

Chapter 3: Guidance on answering the self-test questions

Question 1: List and explain three advantages of ADR over a litigated settlement.

Advantages of ADR include:

- may be quicker;
- may be cheaper;
- can help the parties to overcome emotional difficulties and can assist the parties to retain a civil relationship;
- ADR can be less formal than court proceedings;
- ADR can be flexible.

Question 2: Explain the difference between mediation and collaborative law.

Mediation is where the parties meet with an independent mediator and an agreement is reached with the assistance of the mediator. Collaborative law is where the parties each instruct a lawyer and the parties and their lawyers meet to reach an agreement. In mediation, the mediator will not give legal advice and is neutral. In the collaborative law process, lawyers are present at the meetings to advise the client and negotiate. Lawyers are not generally present at mediation.

Question 3: A client chooses collaborative law as a way of resolving their case. Explain to the client how the collaborative process works. If collaborative law doesn't work, can the client keep their lawyer?

Collaborative law must be suitable for the parties. Each party will instruct a lawyer and have initial meetings to prepare to meet the other party and their lawyer in meetings. The parties and their lawyers will meet regularly in four-way meetings to discuss a settlement. Collaborative law will also use any experts that are required to resolve issues between the parties. Should collaborative law fail, the parties must instruct new lawyers.