for the position statement to address each issue in turn.

40. Depending on what other documents may be filed, such as a chronology, statement of issues, or schedule of assets, it may not be necessary for such information to be repeated in the position statement.

41. The advocates and parties can expect the evaluator to have read the position statements and like documents with care prior to the hearing. They will therefore neither wish, nor be assisted by, the advocate repeating its contents in oral submissions. The position statement should be drafted on the basis that its contents will not need to be repeated, so that oral submissions can principally be a distillation of key arguments and response to what has been said in writing or orally on behalf of the other party or parties.

42. There is a difference between the nature and amount of pre-reading for a judge preparing to hear a trial/final hearing and an evaluator preparing to hear a NE. Pre-reading as a judge does not require drilling down into the detail nor necessarily coming even to a provisional view on the merits as this will all come out during the course of the hearing. However, with a NE, the relative brevity of the hearing and the need to express a view as to outcome after the submissions have been given means the evaluator must engage with the detail and form a provisional view. The provisional view can be (and often is) conditional on the answers that will be given to questions raised in oral submissions, but the evaluator needs to have much more developed thinking in preparation for an evaluation as compared with pre-reading for a trial/final hearing. This means that the evaluator will need to spend more time on pre-reading and thinking before an evaluation as compared with a trial/final hearing and increases the relative importance of written evidence and written (as opposed to oral) advocacy.

Addressing the tribunal – before the hearing and on the day

43. The evaluator is almost invariably happy to be contacted before and after the hearing by email on the basis that such emails are copied to all other parties. Most, if not all, are happy to be addressed in such emails by their first names, including any honorific, rather than 'Dear Judge' or similar.

44. It is usual practice to address the evaluator during the hearing as either 'Sir' or 'Madam', irrespective of how a judge hearing the case at that level may be addressed. This is to ensure an appropriate level of formality. 'Judge' (as now used to address District Judges in court) should be avoided as the evaluator is not sitting in such a role. As with emails above, some evaluators are happy to be addressed by their first name. If in doubt it is good practice for the advocates to ask the evaluator how they would wish to be addressed prior to the hearing.

Advocacy style in the NE setting

45. Many NE hearing rooms are smaller than court rooms and are more likely to be closer in size to a District Judge's chambers. There may, therefore, be relatively little space between the advocates – who may be sitting next to or across from each other – and the tribunal. As a consequence, good practice is for advocacy to be 'smaller' – for example fewer hand gestures and a lower volume – than if the advocate was on their feet in a court room. The advocacy style is perhaps closer to that used for remote hearings or in mediation. The relative proximity of the parties to the advocates in contrast to when in a court room should also be borne in mind.

The style and manner of the indication

46. The evaluator's indication can be given orally or in writing.

47. In either case, it is not unusual for the evaluator to ask the parties for some time (perhaps 45 minutes or so) to gather their thoughts after the conclusion of submissions, prior to giving their indication.

48. If the indication is to be given in writing, practice differs as to whether it is circulated a few minutes prior to the parties reassembling before the evaluator; distributed when the parties reassemble, or after the evaluator has spoken to it orally, when the parties have resumed their discussions and negotiations.

49. There are identifiable advantages and disadvantages to each of these approaches and which one is adopted usually reflects the personal preference of the evaluator and any expressed by the parties through their representatives. In financial remedy cases, if 'computation' is in issue, the evaluator will often circulate their Excel schedule of assets as part of their indication. The evaluator may also provide an Excel sheet to show the net effect of their indication.

50. There is no best practice as to the balance between 'black letter' evaluations or 'encouragement to settle', nor between giving precise indications or ones that are deliberately and strategically vague. Much depends on the personal preferences of the evaluator and sometimes on the personalities and any expressed preferences of the parties.

51. It is often good practice for the evaluation, however given, to set out the applicable legal framework, both statutory and case law. It should also describe, where appropriate, the areas where different judges may legitimately take different views and the bracket of reasonable outcomes, so that the parties are aware of the breadth of the discretion and hence the advantage of certainty that a negotiated settlement may bring. Having done so, many tribunals may suggest where in the bracket their own view is, as a way of combining the benefits of expressing a view but also allowing both parties some room for manoeuvre in the ongoing discussions and negotiations.

52. It is also good practice to remind the parties of the costs that have been incurred to date and the likely costs that will be incurred if the matter proceeds to a contested trial/final hearing, or indeed, will be saved if it does not.

The typical timing of a one-day NE

53. Most one-day NEs will begin at 10.00 am or 10.30 am, i.e. similar to a court day. The evaluator can usually be expected to agree the start time prior to the day. The evaluator will usually introduce themself to the parties prior to the start of the hearing. As with a court hearing, after introductions from the evaluator, the applicant's advocate will address the evaluator first, the respondent's advocate will respond, and the applicant's advocate will then reply.

54. Although there tends not to be a hearing template, it is usual for the advocates not to exceed approximately 45 minutes to one hour in their main submissions and for the reply to be no more than approximately 5 minutes. If the submissions conclude by, say, 12.30 pm and the evaluator asks for around 45 minutes to consider their indication, then the parties may be in a position to continue their discussions and negotiations after the evaluation has been given by around 1.45 pm or 2.00 pm at the very latest. Many evaluators are keen to ensure that their evaluation has been given before lunch so as to maximise the time for discussions and negotiations, so they may seek to shorten this suggested timetable. Advocates can expect the evaluator to ensure the template is adhered to, but the tone is likely to be more relaxed than if the case was in a busy court list.

55. Participants can expect that the host will provide each party with their own conference room where refreshments, usually including lunch, will be provided. Wi-fi and printing facilities can also be expected to be available. A separate room for the advocates to have discussions is often also provided.

56. It is a matter for the parties when the day should end. It is good practice for the parties to keep the evaluator appraised of the ongoing negotiations, but not necessarily the details of such further offers as may be made. If the parties consider the evaluator will not be asked to provide any further guidance but that the parties' discussions may continue, the advocates will usually confirm to the evaluator that they are 'released'.

57. The parties can then continue their discussions for as long as is considered profitable and the host can accommodate. It should be borne in mind that these days are physically and emotionally tiring, particularly for the lay parties, and it may be better for negotiations late in the day to be paused and resumed on a later day.

How to conclude an NE

58. If agreement is reached, it is best practice to record the same in writing, signed by the parties and the advocates, and for a copy of this to be provided to the evaluator, even though they cannot formally 'approve' the same and thereby convert it into a court order. Depending on the complexity of the agreement, it can be recorded either as heads of agreement (recording solely the substantive terms) or as a fully drafted order which can then be filed at court.

59. If agreement is not reached, it is best practice for the advocates to agree whether the last offer/s made will lapse at the end of the day, which is usually considered to be the default position, or will be held open for potential acceptance until an agreed time and date.

Further negotiation after the NE

60. If agreement has not been reached, it is expected that there will be further negotiations, usually in writing after the NE. These often pick up where the negotiations previously left off. If offers are marked *without prejudice* they can refer to offers made during the NE and to comments made by the evaluator. If they are marked *without prejudice save as to costs* (where such offers are admissible) or are open, they cannot.

Online NE

61. If the parties and the evaluator agree, there is no reason why the NE cannot take place online. This may be a particular advantage if, by reasons of geography, the parties find it difficult to convene in one place.

62. The evaluator will ordinarily be the host of an online NE. Care should be taken as to the manner in which the parties are admitted into an online session. The parties may have not seen each other for a long time and being immediately confronted with seeing them and their lawyers might be upsetting and get the day off to a bad start. It is suggested that the evaluator will want to be in touch with each side in advance to choreograph the parties' appearance online. This can easily be achieved by staggering the parties' entrance to the session by a few minutes, imposing an electronic waiting room and then placing each party in their own 'break-out' room prior to the formal commencement of the hearing.

63. It is often the case that someone will have an IT glitch on the day. Whilst this is being resolved, the session should be immediately stopped. It is suggested that a 'lawyers only' WhatsApp group can be convenient for this purpose so that there is an immediate second form of communication to hand.

64. Appearing online can sometimes be more tiring that in person. Care should be taken to schedule appropriate breaks so that everyone involved in the NE does not end up spending 8 – 10 hours staring at their screen.

Soft skills which the advocates and the tribunal might have in mind

65. As noted in paragraphs 23 and 24 above, there are a variety of characteristics which may commend the use of a particular evaluator beyond their purely 'black letter' knowledge.

66. Practice differs, but many evaluators will take the opportunity to encourage pragmatic settlement beyond simply reciting their view as to the prospects. Evaluators may also remind the parties of the emotional impact of the proceedings upon them.

67. The advocates should bear in mind that the parties will have invested financially and emotionally in an attendance at NE. The evaluator has no imperative power to demand a settlement or impose an outcome. Whilst an advocate may be encouraged by their instructions to rake over old hurts and contentions, the process works best when the balance is forward-looking and one that promotes settlement. A more aggressive advocate may find their endeavours are counter-productive in the NE setting.

Special measures in NE

68. Special measures can be provided in NE. The need for these should be flagged by the representatives in advance of the NE. As with online NE, a host may wish to schedule and stagger the parties' arrival at the venue if convening in person. If the geography of the building allows, keep meeting rooms on different floors or a long way apart and seek to ensure that neither party is at risk of bumping into the other in a common part of the building or bathroom. Most chambers will have rooms and/or suites set up for NCDR and many will be able to provide screens in the same manner as a court would when special measures are required.

69. Hybrid hearings or fully online hearings can also be considered as a special measure in certain cases.

Relationship with the court

70. Expect the court to support suggestions for NE. The direction of travel on multiple fronts is for the court to want to see the fight broken up, not merely adjudicate upon it.

71. The relationship between the court and arbitral tribunal has much to commend itself when considering the NE model. The court should be there to support but not interfere.

72. A common issue is for one party to seek to threaten to call off a scheduled NE unless a particular request is met forthwith. Within the financial remedies context, Mostyn J dealt with this issue in *AS v CS (Private FDR)* [2021] EWFC 34, in which he suggested that if proceedings are underway at a First Appointment, the court should direct the date of the private FDR which cannot be vacated save for the agreement of both parties or the permission of the court. Ideally the identity of the evaluator should be agreed at this stage as well.

73. In the family law context, recent amendments to Part 3 of the Family Procedure Rules 2010 make it much more likely that a court may stay proceedings if it considers NCDR has not been properly canvassed. The definition of NCDR has been broadened within the Family Procedure Rules 2010 to include NE (such as a private FDR). The decision of Mr Nicholas Allen KC in *NA v LA* [2024] EWFC 113 is an exemplar of the modern approach to NCDR. In the civil context, changes are to be made to the Civil Procedure Rules 1998 with effect from 1 October 2024 to reflect the decision in *Churchill v Merthyr Tydfil CBC* including the court's power to order the parties to attend ADR being made express.

Further reading

- Family Justice Council's *Financial Dispute Resolution Appointments: Best Practice Guidance* (December 2012) –[1]
  https://www.judiciary.uk/wp-content/uploads/2014/10/fjc_financial_dispute_resolution.pdf

- Resolution's *Guidance Note: Dealing With Financial Dispute Resolution Appointments*

  https://resolution.org.uk/guidance-note-dealing-with-financial-dispute-resolution-appointments/ (available only to Resolution members)

- Early Neutral Evaluation (Wayne D Brazil) American Bar Association (2012)

- How private FDRs can be improved, Financial Remedies Journal

  https://financialremediesjournal.com/content/how-private-fdrs-can-be-improved.5504ad5fd2414534b0328fc0449a364e.htm

- Private Dispute Resolution Appointments and Early Neutral Evaluation, LexisNexis (£)

  https://www.lexisnexis.co.uk/legal/guidance/private-financial-dispute-resolution-appointments-early-neutral-evaluation

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not 'guidance' for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see here.

[1] Referred to at paragraph 8 of *The Financial Remedies Court – Primary Principles* (11th January 2022)