

**BASIC PRINCIPLES AND TERMS OF MEDIATION**

**‘Agreement to Mediate’**

*The following are terms on which this Mediation is undertaken. You will be asked to sign this document as your commitment to the process and your agreement to the terms set out below.*

Thank you for considering mediation. This document sets out the terms for your mediation. May I ask that you read it through carefully ensuring you understand if fully, before signing and returning it to me.

I ask you to sign this document as an indication of your commitment to and your acceptance of 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 and to help you both reach an
* outcome that works for all those involved.

It is important that your mediation is tailored to suit your particular circumstances and set out in the Agreement will be any arrangements we have agreed together which may include arrangements to link with another family resolution service (such as getting an early evaluation of your legal or financial circumstances, support as you plan together for the future or getting a binding decision).

It is very important that you are clear about arrangements and agree (by signing this document) that I have explained and that you have fully understood the arrangements in this Agreement.

I am looking forward to working 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 appreciate that you would prefer to be able to resolve matters together, I will always look to help you both to find ways of reaching an outcome without having to use Court proceedings, other than to finalise your agreement as a Consent Order. There are a number of ways in which we can work together with other professionals or services to help you reach decisions as part of your mediation. Whatever your needs, I will do my best to help you reach an outcome.

1. 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.

1. 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 individualised legal advice (or representation), which, although I am a Solicitor, I cannot provide to you as I must remain independent and impartial at all times. I will talk with each and both of you about when it would or might be helpful to have independent legal (or other) advice to help you.
2. Mediation is a voluntary it is a 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**

1. It is very important that I ensure I can work independently and in an even-handed way with each and both 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 a practice or service with which I am associated, I will discuss with you the nature of that potential conflict.
2. If we decide together that the Mediation can go ahead, I will ask you to provide me with your consent in writing that you agree to my acting as your mediator.
3. 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**

1. 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 14 and 15).
2. No Mediation session, meeting conversation or other communication between the Mediator, parties involved professionally or otherwise in the process, shall be recorded in any manner, save with the written consent of all participants.
3. Mediation meetings may also be conducted with each of you in separate rooms (commonly referred to as ‘shuttle’ Mediation). If your Mediation sessions are conducted on this basis, then my time may be divided unequally between you dependent upon the information each of you has to disclose to me. I will still disclose the information you provide to me, to the other participant in the Mediation.
4. Information, written or oral, which either of you may provide to me, outside of your MIAM will not ordinarily be maintained confidentially as between yourselves, except any address or telephone number either of you ask me to keep private, or otherwise as you may both agree with me.
5. If you wish to maintain a confidential address you are responsible for checking all disclosure has this information deleted before it is provided to us in mediation.
6. 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.
7. Conversations, any communication and information about possible options, proposals and the terms of any financial settlement are done soon 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.

The actual discussions in Mediation remain confidential between us and Courts will normally uphold the confidentiality of the Mediation process unless there is an over-riding right or obligation of disclosure in law. As this is generally the case, I ask that you both agree not to call me (and/or any co‑mediator, or any other professional working as part of your mediation) 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). This does not affect your rights in relation to data protection.

1. 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 with that particular professional. I will not contact other professional/s working with you without having your joint agreement first.
2. 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.
3. These provisions for confidentiality and privilege will also not apply if information is communicated to me with the intention of furthering a criminal purpose. I am required by law to comply with the Proceeds of Crime Act 2002 (“the Act”) and Money Laundering Regulations 2003 and all other regulations made under the Act (“the regulations”). The Act may cover your partner’s conduct, which, although lawful outside of the UK, may be or would have been unlawful if committed in the UK.
4. In essence, the Regulations require me to: -
5. carry out proper client identification procedures (see below) and to keep the information about identification up to date, and
6. satisfy myself that any settlement proposals are for a proper lawful purpose and
7. any monies, which you send to me, are being paid for a proper lawful purpose.

Furthermore, if I become aware in the course of acting for you as a mediator, or have grounds to suspect in the course of so acting that you have engaged or may engage in any criminal conduct, I am obliged to report that knowledge or suspicion to the Serious Organised Crime Agency ( SOCA) and by entering into this agreement, you authorise me to make such reports to NCIS as are appropriate under the Regulations and the Act and accept that I reserve the right to recover from you the costs of making that report in addition to the fees for Mediation specified below. The definition of criminal conduct under the Act is intended to cover all forms of criminal conduct including but not limited to drug dealing, money laundering, fraudulently obtaining state benefits and/or evading tax by failing to disclose case or other income to the Inland Revenue.

1. In order to comply with the obligations as to client identification, I should be grateful if each of you could supply us with a photocopy of your passport (photograph page) or driving licence, together with an original utility or credit card bill showing your current address which is not less than three months old.

**Financial and other information**

1. Where and when appropriate, you both agree to provide appropriate 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.
2. 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 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.
3. You are both responsible, individually for ensuring that copies of all relevant information are provided. Electronic copies must be in PDF format when sent to us.
4. If copies of documents are not provided- the administration charge for copying will be levied at £50 per hour or part thereof.
5. I do not verify the completeness and accuracy of the information you provide but if required, I can help you to consider the ways in which you may make such enquiries or obtain such verification. I will ask you to sign and date a statement in the Open Financial Statement confirming that you have made a full disclosure. If it should emerge that full disclosure has not been made, any agreement flowing from the proposals reached in Mediation based on materially incomplete information, could in some cases, be set aside and the issues re-opened.

**Professional advice and Outcomes**

1. Any significant decisions arrived at in Mediation (including any settlement proposals) will not ordinarily be turned into a binding agreement until you have each had the opportunity to seek advice on them from your separate legal advisors. However, decisions on matters that are not materially significant to your respective positions or to the substantive outcome, may be entered into as binding agreements without legal advice. If during the course of the Mediation it would be helpful for me to draw up an Interim Summary on a without prejudice basis to record interim decisions on minor matters or options/proposals discussed, I would do so. Such a document would be privileged and could not be produced in evidence at court (excepting as stated in 12. above, should the Court Order and/or the law impose an over-riding obligation of disclosure).

**Links with other services to help you in reaching a binding outcome**

1. It is important to me that you are able to reach an outcome that will work for you both for the future. I work with other professionals who are able to provide a range of services designed to assist you to do so, either as part of your mediation or following it.
2. Mediation meetings are commonly conducted without lawyers present. However, your legal advisers may, by agreement between you both and me, participate in the Mediation process in any useful and appropriate way. This is normally achieved by your legal representative being sent updating information after most sessions and in signing this agreement you are authorising the forwarding of such information to them. This is the Mediation Summary. The Mediation summary is a general overview of the session. Its purpose is to aid reflection and help you focus on aspects you may wish to explore further or seek advice upon what may then form part of your Agenda and will be dealt with at the beginning of any follow on sessions.
3. 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, by helping you to consider whether it would be helpful to have an early neutral evaluation (usually by a trained and experienced barrister), providing you with an indication of the range of possible or likely outcomes in respect of one or more issues, or assistance from family consultants, counsellors or therapists and parenting coordinators, either in, alongside or following your Mediation process.

**Agreement to consider Arbitration**

1. We have agreed together that we will keep arbitration under review should you wish to use it alongside your mediation and especially if it proves to be a helpful means of resolving any issues arising from your discussions and which you feel unable to reach a consensus on without help. Unlike any decisions reached by you in your Mediation together, any decision made by an Arbitrator would be binding on you both. Should you decide to appoint an Arbitrator, I will agree with you both the information to be prepared and provided to your Arbitrator of choice including any statement regarding those issues you have identified as requiring the decision of your Arbitrator.

I can also remain available to you after you have received any decision/s from your Arbitrator to assist you to put into place any arrangements as a result of a binding decision.

Summaries and \recording of Agreements

1. During the course of the mediation, usually 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).

At the end of the Mediation (or earlier if appropriate), I will also ordinarily draw up:

* A privileged summary called a Memorandum of Understanding of your mutually acceptable proposals for the settlement of matters discussed in the mediation, outlining the context in which those proposals have been reached. This is a without prejudice document.

In the event of this Mediation being conducted under the Legal Services Commission’s publicly funded scheme, I may instead draw up an Outcome Statement confirming the terms of the outcome of the Mediation.

These documents are generally provided to enable you both to obtain separation and independent legal and/or other advice before entering into a legally binding agreement. You will need such independent advice to assess how the proposed settlement terms may affect your own individual position.

1. Your solicitors will usually undertake the formal recording of any agreements that may be reached, after you have each been able to seek their advice.
2. In order to assist you and your Solicitor I will often provide a summary of a Mediation to enable you to obtain your own Legal Advice. It is important for you to have independent legal advice to assess how you’re the proposals may impact on your individual position. In signing the Agreement, you are authorising me to send a duplicate of any such documents, to your Solicitor to ensure that they have the necessary information to advise you.

**REMOTE MEDIATION**

**Terms for Mediators**

1. We will not audio or video record any mediation session, and nor will you. We will check with you that neither you, nor anyone on your behalf, will do so.
2. We may terminate online video mediation if there is inadequate quality of connection or a breach of this agreement may have occurred.
3. We may suspend the mediation if there is any remote interruption and will restart the online session once satisfied that any interruption has been resolved and that it remains appropriate to continue following such interruption.

**Terms for Participants**

1. Only the people who have signed this agreement to mediate online may be present in the same rooms used by the participants during any online video mediation session. You will confirm that you are not able to be overheard from your location.
2. You agree to do all you can to ensure that you are not interrupted during online video Mediation by anyone else such as children, relatives, pets, deliveries.
3. You agree to turn off or put to silent any phones, tablets or computers, and disable any alerts announcements or notifications of texts, emails, tweets or other social media activity, and close all or any other open application.
4. You agree to there being no live or deferred video or audio relay of the online mediation to third participants.
5. You agree not to video or audio record any online session.
6. You assign all intellectual property rights in the online video Mediation sessions to the mediator.
7. If you create any video or audio recording of the online Mediation, inadvertently or otherwise, you undertake to destroy any such recording as soon as you become aware of its existence.
8. Online video family Mediation is a without prejudice process to seek a negotiated settlement.

1. The Mediator will only communicate with the Mediation participants during pre-arranged remote/ online video meetings to ensure that our Mediators are able to remain independent, impartial and transparent.
2. You will not attempt to contact the Mediator directly utilising remote/ online video methods without a prearranged meeting.

**Concerns and complaints**

1. I hope that I will work with you as a Mediator in a manner fully satisfactory to you both. Any concern you may have as to my practice or the service provided by me should be referred to me in the first instance or Alan Grant of Elliot Mather Solicitors, St Mary’s Court, St Mary’s Gate, Chesterfield S41 7TD email: Alan.Grant@elliotmather.co.uk or telephone: 01246 231288. If I am unable to resolve this with you directly or otherwise, any complaint you have will be considered through my firm’s complaints procedure \*\*\*\*\*\*\* which can be accessed here INSERT HERE\*\*\*\*\*\*\*, and thereafter if it is still unresolved, you may refer to the Family Mediation Standards Board who will refer you to their terms of their Complaints process and rules.

1. In certain circumstances, it may be possible for you to refer your complaint to another external complaints handler such as the Legal Ombudsman ([www.legalombudsman.org.uk)](http://www.legalombudsman.org.uk)) or the Solicitors Regulation Authority (SRA) ([www.sra.org.uk](http://www.sra.org.uk)). Further information is available on the website links.

**Data Protection and Privacy**

1. Data protection protects the privacy of information about you and how it might be used, shared or stored. Our Privacy Notice/Policy sets out our commitment and the arrangements for the collection, use, storage and destruction of any information provided by you. 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 the Family Mediation Standards Board or to any other regulator or relevant complaints handling organisation, that you agree that I may release any information or your file to either or both for the purposes of resolving any complaint. By signing this document you are consenting to this.

My practice’s quality assurance standards also require monitoring of my mediation files. From time to time, my Professional Practice Consultant/ Supervisor 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.

I will only retain information about you for as long as is necessary in relation to your Mediation. This means that any notes or personal information will be securely destroyed after 6years. 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.

Ensuring that your personal data is managed professionally and lawfully is important. If you have any concerns about any aspect of Data Protection and your own personal data, I ask that you raise it with me so that I can provide you with the information you need.

**Professional Development**

1. 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 the Mediation process**

1. Under the Code of Practice, 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.
2. Either of you may end the Mediation at any stage.
3. I may also end the mediation if I do not think it appropriate or helpful to continue.
4. In either such event, I will provide information as to other options and approaches available to you.

**Mediation fees**

1. If you have been assessed as qualifying for free publically funded Mediation, there will be no cost to you, unless you cease to qualify. You have an obligation to the Legal Aid Agency to inform me of any change in your financial circumstances (income and/or capital resources).

**PRIVATE MEDIATION FEES (FOR THOSE WHO ARE NOT ELIGIBLE FOR LEGAL AID)**

1. My fees are payable in full, in advance of each session unless as otherwise specified.
2. Documentation will not be released to a party whilst private fees remain outstanding.
3. Fees charged are at a rate of £120.00 per person, per hour plus VAT (£144.00 VAT Inclusive).
4. The hourly rate applies to all time which I spend engaged in the Mediation, including time spent in joint or shuttle Mediation, time incurred preparing any sessional documents and the Summary of Record of Session if in excess of the time allotted for preparation.
5. Shuttle mediation is charged for the total time spent during the session, irrespective of how allocated between you individually. A mediation session starts and ends when the Mediator confirms the start and conclusion.

***For Example***

***Example 1***

*1 hour and half session £180.00*

*Plus 30 minutes preparation of Sessional Record £ 60.00*

*VAT at 20% £ 48.00*

*Total £288.00*

***Example 2***

*2 hour session £240.00*

*Plus 30 minutes preparation of Sessional Record £60.00*

*VAT at 20% £60.00*

*Total £360.00*

4 to 5 sessions are commonly required, but more or less may be needed, depending upon the issues which are to be discussed.

**Administration Charges**

1. Additional Administration charges may be incurred for example, copying/scanning/pagination of financial disclosure/documents, will be charged at the rate of £50.00 per hour or part therefore (£5.00 per 6 minutes).
2. I do not normally charge separately for routine telephone calls or letters, however, I may charge for sending letters/ making calls or for other time required to progress the Mediation process.

**Additional time or preparation**

1. Additional time or preparation incurred for drafting documents or in reviewing financial disclosure may be charged depending on the degree of complexity. The hourly rate applicable will be £120.00 per person per hour, plus VAT (£144 inc VAT per hour) will apply. The likely need for additional time and incursion of costs will be discussed with you.

**Co –Mediation (more than one Mediator)**

1. Co Mediation will be charged at the rate of £120.00 per person per hour per Mediator plus VAT.

*For Example*

*1 hour session x2 Mediators £240.00*

*Plus 30 minutes preparation of Sessional Record £60.00*

*VAT at 20% £60.00*

*Total £360.00*

**Payment on Account**

1. I may ask for an amount on account of costs at the start of a Mediation case of between £750 and £1000 depending on the issues involved.

A cancellation fee will be payable if either party cancels prior to the session.

1. One working days notice or less – full sessional fee (limited to 1 ½ hour) plus VAT

One and a half working days’ notice – ¼ sessional fee (limited to 1 ½ hour) plus VAT.

Two working days notice – no fee payable.

**Mutual Commitment**

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

Dated the day of 202

Signed …………………………Family Mediator Signed …………………………Co-Mediator

Signed …………………………Mediation Participant Print Name.......................................

I understand the Mediation may be conducted whereby we are in separate rooms. I understand that this does not affect the Mediator’s impartiality in any way

Signed ………………………………. Date:

If you are being sent this document electronically and you are unable to signed this document electronically, please copy, paste and send to us, by email, the following text (including your name) :-

I **( insert name )** can confirm that I have received, read and understood the Agreement to Mediate. I can confirm that I commit to and understand the terms of this document. I am unable to print this document or provide an electronic signature. I can confirm that I intend for this email to be my electronic signature acceptance of the Agreement to Mediate.

Print Name……………………………… Date: