

FREETHS

Family Law

Mediation

What is family mediation?

Family mediation is a way of resolving disputes including those 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. Family mediation provides a safe environment, helping to reduce hostility and improving chances of long term co-operation. The parties have the opportunity to 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 difficult, emotional and/or complex 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 family mediator. 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.

How does mediation work?

Family mediators help to identify and clarify the matters you may wish to consider and will help you to identify and collate the documents and information necessary for the mediation process. The mediator will discuss the choices open to you and help you to negotiate with each other to reach decisions that are acceptable to you both. Very importantly a mediator will help you to keep the needs of any children at the forefront of any negotiations and you can always discuss how you can talk to children appropriately about the arrangements you reach.

What can we discuss at mediation?

You are free to discuss any issues you wish. Common topics include future arrangements for your children and

finances; including the family home and other capital. You might find it useful to discuss parenting arrangements or preparing a parenting plan with the help of your mediator. Mediation is usually successful in restoring constructive communication between parents at a time of tension and fear of the future.

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

Who can protect my individual interests?

Each of you can have your own solicitor who will support you, as needed, during the mediation process. Although the solicitors would not be in the meetings with you, the experienced Freeths Family team will be able to advise you on any queries you may have and suggest practical solutions for any issues that may be identified during the meetings. Whilst supporting the mediation process, our priority will be protecting your interests and we can provide as much support as you feel you need.

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 use the financial summary and Memorandum of Agreement prepared within the mediation process to create a document called a Financial Consent Order which has to be signed but can then be sent to the court for approval. Once approved, the order is then binding.

Whilst the agreement you reach in mediation is not binding unless you take steps to convert it into a binding document, it is unusual for couples to spend time and energy on negotiations only to regret the outcome later on. 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?

- Collaborative practice is very different from mediation because in mediation there is one neutral professional who helps the disputing parties to try to settle their case.
- Within the mediation process, the mediator is prohibited from giving either party legal advice. A mediator is neutral and cannot give you help alone, 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 in to 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 or other transactions to put the agreement reached in to effect.

Mediators can 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 important 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 Oakes, the head of our family team on 0845 128 6960 or email rachael.oakes@freeths.co.uk.



Freeths family team

From Left to Right: Judith Speed, Gemma Nicholls-Webber, Rachael Oakes, Tom Burgess, Claire Colbert & Diana Copestake