



Taylor *Bracewell*

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Family Law Mediation v1

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Mediation

Mediation is a process in which an impartial third person (the Mediator) assists those involved in family breakdown to reach their own agreed and informed decisions about issues arising from their separation such as arrangements for the children and financial issues. Mediation can help to reduce tension, anger and misunderstandings and improve communication. This is especially important where there are children in the relationship. In mediation, there are no winners or losers. The aim is to work towards an outcome which both parties regard as reasonable and fair.

Who can use Mediation?

Mediation is available to married, unmarried and same sex couples both before or after separation. For Mediation to work, both parties must take part. It is voluntary but a party being advised by a Solicitor under the Legal Help Scheme has to consider Mediation as a means of resolving a family dispute.

What if my partner is violent?

Mediators must make sure that Mediation discussions are fair and that the parties feel safe. The Mediator will check before starting and throughout the sessions that issues of violence or abuse will not be a problem. Violence in the relationship does not in itself prevent Mediation being an appropriate way of resolving issues.

What happens in Mediation?

Mediation takes place in private and in informal sessions. The parties have separate initial meetings with the Mediator. These are free. This is an opportunity to learn about the Mediation process, to assess whether Mediation is an appropriate way forward and to consider how the costs of Mediation will be funded i.e. by Public Funding or by paying privately.

How long will Mediation take?

If Mediation is deemed to be a suitable way of resolving the issues, an appointment is made for the parties to attend a joint meeting. Sessions can last 1 to 1½ hours and between two to four joint meetings may be required. The time taken depends on how complicated the issues. Where finances are in issue, the process is speeded up if the parties obtain values of their assets and transfer values of pensions in time for the first



joint meeting where possible. Full financial disclosure is important. If a party does not give all the correct information to the Mediator, a Court could overturn any agreement reached through the Mediation process.

Is Mediation confidential?

What is said in Mediation is confidential. However if it seems that someone has been seriously hurt or is at risk of this, the Mediator should make sure that the Police or Social Services are informed.

How much does Mediation cost?

There is no standard fee. Different Mediators charge different rates, usually by the hour. If you cannot afford Mediation, you may be eligible for your costs to be paid by the Legal Services Commission through Public Funding.

Are the services of a Solicitor still needed?

Yes, as it is important that each party does have independent legal advice throughout the Mediation process. The Mediator can provide the parties with general legal information but cannot advise each party on the legal merits of their case or the best course of action open to them.

What happens at the end?

The parties will receive a written summary of the decisions they have made. This is not a legally binding document. It is therefore important that a Solicitor is seen about the need to enter into a legally binding agreement or Court Order particularly where finances have been in issue.

How will the Solicitors costs be met?

Each party will be encouraged to see their own Solicitor. It is not possible for the same Solicitor to advise both parties even where an agreement has been reached. The Solicitor will assess whether the party is entitled to their costs being met by the Legal Services Commission through Public Funding or whether their costs will have to be paid for privately. The Solicitors costs will be free where a party is entitled to Public Funding and a financial agreement has been reached through the Mediation process. However where no financial agreement has been reached such that an application has to be made to



Court to settle these financial issues, all the Public Funding costs of that party may have to be paid back to the Legal Services Commission out of any financial settlement involving capital and/or property. It may therefore be more cost effective to try to reach a financial agreement in Mediation rather than through the court process.

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