

Frequently Asked Questions?

How can family mediation be of help?

Mediation helps couples facing an actual or possible separation or divorce to work out agreed arrangements for themselves and their children, both in the short and longer term. If arrangements that both parties find acceptable are worked out in mediation, the delays and possible costs of court proceedings can be avoided. Agreements benefit any children involved and greatly reduce the stress on the family as a whole.

If you go to mediation, does the mediator try to persuade you to stay together or to get back together again, if you have already split up?

No. The aim of mediation is not to try to stop couples splitting up. It is to help both partners work out decisions and arrangements for the future that they can both accept. Usually this is at a stage where one partner has already left the home or where one or both partners see a need for separation. This may be against the wishes of one of them. Mediators do not press people in any direction, either towards reconciliation or towards divorce. Sometimes mediation does lead to reconciliation, to both partners' satisfaction. More often it leads to a more amicable separation or uncontested divorce.

What about the children?

Where children are involved, mediation helps parents to co-operate with each other over their children, to discuss their children's needs and to take full account of any concerns that either of them has regarding the children.

How does mediation help to sort out money and property?

Mediators help both parties to gain a clear understanding of their financial position, by gathering and sharing all the details and necessary documents. Mediators then help them to consider all the available options and to work out the possible terms of a financial settlement based on each party's circumstances and needs, as well as the children's needs, and arrangements for the future which both parties consider workable and acceptable.

Although mediators do not give legal advice, they can provide information about the legal process of divorce and the general principles the court follows in making orders in divorce. Unmarried couples with children are also helped to reach settlements regarding child support payments and housing arrangements.

Mediation helps to reduce legal costs. It should cost considerably less to work out the terms of an agreement with a mediator than to pay two solicitors - one on each side - to gather all the information and engage in correspondence, especially if this is followed by court proceedings.

How much does mediation cost?

Mediation is charged at an hourly rate the same as a solicitor would charge (although sometimes more). This can be cost effective as these costs may be shared.

How does it work in practice?

Initial appointments may be individual or joint appointments, as preferred. The purpose is to explore whether mediation would be appropriate in the circumstances and acceptable to both parties. Mediation is an entirely voluntary process. Nobody is forced to take part and great care is taken to ensure that neither party feels under pressure or at risk from the other.

Once the offer of mediation is accepted by both parties, joint meetings are arranged with the family mediator or sometimes with two co-mediators.

Mediation helps separating or separated couples to reach their own agreements, instead of asking a judge to decide for them. It encourages them to come up with their own ideas and solutions. Sometimes these are ones that neither had thought of before. Mediators do not give advice or make decisions, but they can help to open up new options and may offer suggestions. Those taking part in mediation are not put under any pressure to agree to something against their will.

Mediators seek to keep the discussions on track and try to make the atmosphere as relaxed and constructive as possible. The discussions are informal and each party has opportunities to explain priorities and concerns.

Is mediation confidential?

Yes, the discussions that take place in mediation are confidential. The mediator does not give information to any third party without both parties' written consent. An exception would be made only where a child or other person was said or thought to be at risk of serious harm - and even then, any action to be taken by the mediator in contacting the appropriate agency would normally be discussed first in the mediation session.

Can one party tell the court what the other one said in mediation?

No. The discussions that take place in mediation are legally privileged, meaning that neither party can tell the court what was said in mediation unless both parties agree to do so (except, as explained above, where there are concerns about a child at risk). The financial information provided by both parties and considered jointly in mediation can, however, be made available to the court, as this may be necessary for a consent order. It also saves the information being collected all over again by solicitors, so that time is saved and people do not go back to square one if mediation ends without any basis for agreement.

How long does mediation usually take?

On average, four to six sessions. It depends on whether there is some agreement already and on whether the financial position is relatively straightforward or more complicated. Meetings normally last an hour and a half. If there are financial matters to deal with, it is

rarely possible to go through everything in fewer than three meetings. There is a choice at the end of each meeting of continuing with a further meeting, if more progress could be made. Arrangements can be worked out quickly, compared with court proceedings which may be prolonged.

Who are the mediators? Are they trained?

Family mediators have qualifications and experience in family law or other relevant qualifications and have nationally recognised training as family mediators. Mediation on all the questions that arise in separation and divorce - children, maintenance, property, pensions – needs up-to-date knowledge and experience of the law and the legal system. There may be need to seek advice from other experts, such as other lawyers and financial advisors. Mediators can help to clarify the questions that need to be asked.

Are those who go to family mediation satisfied with the results they get?

A research study carried out by Newcastle University found that 80% of the couples who went to mediation, at any stage of separation or divorce, reached some agreement. Most were satisfied with their agreements. Mediation made communication easier and the separation or divorce was less bitter and stressful. Those who saw mediators with a family law background appreciated their legal expertise. Two-thirds of mediation clients thought mediation had reduced their legal costs. Most felt it had helped them to co-operate as parents over their children. Even when there was a high level of conflict and individuals had felt doubtful about taking part, most said it enabled them to talk and have their point of view heard in a way that would not otherwise have been possible.

What happens after mediation? If people go back to solicitors after making good progress in mediation, is there a risk that the solicitors will take their proposed agreement apart, so that both parties end up in court after all?

Mediators help people to make the best possible use of their legal advisors, so that following mediation a legally binding agreement can be drawn up at minimum cost. Both parties are encouraged to check the terms and consequences of proposed agreements reached in mediation with their own legal advisors, so that neither of them enters into a legally binding agreement without understanding its implications and without having obtained legal advice on its terms.

If legal advisors recommend taking the case to court, each party should consider very carefully the legal costs and delay that would be involved and the emotional stress of going to court. The mediator can help both parties to identify the questions they need to ask their lawyers, such as how much the legal proceedings might cost them, how long it might take and whether they could end up with a worse deal than the terms worked out in mediation. Research findings show that most solicitors support mediation and do not set out to undermine the progress made in mediation. Solicitors are likely to advise their clients to accept mediated agreements, if the necessary information has been gathered and considered in mediation and the options have been explored fully.

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