

Agreement to Mediate

Thank you for considering mediation. The attached document sets out the terms for your mediation. At the first joint mediation meeting you will be asked to sign this document as an indication of your commitment and of your Agreement to the arrangements set out in the Agreement.

The Agreement sets out important information for you about the way that I will conduct your mediation and the principles of mediation which include that:

- **you come to mediation by choice** (no-one can make you take part in a mediation),
- **mediation is confidential** (except for certain conditions that are set out in the Agreement),
- **it is for you to make decisions about your situation**
- **I will do my best to act in an even-handed way** between you.

I will be happy to answer any questions you may have about the Agreement and ask that you read it through before your first meeting with me.

I look forward to meeting with you.

Mediation Organisation and Code of Practice

I undertake this mediation as a member of Resolution. In doing so I am guided and bound by the Family Mediation Council Code of Practice. You can access a copy of the Code at the website of the Family Mediation Council: www.familymediationcouncil.org.uk

How I work and will conduct your mediation

- 1. My role is to assist you both** to consider the ways of resolving any issues that you may have for making future arrangements for yourselves and any children. I will help you both to explore the options you may have, with a view to your reaching an outcome that you both consider will work for you all. That might not be the same as a solution arrived at by a court. I will tell you if I think that your proposals might fall outside of what a court might approve or order and can give you information about what courses of action are open to you to seek individual advice.
- 2. The choices and decisions are yours.** I will not tell you what you should do or comment about what your individual 'best interests' are or might be. It is possible and often very helpful for you to have advice from a (or your own) solicitor during the course of your mediation so that you are able to make informed decisions and so that each of your solicitors (if you have them) is aware of how the mediation is progressing. I will help you to consider when legal advice would be helpful. Sometimes, it may be helpful for your solicitors to be present for some or all of the mediation meetings (see also 16).
- 3. When working as a mediator, I will provide you with legal and other information,** on an even-handed and general basis to assist you both in working towards your own decisions and particularly to assist you in how the general principles of the law may affect anything you are planning or proposing to do as a result of your discussions together, including how the courts consider what would be within a reasonable range for any outcome/settlement. This is different from providing legal advice (or representation), which I cannot provide to you and I will talk with each and both of you about when it would or might be helpful to have legal (or other) advice to help you.
- 4. Mediation is a voluntary choice** and it is important that each of you enters the mediation process able to discuss matters freely and without risk of threat or harm. Please let me know me if there are any concerns for you about your ability to discuss matters in front of the other person.

Conflict of interests

5. It is very important that I ensure that I do not have any prior knowledge of either of you or your situation through a previous professional involvement of any kind. This is to ensure that you can be confident that I am working independently and impartially. If

there is any other conflict, potential conflict or perceived conflict of interest or a conflict emerges, I will not continue to act as mediator and will discuss with you what your alternative or next steps might be.

Confidentiality and privilege

6. I will treat all matters in the mediation as confidential, except as otherwise agreed, and subject to the terms of this Agreement, (in particular Paragraphs 11 and 12).
7. Information provided by either of you will be shared in the mediation. However, if you wish to keep an address or contact details confidential you may do so – please let me know if this is the case.
8. It is important to know that all your financial information is provided on an "open" basis, which means that it can be used in court. This may be in support of a consent application made by either of you or in contested proceedings. Completing your financial disclosure will assist you and your individual legal adviser and will avoid information having to be provided twice over. The information can be 'portable' for you and you will be able to use it with your solicitor, independent financial adviser or any other professional who you may choose to assist you with your finances. This is important as your individual legal or financial adviser will need to see your disclosed finances before they can advise you on any proposals you have reached or are considering.
9. Conversations, any communication and information about possible options, proposals and the terms of any financial settlement are on a "without prejudice" basis, which means they cannot be referred to in court (except by order of the court or where the law imposes an over-riding obligation of disclosure on a mediator). Also, an 'evidential privilege' will ordinarily apply for all attempts to resolve issues in the mediation. This allows you both to be able to share ideas and proposals that you may have thought about as possible options for resolving things without having to be concerned that that information might latterly be used against you in any way. It also means that it is only if both of you agree to waive that privilege that you might do so and allow a court to know any details of your possible options, proposals and terms of financial settlement discussed in the mediation.

However, the actual discussions in mediation remain confidential between us and I ask that you both agree not to call me (and/or any co- mediator) to give evidence in court, or ask to have any of my notes brought into evidence (excepting as above, where there may be an order of the Court or where the law imposes an over-riding obligation of disclosure on a mediator).

10. If you choose to have advice or support from other professionals either as part of your mediation or alongside it, I can discuss with you how and if any information might be shared between us. I will not contact other professional/s working with you without having your joint Agreement first.
11. These arrangements for confidentiality and privilege **will not apply** if it appears that a child or other person is suffering or likely to suffer significant or serious harm. In this event, I would normally, as far as practicable and appropriate, discuss with you what will happen before taking any action to contact an appropriate agency or authority. I have a responsibility to do so under the FMC Code of Practice and in order to ensure the safety and protection from harm of children and vulnerable adults.
12. Generally, I am required to have regard to and comply with relevant law/s and regulations that relate to any obligation to make a disclosure to the relevant authority/ies. Therefore, arrangements for confidentiality and privilege **will also not apply** if information is shared with me about any intention to commit an unlawful or criminal act or where I suspect that I may be required to make disclosure to the appropriate authority under the Proceeds of Crime Act.

Financial and other information

13. Where and when appropriate, you both agree to provide complete and accurate disclosure of all your financial circumstances, with supporting documents where necessary. I will try to help you to identify what information and documents will help you to be clear about your financial situation, and to consider how best these may be obtained.
14. I do not check or confirm the completeness and accuracy of the information you provide but I can help you to consider the ways in which you may do so. I will ask you to sign and date a statement in an Open Financial Statement confirming that you have made a full disclosure. It is important for you to know that you each have a duty to make full and accurate disclosure of your finances if you are going to be able to make decisions that can be endorsed by the court by way of a Consent Order. It is important that you know that if it should emerge later that full disclosure has not

15. been made, any decisions or Agreements flowing from the proposals reached in mediation could in some cases be set aside and the issues re-opened.

Professional advice and outcomes

15. Any significant decisions arrived at in mediation (including any proposals you make together) will not usually be turned into a binding Agreement (usually a Consent Order) until you have each had the opportunity to seek advice on them from your solicitors

which I will encourage you to do. If during the course of the mediation it would be helpful for me to draw up an Interim Summary or Outcome Statement on a 'without prejudice' and confidential basis to record interim decisions on minor matters or options/proposals discussed, I will do so. Such a document would be privileged and could not be produced in evidence to a court (excepting as stated in 9. above, should the court order and/or the law impose an over-riding obligation of disclosure).

16. Usually, mediation takes place without your solicitors attending. However, they may by Agreement with them and between you both and me, participate in the mediation process in any useful and appropriate way.
17. I will also assist you to consider whether it would be helpful to have assistance from other professionals such as accountants, financial advisers, expert valuers or others, or from family consultants, counsellors or therapists either in or alongside the mediation process.

Summaries and recording of your outcome proposals

- 18.1 If you are discussing future financial arrangements between you as part of your mediation, during the course of the mediation and once financial disclosure is complete I will ordinarily draw up:-
 - **An Open Financial Statement/Summary** of your financial circumstances which will be on the record (and could be used in evidence in a court if need be).
- 18.2 At the end of the mediation (or earlier if appropriate), I will also draw up:
 - A privileged summary called a **Memorandum of Understanding** of your proposals discussed and decided in the mediation, outlining the context in which those proposals have been reached. This is a 'without prejudice' document. These documents are generally provided to enable you both to obtain separate and independent legal and/or other advice before entering into a legally binding Agreement. It is important to have independent advice to assess how your joint proposals may affect your own individual position.

19. Your solicitors (if you have them), will usually undertake the formal recording of any Agreements that may be reached after you have each been able to seek their advice, including for example the drawing up of any separation Agreement or draft court Consent Order. If you do not have a solicitor, I can provide information about specialist family solicitors in the area who will be able to help you.

Concerns and complaints

20. I hope that I will work with you as a mediator in a manner that is satisfactory to you both and that assists you in reaching decisions for the future. I ask that any concern you may

have as to my practice or the service provided by me is referred to me in the first instance. If I am unable to resolve this with you directly or otherwise, my firm/practice/service has a complaints procedure and I will provide a copy of that to you and if it does not prove possible to settle things having used that procedure, you may then refer your complaint to Resolution for consideration in accordance with their complaints procedure. You can see the Resolution complaints policy on their website www.resolution.org.uk. It is also possible to make a complaint to the Legal Ombudsman in certain circumstances, full information is available on their website www.legalombudsman.org.uk.

Data protection – important information for you

21. **Data protection protects the privacy of information about you and how it might be used, shared or stored.**

For the purpose of your mediation, I will keep any information that you provide to me securely and will not share it without your individual permission. However, I ask that, in the event of any complaint that is referred to my membership organisation or to The Legal Ombudsman, that you agree (inclusive of your signatures to this Agreement) that I may release any information or your file to either or both for the purposes of resolving any complaint.

My practice's quality assurance standards also require monitoring of my mediation files. From time to time, my practice consultant and/or the Legal Aid Agency may have sight of files, but access is strictly controlled and on a similar confidential basis. I also ask you to agree that the mediation and any summaries may be reviewed on a strictly confidential basis by my Professional Practice Consultant/Supervisor **and that anonymised details about your case may be used for training purposes.**

I ask that you also accept that this includes me retaining and storing information for as long as is necessary in connection with this Agreement and your mediation. I may

also keep data for research and statistical purposes but on the understanding that if used any information or details about you have been removed so that you cannot be personally identified.

Professional development

- 22.** I operate a learning and professional development practice. From time to time colleagues may work with me for the purposes of their own professional development and/or my own (this would be at no extra cost to you). If you would prefer that your mediation does not involve my colleague/s, then please let me know. I will not involve another person without your joint Agreement.

Ending a mediation process

- 23.** Under the Code of Practice to which I am guided, I will be concerned to ensure that each of you enter into the mediation process able to discuss and plan freely together and without risk of threat or harm. I ask that you inform me if there are concerns for you about your ability to negotiate freely.
- 24.** Either of you may end the mediation at any stage. I may also end the mediation if I do not think it appropriate or helpful to continue. In either such event, I will provide information as to other options available to you.

Mediation fees

- 25.** My fees, which may be paid at the end of each session or as otherwise arranged are usually £125.00 + VAT per person per hour. Fees can be shared between you in any way you may agree. Depending on how you choose and agree to mediate, I will ensure that I have given you an estimate of how much the costs of your mediation will be for each of you. Usually 3 – 5 sessions of 90 minutes each are required (it may be more or less, depending on what you have to deal with). If three 90 minute sessions are required, the costs are split equally between you, then for each of you the cost would be £562.50 + VAT It is also possible to arrange your mediation to take place over a half or full day or in any way that is agreed between us as most appropriate to your needs and situation. However, once you have arranged dates for your mediation sessions, if these are cancelled, a cancellation charge may be required.
- 26.** The hourly rate also applies for any work that may be required between sessions for example in drafting documents or in reviewing financial disclosure but I do not normally charge separately for routine telephone calls or letters. Depending on the degree of complexity, it usually takes around 2 to 3 hours to prepare mediation

