



Information About All Issues Mediation

When two people decide to separate there are usually a number of other decisions that have been made about such issues as:

- How to separate
- What to say to the children
- Who will live where
- The distribution of money and property

Mediation provides an opportunity for you to consider these matters together with the help of a mediator, to decide jointly what you think are the best arrangements for you and your family.

1. How does it work?

A trained mediator will meet with you both for a series of sessions, in which you will be helped to:

- Make a list of all the matters you wish to consider
- Collect the necessary information
- Talk about the choices open to you
- Negotiate with each other in order to reach decisions which are practicable and acceptable to you both
- Discuss how you can consult your children appropriately about arrangements you decide to make

2. What does the mediator do?

The mediator's job is to act as an impartial third party, helping you to exchange information, ideas and feelings constructively so that you can progress towards joint decision making. However, the mediator has no power to impose a settlement; responsibility for all decisions remains with yourselves, since you will know better than anyone what is right for your family. What the mediator will not do is advise you about which option is best nor can the mediator protect your individual interests. That is the role of your solicitor and we therefore advise you to engage a solicitor so that you can be told about the personal consequences for you of what you agree.

3. How many meetings will there be?

That depends on the number of complexity of the issues, and the amount of cooperation which already exists between you. However, as a rough guide you should anticipate between four to six sessions of approximately one and a half hours to two hours each.

4. How much will it cost?

Details of charges are given on a separate sheet. If however you are eligible for public funding there will be no charge for mediation. An assessment of your eligibility can be made at the first meeting.

5. Can mediation cover all the issues?

Yes, we offer mediation on everything – children, property, maintenance etc – arising from the break – up of your relationship.

6. Is mediation suitable for everybody?

Sometimes mediation is not the best way for you to resolve your problems. You will have a chance to discuss this in more detail at your first meeting with the mediator.

7. What are the Issues concerning the children?

The major decisions affecting the children are likely to be:

- Where they will live
- What arrangements will be made for them to spend time with each parent and other relatives.
- Special provisions, if any, which might need to be made about such matters as education, religion and health.
- The level of financial support required to meet their needs
- How can they be appropriately consulted

The mediator, whilst understanding that you may well have quite different views on some or all of those matters, will help you build on your relationship as parents so that you can focus more effectively on your children's needs.

8. How will money and property be tackled?

You will be asked to provide details of expected income and spending (as far as this can reasonably be predicted) and details of the value of your assets.

This means:

- Making a list of all the money you usually earn or receive over a given period of time (weekly, monthly, etc)
- Making a reasonable estimate of what you would expect to have to pay for in the future including housing.
- Provide details of any property, savings, shares, insurance policies, pension rights and other capital assets in which either of you have an interest.
- Identifying loans and debts for which either of you are liable.

9. What about the Child Support Agency?

If you are on certain state benefits the C.S.A. will calculate and collect child support. Otherwise, you can make your own agreements about the support of your children. However each of you has the right to apply for C.S.A. at anytime for them to calculate the support that would be due. Knowing this figure may help your decision.

10. Using this information, you will be helped to negotiate on such matters as:

The Family Home – who should live there, should it be sold and, if so, when and how should the money be divided? (In the case of a rented home, should the tenancy be changed or transferred?)

Maintenance and Child Support – how much should each contribute towards the living costs of the children (and possibly of the adults?)

Possessions – how should these be shared between you?

Future benefits – does none person need to be compensated for the loss of pension rights, endowments etc?

On all these issues the final outcome will depend very much on your views about:

- What is “fair” (which may not necessarily mean a 50/50 split)
- What is realistic
- What bests meets the needs of all members of the family, particularly the children
- How your circumstances might be expected to change in the future

11. A Contract of Mediation

If you both agree to mediation, you will be asked to sign an Agreement to Mediate which includes a declaration that you agree to be open and honest with each other and not do anything which might prejudice the outcome of the discussion. Either of you is free to withdraw from mediation at any time. The mediator also reserves the right to withdraw from mediation if it becomes clear for whatever reason, then further progress is unlikely to be made through mediation.

12. Is Mediation Confidential?

Firstly mediation is confidential and secondly, courts are likely to regard the discussions as privileged.

Confidentiality – The agency will not voluntarily disclose to outsiders any information obtained in the course of your discussions without first obtaining your permission (unless it appears, there is a risk or significant harm to adult or child or there is a duty to make a disclosure under the Proceeds of Crime Act 2002).

Privilege – What you say during mediation cannot later be used in Court as evidence. We will ask each of you to agree that all discussions during mediation take place only to attempt to reach a settlement are on the basis that they are both confidential and will not be referred to in evidence in any court proceedings or affidavit about the same issue. But facts disclosed during mediation are regarded as open. Any facts provided by either of you during mediation about financial matters will need to be verified with supporting documents. Although these will be strictly confidential they may be used subsequently in court. If an agreement is not reached they can be used by a solicitor as a basis for further discussions.

13. Will we have anything in writing?

Towards the end of the series of meetings, a “Memorandum of Understanding” will be drawn up which is a statement of everything you have proposed during mediation. You will be told that you should consult your solicitor on the contents. He or she will advise you on the personal consequences of what you have jointly agreed. The Memorandum will also state any issues on which you have not been able to agree and which may require further negotiations by your solicitor or perhaps a decision by the Court. However, the Memorandum will not refer to the way either of you responded during mediation.

The Memorandum itself is not legally binding, but is intended for your solicitor to use in preparing a legal binding agreement, where appropriate.

14. Can any arrangements we make now be changed later?

Some Court Orders, particularly those of the “clean break” kind, will have a once-and-for-all as far as capital assets are concerned. This is one reason why it is advisable that you have your own solicitor to advise you. Nothing is binding at this stage. Other Orders, such as those relating to the amount of maintenance paid to spouse/children, may be changed at a later date on further application to the Court. The Court may also be prepared to consider an application to change an Order relating to the children if the original circumstances have altered significantly. Where no Court Order has been made about particular issues, the arrangement may be changed by agreement between the two of you at some later date.

15. Can the Court impose arrangements different from those agreed?

The final authority always rests with the Court. However in practice the Court is unlikely to disregard agreement freely arrived unless:

- It is patently unfair to one of you.
- It is clearly not in the children's best interest

Or

- The facts on which the discussion was based turned out to be incorrect

16. What happens if we cannot agree on everything?

You may well have reached a certain level of agreement which can be written down and the areas outstanding can be clarified. You are then able to instruct your solicitor to negotiate a final agreement on your behalf. Ultimately if you cannot agree, the Court may have to make the necessary decisions.

You will receive a more detailed explanation at your first joint meeting with the mediator, where you will also have the opportunity to raise any other issues or concerns you have about the process.