

What is Family Mediation?

Family mediation is a voluntary process by which family members in dispute, particularly those going through separation or divorce, are helped to deal with arrangements for their future.

Many people prefer to negotiate their own arrangements with the assistance of a family mediator rather than putting their decisions in the hands of the courts. By making this choice, families are helped to communicate better and to minimise conflict whilst ensuring that their future arrangements are tailor made to suit the needs of their own particular family. Parties can discuss parenting and financial issues in the presence of a trained and impartial mediator who can help them to consider all of the available options. Family mediators also ensure that people have the information they need to help them make informed decisions about the future of their families.

Family mediation is a voluntary and confidential process in which parties can explain their concerns and needs to one another and reach an amicable agreement about issues such as finances and arrangements for children. Mediation can help reduce hostility and improve chances of long term co-operation. It is often less expensive than litigation with parties having the opportunity to communicate directly with each other rather than simply through solicitors and in court and with parties also being in control of the outcome.

Mediation is not always an easy option. If you have not spoken to your partner for some time, and/or there are difficult emotional, financial and children issues to deal with then you may find it hard to find the solutions. A family mediator can work with you to help you find acceptable and workable solutions.

What can we discuss in mediation?

You are free to discuss any issues you wish. Some of the topics include future arrangements for the children, finances, and/or family home, other capital and pensions. Mediation can also be successful in restoring constructive communication between parents at time of tension and fear of the future. We can (where appropriate and depending on age) consult the children themselves to express their wishes and feelings. Whether the children are consulted directly or not, their needs are regarded as paramount throughout mediation process

What does the mediator do?

The mediator's job is to act as an impartial third party and manage the process of mediation, helping you to exchange information, ideas and feelings constructively. The mediator has no power to impose a decision or settlement on you. The responsibility for all decisions remains with you since you know better than anyone else what is right for your family. The mediator will help you look at all of the options available but you must decide what is the best option for you, your children and your financial affairs. The mediator will give you information, including legal information, that will help you make those decisions.

Four key principles of the mediation process:

- It is voluntary
- The mediator is impartial
- It is confidential
- You make your own decisions and are in control of the outcome

Will the process be time-consuming?

The majority of mediations are concluded in 3-4 sessions, each lasting approximately 1 ½ hours. Sometimes a family will have very complex finances or there may be a lot of conflict so the mediation may last longer. The probable length of the mediation will always be discussed with you at the outset.

How are solicitors involved?

Family mediators will encourage you to contact your solicitor during the mediation process if it is felt you need legal advice. If the mediation results in an agreed outcome, then the mediator will prepare a written summary, recording your decisions and you will be encouraged to take these summaries to your solicitor so that you can take legal advice and your solicitor will be able to translate the summaries into a legally binding form if this is what you wish to do. Again, this is something that the mediator will discuss and explain during the mediation process. If you are getting legal aid for the mediation, you may be entitled to this advice from the solicitor free of charge under the legal aid Help with Mediation Scheme.

Will agreements reached in the mediation be binding?

The mediation summary is the outcome of successful negotiations in mediation. The mediator will encourage you to take the summaries to your solicitor to convert them into a legally binding document. It is unusual for people to spend time and energy on negotiations, only to reject the outcome later. One of the advantages of mediation is that the parties themselves have been directly involved in reaching the agreement and therefore have ownership of the decisions reached. If the mediator is concerned that one of the parties to mediation is not negotiating in good-faith, then this concern would usually be raised during the mediation.

I'm not sure that I understand all of the finances or that I trust my former partner – is mediation still possible?

If financial matters are to be discussed in mediation then it is important that there is full and honest disclosure of your finances. It is important that you both understand your financial situation and that the mediator understands the position so that they can help you with your negotiations and help you consider all of the options that are available to you. The mediator will ask you to complete some financial questionnaires which will be explained to you during the process and you will be asked to provide documentary evidence of things such as your mortgage, your bank accounts, etc. All of this information will be discussed openly with you both in the sessions to ensure that the information is understood before negotiations commence. If full disclosure is withheld or the mediator feels the mediation is not being conducted in good-faith with all of the information out in the open then the mediator will refer you back to your solicitors for advice.

What if there has been abuse or domestic violence?

Mediators know that one of the most important tasks is to ensure you feel safe during mediation and mediators are trained to deal with domestic abuse issues. Mediation is a voluntary process and you should never feel any form of pressure, either before, during or after the sessions. You should always disclose any concerns you have confidentially with the mediator at your preliminary assessment meeting. Often separate waiting facilities, and separate leaving times can be arranged. The mediator may also be able to offer you the opportunity of mediating in separate rooms. This is called a 'shuttle' mediation. The mediator will discuss these options with you if they are considered appropriate. Experience shows that in many cases, mediation can help to reduce tension and improve communication but if there are circumstances where the mediator takes a view at any stage that you or the children are in need of protection you will be advised to seek the advice of your solicitor as soon as possible.

What about the cost?

This meeting gives you the opportunity to find out a little bit more about the mediation process, meet the mediator and ask any questions you have.

Legal Aid is available for mediation and the mediator will discuss with you whether you qualify for mediation free of charge. Legal Aid is assessed based upon your income and savings and is free of charge and there is no contribution to pay. You may also be able to get free advice and assistance from a solicitor during the mediation and afterwards to make any financial proposals you reach a court order.

If you do not qualify for legal aid and have to pay privately for the mediation, you will be charged an hourly rate for the work carried out on your behalf. The mediator will give you an estimate of the mediation costs at your assessment meeting, as this may vary depending upon the complexity of the issues that are to be discussed. Fees are normally payable on a session by session basis.

By way of an example, a person mediating both financial and children issues in mediation will usually incur a fee of approximately £600 plus VAT. In comparison, dealing with the matter through solicitors and litigation, would usually cost approximately £2,500 upwards.

Considering going to court?

Under The Children and Families Act 2014 there is requirement, subject to a few exceptions, that those with a dispute about finances or children, will attend a Mediation information and Assessment Meeting - called a MIAM - to consider whether mediation would be an appropriate way of resolving their disputes, before making an application to the court.. If you are not the applicant, but the respondent, ie 'the other person' to the application, there is an expectation that you will attend a meeting also.

A mediator will need to sign either the court application itself or a form called an FM1, to show that you have attended a MIAM. Which of these forms you need depends on the type of application that you are making. If after you attend your MIAM mediation is either unsuitable or is not going ahead and you decide that you are going to start court proceedings to sort things out, the mediator can sign the appropriate forms for you.

If you qualify for legal aid, the meeting and signing any necessary forms is free of charge. If you do not qualify for legal aid, there is a charge for the meeting and signing any necessary forms.

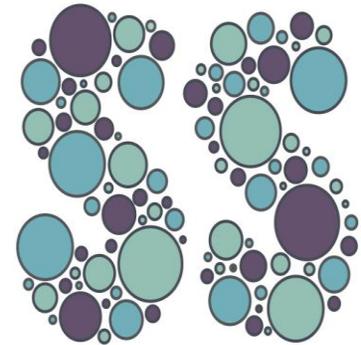
Finally

Even if, for one reason or another, mediation does not, in your particular case, result in an agreement, there will usually be benefits from having attended mediation. For example, you will have had the opportunity to tell your stories and express any anger or disappointment in a safe place. You will have time to consider the effect your future arrangements may have on your children and also the position of other close relatives, for example grandparents. Outstanding issues will have at least been clarified and narrowed down, even if there is no final agreement, and financial disclosure will have been dealt with.

For these reasons, when you return to your solicitor, a great deal of work has already been done which means savings in time and costs.

What should I do next?

If you have any questions about any information contained in this leaflet, or would like to find out if you qualify for legal aid, please do not hesitate to contact us. An initial meeting can be arranged with one of our mediators who can discuss your specific circumstances and family situation and help you decide whether mediation is suitable for you.



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