

## Family Law Factsheets

# Family mediation

### Using mediation

Mediation can be useful in any dispute where you and your partner (or former partner) cannot reach agreement between yourselves. Rather than communicating through your solicitors or going to court, you work with a trained mediator who helps the two of you to talk through the issues and negotiate an agreement. Mediation can be used to help negotiate residence and contact arrangements for your children, financial agreements and other family disputes.

Mediation focuses on taking a constructive approach to resolving problems rather than trying to win the argument. This means that mediation can help you to maintain a reasonable working relationship and good communication with your partner - particularly helpful if you have not definitively decided to separate or divorce, or if you need to continue working together for the sake of your children.

To be successful, both of you need to understand what mediation can and cannot do, and how to approach it:

- Although mediation involves talking through the issues you are arguing over, it is not designed to provide emotional support or bring a couple back together. Issues like these can be approached using separate counselling services.
- Both parties need to be willing to negotiate in good faith. If finances are involved, honest disclosure of your financial position is a must - any agreement based on inaccurate information can be overturned later.
- Mediation is less likely to be suitable if one partner is violent or overly dominant, though a skilled mediator may be able to work round this.

Effective mediation can be both faster and cheaper than traditional dispute resolution. Mediation sessions only require one trained expert rather than each party having their own solicitor (though some separate legal advice may also be needed - see below).

### The mediation process

The mediation process begins with an initial intake meeting or phone conversation. This is an opportunity for you to find out more about how mediation works and for the mediator to assess whether mediation is suitable for you.

If you are going ahead with mediation, the mediator will ask both of you to provide some basic information. If your dispute involves financial issues, you will each need to provide information on your financial position, typically by completing a form setting out your income, expenditure and financial assets (eg savings and investments).

A typical mediation then involves anything from two to six sessions, each of between an hour and ninety minutes. More sessions might be needed if your dispute is particularly complex (for example, if complicated financial issues are involved). The mediator uses his or her skills to guide the discussion through a series of stages:

- Establishing what needs to be discussed.
- Exploring the issues, including allowing each partner to express their point of view (and encouraging the other to listen).
- Identifying how you could deal with the problem.
- Reaching agreement where possible and identifying any unresolved areas. The mediator will provide both of you with a written summary of what you have decided.

Generally, mediation takes place in joint sessions involving both partners. You can speak freely, knowing that discussions during mediation are confidential, and nothing you say can be used against you if the dispute later ends up in court. However, the mediator is required to alert the police or social services if it appears that someone is at risk of serious harm or is benefiting from crime.

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### **Legal advice and mediation**

During mediation, the mediator acts as an impartial expert. Although he or she may highlight issues that need to be taken into account (for example, emphasising the need to focus on the welfare of any children involved), the mediator will not provide either of you with legal advice.

This means that it may well be a good idea to take your own independent legal advice before you start mediation. This will help you understand what the legal position is. Knowing what outcome you could reasonably expect if a dispute ended up in court instead can make it more likely that the mediation will succeed.

You should also take legal advice if you have any immediate concerns at any time: for example, if you are concerned that your partner might be violent towards you or your children.

In addition, you should be aware that mediation is not a legally binding process. Either party is free to stop mediation at any time, or to decide afterwards to reopen the dispute regardless of any written record of your decisions. If mediation has helped you to reach a satisfactory agreement, you should ask your solicitor to apply to the court for a consent order that will make the agreement binding.