

## Henmans Guides - mediation

### What is family mediation?

Family mediation is a way of resolving those disputes which arise, before, during or after separation or divorce. It is a voluntary and confidential process enabling parties to explain their concerns and needs to each other in the presence of a qualified family mediator. The aim is to reduce hostility and improve chances of long term co-operation. The parties can communicate directly with each other rather than via solicitors or across a court room.

Mediation is not an easy option, you may not have seen or spoken to your ex partner for some time, you may have emotional and financial issues to deal with. You may find you have to work hard to reach a solution that suits you and your family but you will be doing this with the help of a specialist. Sometimes the mediator will suggest a way of solving the problem which you may not have thought of. Mediators will always reality test solutions you are proposing, helping you to reach acceptable and workable solutions. However, the solutions and decisions you reach with the help of a mediator are yours – mediators will never tell either party what to do. Very importantly a mediator will help you to keep the needs of any children at the forefront of any negotiations.

### What does the mediator do?

The mediator's job is to act as an impartial third party and manage the process of the mediation, helping you to exchange information, ideas and feelings constructively. The mediator has no power to impose a decision or settlement on you, the responsibility for all decisions remains with yourselves since you know better than anyone else what is right for your family. The mediator will not advise you about the best option either for your children or your financial affairs, nor can the mediator protect your individual interest. However, the mediator can give you legal information where this is needed to ensure that you reach informed decisions.

The four key principles of the mediation process:

- » It is voluntary
- » The mediator is impartial
- » It is confidential
- » It is flexible

### Will an agreement reached in the mediation process be binding?

The mediation summary is the outcome of successful private negotiations, not part of a court directed process and is therefore not binding unless you want it to be. Solicitors can use the outcome of the mediation to create a document that can be sent to the court for approval. Once approved, the order is binding.

One of the advantages of mediation is that the parties have themselves been directly involved in reaching agreement and therefore have ownership of any decisions reached.

### What is the difference between mediation and collaborative practice?

- » In mediation there is one neutral professional who helps the disputing parties to try to settle their case.
- » The mediator is prohibited from giving you advice. A mediator is neutral and cannot give you help to express your views, feelings or wishes.
- » Any settlement discussed during mediation is only binding once each party has had the opportunity of taking separate legal advice and has transferred the agreement into a separate consent order of the court. The mediator cannot prepare the court document for you to finalise the process.
- » In collaborative practice you each have your own lawyer throughout the process. If either party lacks financial understanding or feels vulnerable, collaborative practice could be preferable to mediation.
- » Provided agreement is reached, your collaborative lawyer can act for you in any necessary court proceedings for other transactions to put the agreement reached in to effect.

Mediators may still have a role in the collaborative process if either party wishes to consult the mediator regarding an issue. This can often be helpful when dealing with issues relating to children so that this aspect can be considered separately to the financial issues.

**If we can help you with any of these issues, please call to speak with Rachael Smethurst, the head of our family team on 01865 781181 or [rachael.smethurst@henmansllp.co.uk](mailto:rachael.smethurst@henmansllp.co.uk).**