



# guide



## Your questions answered

### CAN YOU USE MEDIATION TO HELP YOU SEPARATE?

**C**an you use mediation to help you separate? In short, yes you can. Mediation offers couples a more dignified and cost-effective way to separate as opposed to the traditional solicitor led and court route approach.

Working with an impartial third-party (the mediator) allows couples to get pragmatic guidance and legal information to help them reach their resolutions.

It is often when couples are at crisis point, that one or both of them contacts a divorce lawyer and in some cases, legal intervention is required to resolve the issues. However, this is not the only option available.

You use mediation to help you separate by reaching an agreement on issues including finances, property and children arrangements whilst avoiding potentially lengthy legal negotiations.

### Why choose family mediation?

Mediation is a smarter and more dignified way of sorting out issues arising out of separation or divorce. It is a cheaper and quicker process compared to the traditional solicitor-led negotiations and litigation/court-based applications. Also, mediation limits the stress and anxiety that you and your ex-partner will experience during the relationship break up.

Mediation is a voluntary and confidential process that allows you and your ex-partner to think creatively outside the box regarding possible solutions without fearing that you will be bound by statements and observations made in mediation. This helps separating couples to have an open and honest dialogue to reach understandings and agreements that can then be converted into legally binding agreements with the help of their solicitors.

## How can mediation help me?

**Mediation can help you to communicate better with your ex with the support and guidance of a qualified, neutral third-party: the mediator.** The process helps separated couples to reach their own informed resolutions on the issues arising out of the relationship break up.

For example, arrangements in the best interests and welfare of any children, what should happen in relation to the family home: should it be sold or retained for one of the parties and how to meet financial needs moving forwards.

At the first mediation session, with the help of the mediator, an agenda will be formulated to cover all of the important issues that you and your ex-partner wish to discuss and explore.

Non-legal issues can also be put on the agenda like reaching an agreement on ground rules and boundaries regarding the occupation of the family home and living separately under the same roof.

## Can you use mediation help you separate?

Subject to you both agreeing to keep an open mind about mediation and having an attitude that will allow for compromise, **with the help of an experienced mediator, agreements can be reached concerning issues arising out of the separation.**

The mediator will give pragmatic guidance and information on the law applicable to the various issues and provide a safe space/arena for sensible discussion to reach your resolutions.

**Mediation can be an empowering process that allows you and your ex to take control of difficult circumstances.** It is a future-focused exercise that involves shelving issues that serve no useful purpose in discussing and exploring. Sometimes, it's simply about agreeing to disagree.

Mediation works best when those participating have their independent legal advice from solicitors or advice from other professionals such as pension experts and accountants.

This helps to support the mediation process and have a full appreciation and understanding of their respective legal positions.

Solicitors and other professionals can provide advice (mediators cannot give any legal or financial advice) on what a Judge is likely to award if a court application becomes necessary to manage expectations and to allow for compromise resolutions that both parties can live with.

## Do I have to go to mediation? (MIAM attendance)

On the 6th April 2011, the Government issued a pre-action protocol that requires anyone facing a relationship breakdown to attend a Mediation Information and Assessment Meeting (MIAM) before they consider issuing a court application.

There are exceptions where there is evidence of domestic abuse or child protection issues.

If your case is suitable for mediation and you and your ex-partner both agree then the matter can go ahead via the mediation route. Mediation is a voluntary process for the separating couple and the mediator. You cannot be forced to mediate but there is likely to be judicial encouragement where it is considered safe and appropriate to do so.

## What do I need to do before going to mediation?

It is a good idea to take counselling and therapy (if identified as necessary by the mediator at the MIAM) to ensure that you are in an emotionally stable position to play an effective part in mediation.

If there is concern regarding one or both of the parties emotional status/mental health, the mediator will recommend that there is a pause in mediation to allow for such therapy to take place. This will help in the mediation process moving forwards.

It is wise to seek legal and other appropriate advice from professionals, to have a full appreciation of your respective legal positions on rights and responsibilities. This understanding ensures that you and your ex-partner are in a good position to effectively broker your terms and agreements in mediation.

## What happens during mediation?

During the mediation process the mediator will help:

- Define the issues (set the agenda)
- Identify areas of agreement
- Clarify areas of disagreement
- Explore options
- Provide pragmatic guidance and legal information
- Evaluate options to help you reach agreement upon them.

At all times, the mediator will remain impartial and will not take sides or make judgements on who is right or wrong. They will offer legal and financial information to you in a neutral way to help in the understanding of options.

However, they cannot give you or your ex-partner legal or financial advice. You will be directed to seek advice from solicitors, financial advisors and other professionals to support the mediation process.

**Research studies have shown that family disputes resolved via the mediation route are less acrimonious than those cases that are settled through the court system.** Also, decisions made by you and your ex-partner by agreement are more likely to be kept and adhered to, as opposed to court-imposed orders.

## How much does mediation cost?

The initial assessment/MIAM will cost each party usually a fixed fee of approximately £100.00 plus VAT.

Mediation sessions are normally booked for 90 minutes. The cost to each party will be approximately £262.50 plus VAT per session and there will be a charge for preparing outcome letters based on an approximate hourly rate of £350.00 plus VAT. (These are current rates and may vary)

In addition, there is the cost of preparing mediation documents i.e. open financial summary (OFS) and memorandum of understanding (MOU) at the end of the case. The cost involved in mediation is usually shared equally but sometimes one party agrees to pay a greater proportion or the full costs of mediation.

This may seem expensive but **the cost of family mediation is a lot cheaper than paying solicitors to litigate or negotiate settlement terms on your behalf.**

## When is mediation not appropriate?

**Mediation is not appropriate where there is evidence of domestic abuse or significant welfare/child protection issues** that are raised by one or both parties at the initial Mediation Information and Assessment Meeting, (MIAM).

One of the key tasks of the mediator at the MIAM is to carry out a safeguarding screening enquiry with each party to consider if it is safe and appropriate to mediate. If the mediator does not consider it safe and appropriate, mediation will not take place.

## What happens at the end of mediation? (memorandum of understanding)

**Mediation is a confidential process and is conducted in a legally privileged arena.** If both parties agree, a without prejudice agreement can be prepared known as a memorandum of understanding (MOU) based on the outcome of the mediation.

However, agreements reached in mediation are not legally binding but an application can then be made to the court to convert the MOU into a legally binding order. This work would usually be undertaken by solicitors.

## What if you can't reach an agreement through mediation?

The mediator will discuss other dispute resolution options like arbitration and collaborative law to consider and explore. They can also issue the requisite form that is needed to allow you and/or your ex to issue a court application if this is considered necessary.

## What is collaborative family law?

**Collaborative family law** is a form of dispute resolution that involves round-table meetings with your respective solicitors and other professionals including accountants, financial planners and pension experts to assist you both in reaching your own informed decisions with a series of planned meetings with an agreed agenda in place.

It is a confidential out-of-court process that has clear ground rules and structure. The agreement or contract entered into for the collaborative process confirms everyone agrees to different solicitors stepping in if negotiations break down and you need to go to court or arbitration to determine issues.

## What is family arbitration?

**Family arbitration** is a private process that allows issues to be dealt with flexibly and efficiently and can be more cost-effective than court-based litigation. It can cover both children's arrangements and financial matters.

It is a form of dispute resolution that you and your ex-partner contract to be bound by. Unlike mediation, the contract confirms your agreement to be legally bound by the decision of the appointed arbitrator.

The determination of the issues by the arbitrator will lead to an order that will be ratified by the court.

## How do I find a good mediator?

To find a good mediator the [Family Mediation Council \(FMC\)](#) website is a good place to start.

The FMC is a not for profit organisation that maintains a professional register of family mediators.

All FMC Registered Mediators are trained to a set standard and follow the FMC's Code of Practice, hold relevant insurance, are required to carry out training and activities to ensure their continued professional development, receive the appropriate supervision and support and are required to have a complaints process.

## Meet our mediators

Here at Stowe Family Law we strongly support the use of mediation when managing a relationship breakdown, and are pleased to have the following mediators in our team:

**Sushma Kotecha**, Nottingham Office, [sushma.kotecha@stowefamilylaw.co.uk](mailto:sushma.kotecha@stowefamilylaw.co.uk)

**Alice Wightman**, London Chancery Lane Office, [alice.wightman@stowefamilylaw.co.uk](mailto:alice.wightman@stowefamilylaw.co.uk)

**Gavin Scott**, London Chancery Lane Office, [gavin.scott@stowefamilylaw.co.uk](mailto:gavin.scott@stowefamilylaw.co.uk)

## Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit [www.stowefamilylaw.co.uk](http://www.stowefamilylaw.co.uk)



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