

# Exemptions from Family Dispute Resolution

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**Exemptions from Family Dispute  
Resolution where a party did not  
participate**

September 2017



New Zealand Government

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# Background

In 2014 New Zealand's family justice system was reformed and changes were made to the way it assists separating couples to reach agreement about care and contact arrangements for their children.

The reforms introduced the Family Dispute Resolution (FDR) service, an independent mediation service, which shifts the focus from court resolution of childcare disputes to encouraging people to reach agreement themselves.

FDR consists of an assessment, to determine if people are suitable for FDR, preparation for mediation, to help people manage their feelings and focus on what is best for the children, and mediation, working with an independent mediator to reach agreement on care arrangements for the children.

People can be exempt from participating in FDR if domestic violence has been disclosed, if a power imbalance exists between parties, if one or both parties are unable to effectively participate or where parties would not participate in FDR.

Parties who would not participate in FDR make up the highest number of exemptions recorded.

Between 1 July 2016 and 30 June 2017, there were 1561 disputes with a completed mediation. However, in the same period, the number of exemptions reached 1542 and, of these, 1276 (83%) were because one of the parties would not participate.

The ministry contracts three fully-funded suppliers to deliver FDR services. Both the ministry and the suppliers believed parties chose not to take part in FDR due to cost, so we asked suppliers for more information about parties who do not participate in FDR.

# Assessment for FDR participation

Parties require an assessment to determine their suitability for FDR. An assessment is usually completed with the initiating party first. This will involve gathering information about the dispute, determining eligibility for funding, obtaining contact details for the responding party and determining if all parties are safe from harm.

If the assessment of the initiating party determines a risk to safety of anyone involved in the dispute, the supplier will give an immediate exemption because of this risk.

If the assessment finds no risk of harm, the supplier will attempt to make contact<sup>1</sup> with the responding party to determine whether they are eligible for FDR, and willing to participate. The responding party will then be assessed and also asked to provide information about the dispute from their perspective.

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<sup>1</sup> Suppliers attempt contact at least three times, by phone, text or letter.

# Exemptions from FDR

Section 12 of the Family Dispute Resolution Act 2013 lists the reasons parties can be exempt from participating in FDR. These include:

- at least one of the parties to the family dispute is unable to participate effectively in FDR
- at least one of the parties to the family dispute, or a child of one of the parties, has been subject to domestic violence by one of the other parties to the dispute
- a situation exists that gives the FDR provider reasonable grounds for deciding that FDR is inappropriate for the parties to the family dispute
- an FDR provider can make a decision that it is inappropriate to start or continue with FDR for a family dispute because one of the parties refuses to attend or to continue to attend FDR.

Suppliers record the reason in the Resolution Management System (RMS). This system enables the ministry to report on outcomes of people participating in FDR.

There is no detailed explanation for each exemption recorded in the system. The ministry wanted to find out if we could determine why people were not participating.

# Reasons why parties did not participate in FDR

## Reasons why parties did not participate

FDR suppliers agreed to record data to help the ministry find out why so many people were not participating. Data was recorded between February and May 2017.

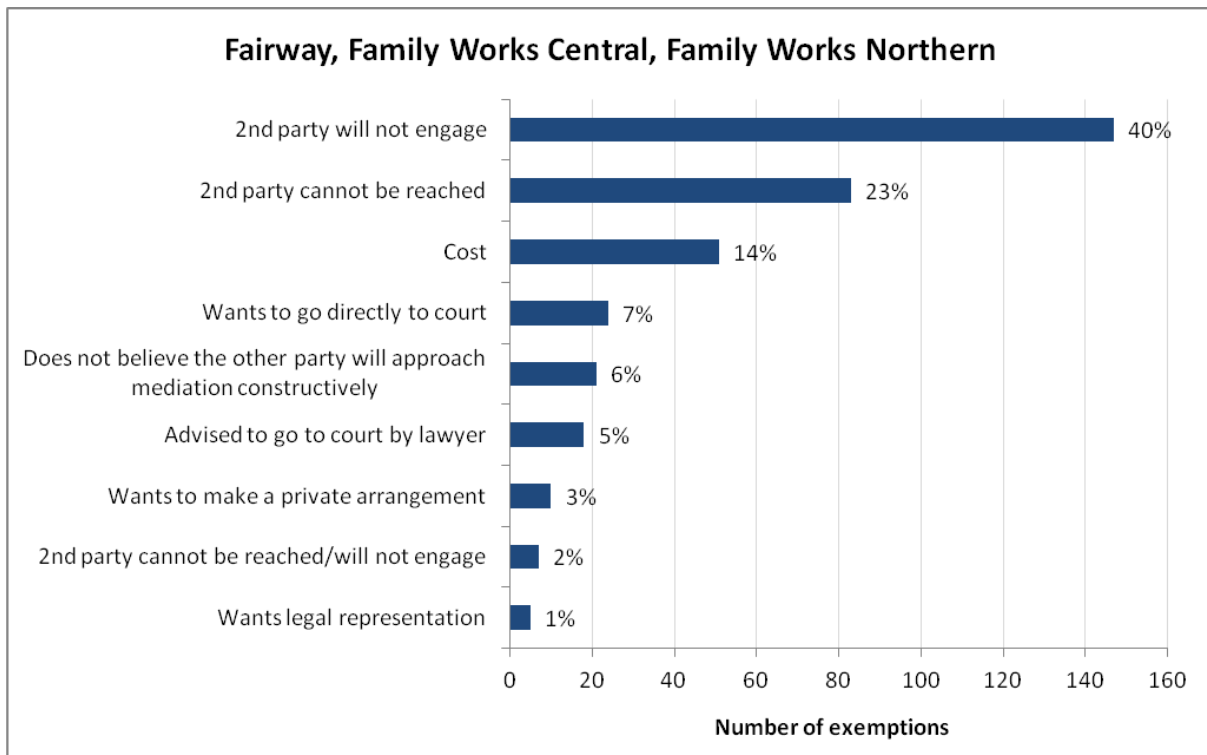
Together the suppliers and the ministry agreed to create a list of possible reasons for lack of participation, so they could track the data more accurately. The reasons were:

- 2nd party will not engage (refused to participate in FDR)
- 2nd party cannot be reached (party will not respond to contact)
- Cost
- Wants to go directly to court
- Advised to go to court by lawyer
- Does not believe the other party will approach mediation constructively
- Wants to make a private arrangement
- Wants legal representation

When an exemption was recorded because one person did not participate, the FDR supplier asked the reason for this lack of participation. The supplier then recorded this in an Excel spreadsheet using the categories listed above.

# Breakdown of reasons for not participating in FDR

Between February and May 2017, fully-funded FDR suppliers reported 366 exemptions where one person would not participate.




The most common reason for lack of participation was 40% who refused to engage with the supplier.

There could be many reasons why someone may not engage with the FDR process. They may simply not wish to have contact with the other party. However, since they refused to engage there is no way to determine this.

The second most common reason for lack of participation was when the party could not be reached<sup>2</sup>. This was the case for almost a quarter (23%) of non-participating parties.

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<sup>2</sup> Suppliers made at least two attempts to contact by phone. They also follow up by text, email or letter (if address details are known).



Apart from parties who would not engage or could not be reached, the most common reason for non-participating was cost<sup>3</sup>, with 14% providing this reason.

After cost, the other categories all have reasonably low numbers. The most common reasons were: the non-participating party wanted to go directly to court (7%), did not believe the other party would approach mediation constructively (6%), or they were advised to go to court by a lawyer<sup>4</sup> (5%).

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<sup>3</sup> FDR is free for those who meet the civil legal aid thresholds. For parties not eligible for free FDR, the cost is \$448.50 per person to participate in two sessions of mediation of up to five hours each.

<sup>4</sup> FDR suppliers are skilled at discussing the benefits of FDR to encourage participation and keep people out of the court system.

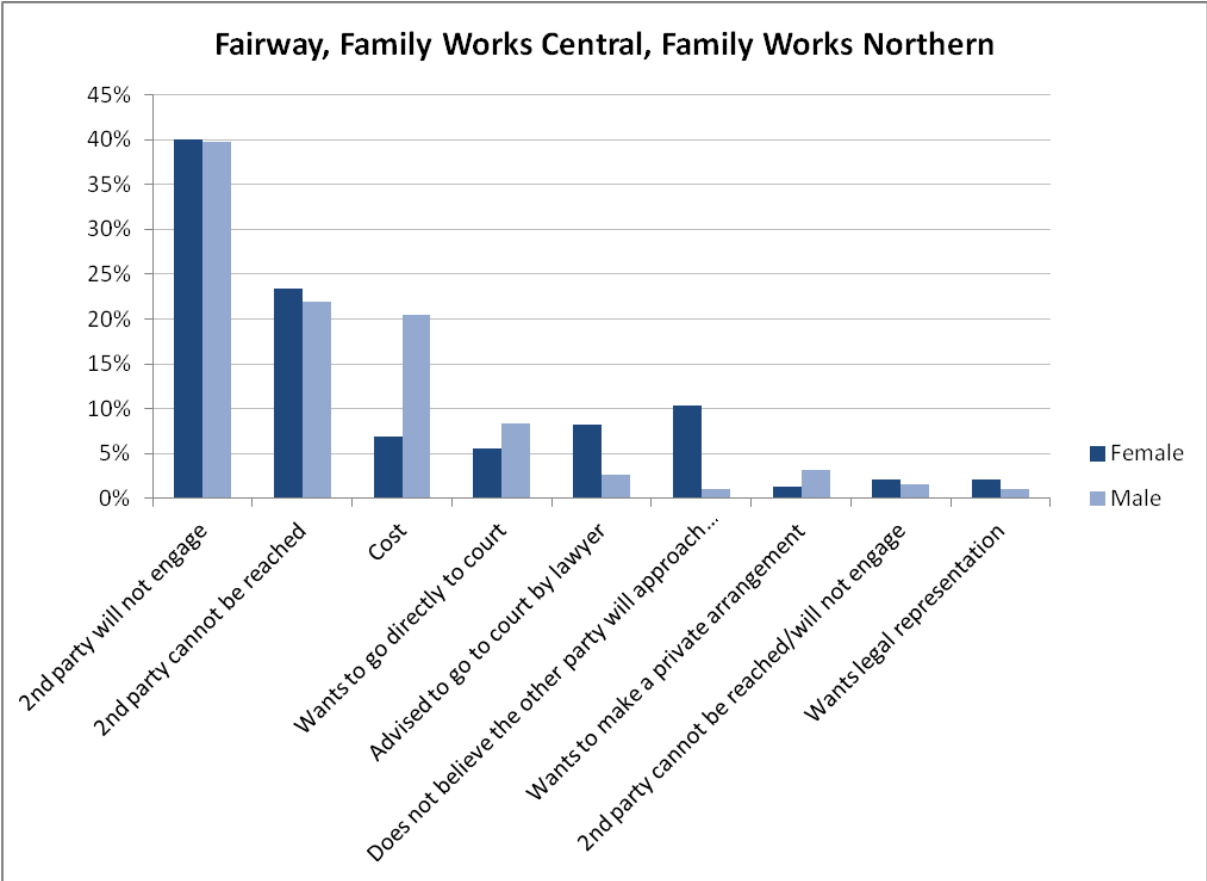


## Differences based on gender

Out of the non-participating parties:

- 191 were men
- 145 were women
- 27 were of unknown gender.

The table below shows the proportions for the different reasons for not participating in FDR by gender, excluding cases where the gender was unknown.



Men were more likely than women not to participate due to cost, while women were more likely than men to believe the other party would not approach mediation constructively.

Excluding parties who would not engage or could not be reached, men’s most common reasons for not participating were cost (20%) and wanting to go directly to court (8%).

For women, the most common reasons were not believing the other party would approach mediation constructively (10%) and being advised to go to court by a lawyer (8%).

# Conclusions

When we started this project it was considered that the majority of reasons parties chose not to participate in FDR was due to cost.

What we have learnt is:

- 40% of people refused to engage with the FDR supplier because they simply did not want to do FDR
- 23% of people did not respond to the supplier, even after multiple attempts via phone, email and letter
- Cost was the third the most common reason for non-participation (14%)
- Between 1% and 7% of people reported a variety of other reasons for non-participation, but each group had relatively low numbers.

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