



# MEDIATION

Mediation is not designed to assist parties to reconcile. In mediation it is assumed that your relationship has broken down and the focus is on helping you sort out issues such as separation, divorce, children, property and finances. It is available and applicable to divorcing couples and separating partners.

The aim of mediation is to help you find some middle ground and works well where both parties are open to the process. The advantage of mediation is generally its cost effectiveness and the speed of resolution, compared to the traditional approach where each party appoints a solicitor.

The mediator is a neutral third party, frequently a qualified solicitor, and has no power to make any decisions for you. Any decisions will be made by you after full discussion of the various issues. Mediation is chargeable at an hourly rate but if you are eligible for public funding this will be free.

To help find a mediator in your area try the National Family Mediation website [here](#).

## Benefits of mediation

- Mediation can be cost effective as both parties use the same mediator and the cost is shared. Additionally, reaching an agreement will generally take less time than each party using a solicitor.
- The mediation process and communication between you and your spouse/partner will often help reduce the emotional trauma of divorce/separation.

The emphasis within family law is very much aimed at disputes being resolved by the parties without the need for court intervention thereby saving time, emotion and money. For this purpose, in child contact cases the parties are encouraged to agree the arrangements for contact with the children and if the finances are in dispute, to agree to a division of the assets. Where this is not possible the next step may be mediation.

## Mediation Information and Assessment Meeting (MIAM)

You will need to show the court you have attended a Mediation Information and Assessment Meeting (MIAM) before you can start court proceedings relating to finances on divorce/separation or civil partnership dissolution or for issues concerning children (other than protection issues), including financial provision.

At this meeting a trained mediator, usually a solicitor, will explain the service to you and help you reach an agreement. The purpose of the meeting is to provide you with information about the service and to assess if such a service is suitable for you. The meeting can take place with you all together or it may take place with you and your partner on separate occasions. It is not necessary for your partner to attend or be part of the process. The meeting will last about 45 minutes and you can find out more about how it works [here](#) on the Family Mediation Council website.

There are some exemptions:

- You, or the other party, has made an allegation of domestic violence against the other supported by clear evidence, for example either a police investigation or an injunction being issued within the last twelve months.
- The application you want to make to the court relates to other family law matters which you are currently involved in.
- An application to the court needs to be made urgently because there is a risk to the life or safety of the person who is making the application (the applicant) or his or her family (for example, their children) or his or her home.
- The dispute is about money and you or your husband, wife or civil partner (the respondent) is bankrupt.
- You and your husband, wife or civil partner are in agreement and there is no dispute.
- You do not know where your husband, wife or civil partner is.
- You wish to make an application to the court but for certain reasons you don't want to tell your husband, wife or civil partner in advance.
- You are currently involved with social services because there are concerns about the safety and wellbeing of your child or children.
- You can't find a mediator within 15 miles of where you live, or you have contacted three mediators based within 15 miles of where you live and you are unable to get an appointment with any of them within 15 working days.
- You or your partner cannot access a mediator's office because one of you has a disability. However, if the authorised mediator can provide the appropriate facilities then you will both still be required to attend the meeting.
- A mediator shows on the court form that mediation isn't suitable, for example the other person isn't willing to attend a MIAM.
- In the past four months you've tried mediation but it hasn't been successful. A mediator has to confirm this and state that mediation is not the best way for you to resolve your dispute.

If, during the mediation, no agreement can be reached, the mediator will complete and sign the relevant form which will allow you to commence court proceedings. If you do not have this form, it may not be possible to take further action. Since compulsory mediation was introduced, it has been reported that calls for assistance have doubled.

This has directly corresponded with a significant decline in the number of child-related cases being lodged with the courts. It is also an indication that with the absence of legal aid, separating and divorcing couples are finding their own way to resolve legal issues without using formal legal proceedings.

## Collaborative law

As a relatively recent introduction to the legal framework, collaborative law is designed to put you and your husband/wife in charge of the legal process rather than your solicitors. The purpose is to ensure that your priorities and concerns also become the priorities of the legal process.

The actual collaborative approach means there will be meetings attended by you and your legal advisor with your husband/wife and their legal advisor. Very much an American idea, and very likely you may have seen films where this happens, it is designed to make sure that any discussions are full and frank during that time.

A further distinctive aspect of this process is the binding participation agreement. This is signed at the start by all parties, including the legal advisors. The significance of this is that everyone is then committed to the process and to seeking a financial agreement. If no agreement is reached and you decide court action is necessary, you will need to appoint new legal advisors to assist as those involved in the previous discussions cannot continue to be involved.

This process differs from mediation as there are advisors present representing both parties. However, it can have the same advantages of being more affordable and less time consuming. For more

information on the subject please see [here](#).

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