



A guide to family mediation

Mediation can help steer you through the difficulties of divorce or separation to make mutually beneficial decisions for you and your family.

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Understanding Mediation in Family Law

Mediation is about making arrangements for the future, when parties separate and need to sort out financial and/or children matters. It is a key alternative to court proceedings, and one that you are encouraged to consider.

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1. What is mediation?

Mediation is a way of resolving disputes, and an alternative to fighting your case in court. It is widely used to settle many types of case, including family law matters that arise when a relationship ends. It is not intended to bring parties back together again. If you are hoping for a reconciliation, you may find counselling helpful. Mediation focuses on planning for the future when a relationship has irreparably broken down.

In England & Wales, parties must (with some exceptions) consider mediation before starting court proceedings to settle:

- (a) financial matters on separation/divorce/dissolution of civil partnership; or
- (b) private law children matters, such as which parent the child lives with and arrangements for spending time with the other parent.

Before making a court application, one party must have an initial meeting with a mediator, known as a Mediation Information & Assessment Meeting (MIAM). The mediator explains the mediation process and considers with you whether it is appropriate and could be successful. Afterwards, the mediator contacts the other party to give them the same information and hear their views. If it is agreed that mediation is not appropriate, and the parties need to start court proceedings, the mediator provides a certificate for the court confirming that mediation has been considered and ruled out.

The requirement for a MIAM is waived in certain circumstances where mediation would clearly be inappropriate, such as if there is a history of domestic violence between the parties.

2. Appointing a mediator

You can approach a mediator directly, or your solicitor can refer you to one. Mediators are professionally trained to facilitate discussion between the parties and help you reach a settlement. The mediator's role includes helping parties identify their priorities and communicate constructively with each other. They are impartial and do not take sides. They can give you information about the law and your options, in terms of legal proceedings, but they cannot give legal advice.

As the mediator is impartial, mediation works best where parties are on a fairly equal footing. Each party must be able to talk openly about matters and reach their own decisions, without succumbing to undue pressure from the other. If there is a dominant party and a weaker party, another form of dispute resolution may be more appropriate, for example negotiation through solicitors, where each party has their own solicitor to protect their interests.

It is important to find a mediator whom both parties feel comfortable working with. It is advantageous to instruct one who is also a qualified family lawyer: they have an in-depth understanding of how the court would approach matters, and the types of order the court can make. Once you appoint a person as your mediator, neither they nor their firm can act as family law solicitors for you or your partner, as there would be a conflict of interest. For legal advice, you each need to consult a different firm.

3. The mediation process

This involves a number of meetings with both parties and the mediator. Three to five two-hour sessions is usual. Depending on what works best, you can meet together in the same room or each party can be in a separate room, with the mediator shuttling between you. It is helpful to identify at the start the issues you need to resolve. Sometimes new issues arise during the mediation process, or existing issues fall away. You can consult your solicitor between sessions for legal advice on the points discussed.

Importantly, mediation is confidential. Neither of you, nor the mediator, should discuss with anyone else what has been said in the sessions, unless it is to seek advice from your family law solicitor (further exceptions apply to information about domestic violence or other criminal matters which comes to light during mediation). Mediation is also "without prejudice", meaning that if matters end up in court, neither party can use what was said in mediation as evidence before the court. These safeguards should enable both parties to explore settlement options openly.

If you are able to resolve matters, the mediator prepares a written record of the agreement reached, known as a Memorandum of Understanding. This in itself is not legally enforceable and, where financial matters are concerned, parties should ask the court to make an order in the terms agreed. Each of you forwards the Memorandum of Understanding to your respective solicitor and they make the court application for you. A court order offers protection if one party breaks the agreement and the other needs to enforce it. In children matters, there might be no need to have the Memorandum of Understanding made into a court order and it may be in the child's interests not to involve the court. You should discuss this with your solicitor.

4. What if mediation doesn't work?

If a case is assessed as suitable for mediation, and if both parties are prepared to compromise a little for the sake of reaching an agreement, there should be a good prospect of reaching a settlement.

If mediation breaks down, there are a number of other options available to resolve family law matters. These include negotiation through solicitors, collaborative law, arbitration and court proceedings. Both parties should seek independent legal advice on the way forward. While it may feel as if mediation has "failed", parties are likely to find that the mediation process has narrowed some of the issues so the time, money and effort invested is not wasted.

5. Where can I find out more?

For further advice, visit our website www.kiddrapinet.co.uk/our-people/ where you can find details of our team of mediators and family lawyers.

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