

Agreement to Mediate

Thank you for considering mediation. This document sets out the terms for your mediation. At our first meeting you will be asked to sign this document as an indication of your commitment to the process and of your agreement to the arrangements set out in this document.

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

1. You come to mediation by choice (no-one can make you take part in a mediation);
2. Mediation is confidential;
3. It is for you to make decisions about your situation; and
4. 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 am an accredited member of the Family Mediation Council and 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 find a copy of the Code at the website of the Family Mediation Council: www.familymediationcouncil.org.uk

How I work and conduct your mediation

1. **My role is to assist you both** in considering 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 so that you can reach 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 might be. It is possible, and often very helpful, for you to have advice from a 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.

3. **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, including how the courts consider what would be within a reasonable range for any outcome or settlement. This is different from providing legal advice, which I will not do, but I will talk with each and both of you about when it would be helpful to have legal (or other) advice.

4. **Mediation is a voluntary process** 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 participant.

Conflict of interest

5. It is very important that I ensure I can work independently and in an even-handed way with each of you. If I identify that there may be a potential conflict of interest because of some prior contact either of you may have had with me or with a practice or service with which I am associated, I will discuss with you the nature of that potential conflict. It is also important that I do not have any direct 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 it is clear that there is an actual conflict, or one emerges during the mediation, 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. Once your mediation begins, information including any correspondence, emails etc., provided by either of you will be

shared. 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.

7. All your financial information is provided on an open basis, which means that it can be used in court, either in support of a consent application, or in contested proceedings. Completing financial disclosure will assist each of you, and will avoid information having to be provided twice. The information can be 'portable', 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.

8. 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, '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 later be used against you. 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.

9. However, the actual discussions in mediation remain confidential between us, and I ask that you both agree not to call me (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 me). To protect the confidentiality of the process, no one may make any form of electronic recording – audio or video – of any mediation session, although you are very welcome to make notes.

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 professionals 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 harm. In this event, I would normally 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. I am required to have regard to and comply with relevant laws and regulations that relate to any obligation to make a disclosure to the relevant authorities. 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. 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 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 in a Consent Order. It is important that you know that, if it should emerge later that full disclosure has not been made, any decisions or agreements flowing from the proposals reached in mediation could be set aside by the Court and the issues reopened.

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 legal advice. 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 the Court without order of the Court or some other legal requirement.

16. 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

17. If you are discussing future financial arrangements 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 of your financial circumstances, which will be on the record and could be used in evidence in a court if needs be.

18. At the end of the mediation (or earlier if appropriate), I will also draw up a privileged summary of your proposals discussed and decided in the mediation called a Memorandum of Understanding, outlining the context in which those proposals have been reached. This is a 'without prejudice' document. It will enable you both to obtain separate and independent legal and 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 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 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 is referred to me in the first instance. If I am unable to resolve this with you directly or otherwise, my service has a complaints procedure and I will provide a copy of that to you. If it does not prove possible to settle things using that procedure, you may refer your complaint to Resolution for consideration in accordance with their complaints procedure, and I will provide you with information on how to do that.

Data protection

21. Data protection protects the privacy of information about you and how it might be used, shared or stored. I will keep any information that you provide to me securely and will not share it without your express permission. All information about you will be destroyed after 5 years.

22. My practice's quality assurance standards also require monitoring of my mediation files. From time to time, my practice consultant might ask for sight of files, but access is strictly controlled and on a confidential basis. I also ask you to agree that the mediation and any summaries may be reviewed on a strictly confidential basis by my practice consultant.

Ending a mediation process

23. 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

24. The fee for Mediation Information and Assessment Meetings (MIAMs) is £95 per client. The fee for a joint mediation session is £110 per person, per hour. Fees can be shared between you in any way you may agree, but absent any agreement to the contrary, each participant will be expected to meet their own share of the costs and this Agreement constitutes a contract to that effect.

25. Depending on how you choose and agree to mediate, I can give you an estimate of how much the costs of your mediation will be for each of you. Usually 2 – 5 sessions are required, but it may be more or less, depending on the issues to be addressed and, of course, the approach that each of you takes. It is also possible to arrange your mediation to take place over a half day

or in longer sessions if you believe that it is the most appropriate approach for your needs and situation.

26. Once you have a date for a mediation sessions, cancelling with less than 2 working days' notice will attract a late cancellation fee of half the session fee, and for cancellations with less than 1 working day's notice, the cancellation charge is the full fee. A client who, without notice, fails to attend a joint session will be liable for the fees of both parties.

27. The hourly rate for any work that may be required between sessions (for example, in drafting documents or reviewing financial disclosure) is £75 per client, but I do not normally charge for routine telephone calls, emails or letters. Depending on the degree of complexity, it usually takes around 2 hours to prepare mediation outcome documents, and if I think that it may require more time to do so, I will discuss this with you first.

28. If your issues are particularly complicated or you require interim documentation for consultation with your personal advisers, I will always discuss with you beforehand any likely additional cost. I will provide you with cost estimates wherever practicable to assist your planning of likely costs.

Mutual commitment

29. It is important to me that you receive a service which you can value. I will do my best to help you both. I ask you both to give your commitment to the mediation process and to co-operate as fully as possible in looking for workable solutions.

Signed:

Signed:

Name:

Name:

Date:

Date:

Signed:

Family mediator

Date: