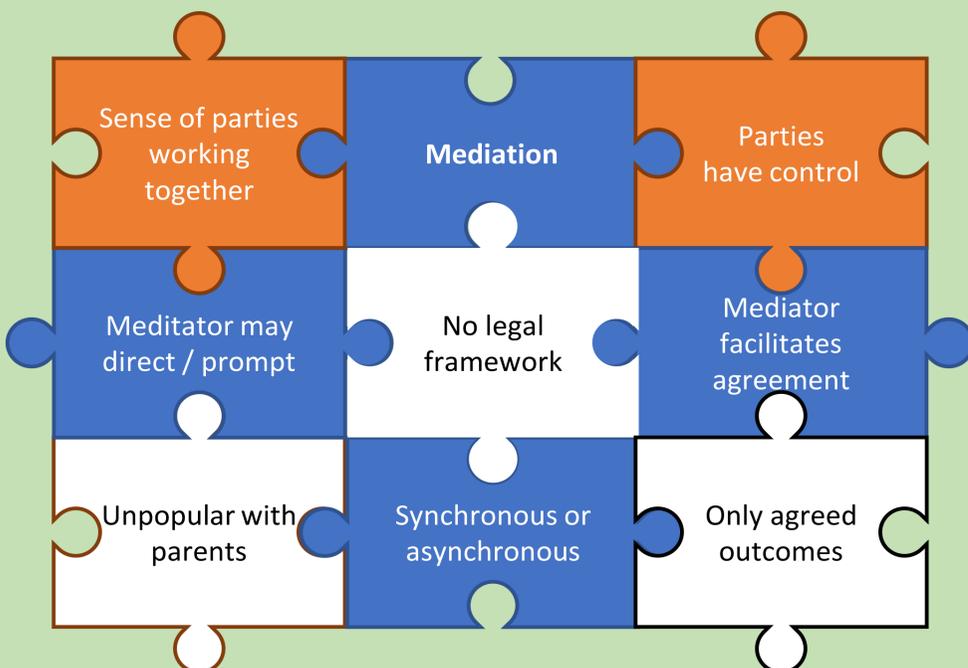


The family justice jigsaw: piecing together an investigative process

The family justice system in England & Wales is in crisis. Instead of taking up the encouragement to try mediation to resolve their disputes, increasing numbers of separating parents are making private child applications to the family court, with the result that the courts are now overwhelmed. Following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 nearly a decade ago, parents now overwhelmingly come to the family court as litigants in person and must navigate an adversarial system which remains designed around the assumption of full legal representation, but without legal advice or representation.

What's wrong with an adversarial system?

- Detrimental for families and makes a bad situation worse.
- It entrenches parties and increases the level of parental conflict by pitting parents against one other.
- Default result is imposed third party adjudication, considered worse than a negotiated settlement on the parties' own terms.
- Adversarial system designed for lawyers: litigants in person struggle to navigate this / participate fully in their cases.

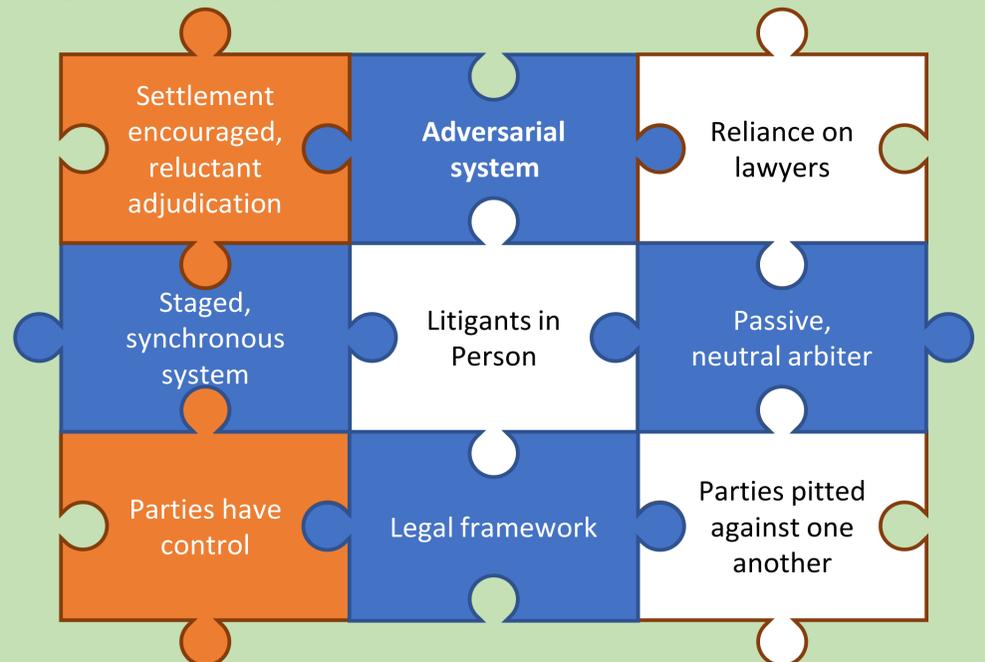


Why an investigative court?

The majority of cases coming to the family court feature allegations of domestic abuse. The Harm Report identifies the adversarial system in the family court as one of the over-arching barriers to the court's ability to respond effectively and consistently to domestic abuse and other serious offences in private law child cases. It calls for a change from adversarialism to an investigative and problem-solving approach. However, current proposals are arguably 'less adversarial' rather than investigative, or seek to triage and track cases, with further encouragement to mediation as a less adversarial process.

What could be the pieces of a new system?

- Focus on child, not parents.
- Designed for litigants in person: must not rely on lawyers.
- Parties' cases directed towards court, not against one another.
- Problem solving, not who has best case.
- Moves control from the parties to the court.
- Need to re-frame the role of judges.
- Potential need for new judicial officer to manage investigative process?



Why not divert to mediation?

- Already attempted in many ways and forms.
- High awareness of mediation, but mediation remains unpopular with parents.
- Even if partial agreements are reached, there may remain outstanding issues.
- Agreements are unenforceable without a court order.
- Only appropriate for a minority of cases: unsuitable where there are safeguarding concerns or allegations of domestic abuse.

