



# MEDIATION

**MEDIATION INVOLVES A COUPLE MEETING TOGETHER WITH A NEUTRAL MEDIATOR WHO WILL HELP GUIDE THEM TOWARDS REACHING AN AGREEMENT, THROUGH A SERIES OF FACE TO FACE MEETINGS**

## THE PROCESS

The mediator's role is to guide the couple to facilitate an agreement. Any agreement reached is subject to having an opportunity to take legal advice. A mediator cannot give legal advice, but he or she can provide information.

Where both parties are legally represented, they can bring their solicitors to some of the mediation sessions. This can be particularly useful where time is of the essence or the issues are complex, as legal advice can be provided during the meeting, and if an agreement is reached this can be signed off immediately.

Non-legal professionals are also often brought in, such as financial advisors and family therapists. This enables couples to reach an outcome which addresses not only the legal aspects but also other issues, such as tax consequences or emotional aspects.

The number of sessions will depend on your personal circumstances. Sometimes a couple need three to five mediation sessions to reach an outcome. Where time was of the essence, we have conducted a mediation over a whole day.

Mediation can be used to complement any other process and it is never too late to mediate. Mediation is often successfully used to deal with issues following a court order being made, for example the division of household contents or the practicalities around selling a property. It can also begin during court proceedings.

## SUITABLE CIRCUMSTANCES

You both need to go into the process with an open mind, listen to your ex and be prepared to compromise. The mediator will help you to work through all the options to reach a creative solution.

Some situations in which mediation may be considered especially suitable:

- ▶ where the couple wish to create an agreement on their own terms, as opposed to a third party imposing a decision, and who are relatively amicable with one another

However, an experienced mediator will be able to mediate even high conflict cases as a separating couple will often share a common goal that a mediator can help them work towards, e.g. wanting what is best for the children or wishing to avoid litigation. Usually a couple need to feel comfortable being in the same room as one another, but this is not essential. 'Shuttle' mediations are possible – where clients are in separate rooms and the mediator 'shuttles' between the rooms.

- ▶ to deal with issues outside of the court's remit, for example, working out the detail of child arrangements e.g. introducing the children to new partners or parenting styles
- ▶ where there is a significant degree of trust, for example each person must be confident that the other will fully disclose their finances.

## BENEFITS



**'Confidential and without prejudice'** – this means that ideas/possible compromises discussed cannot later be used against either party if there are future court proceedings, so negotiations are more open.



**Cost-effective** – when successful, the costs can be much lower than alternative processes. Each party ought to have independent legal advice alongside the process, which will incur additional costs; however not every couple choose to do so.



**Work at your pace** – the separating couple set the pace of the mediation process and the agenda.



**On your terms** – the separating couple play a direct role in reaching an outcome, rather than leaving it to a judge or feeling that solicitors have taken over. This often means the agreement sticks in the long-term, both parties feel more positive about the future, and are able to remain relatively amicable.



**Ongoing dialogue** – where children are involved mediation can be used on an on-going basis to deal with co-parenting issues e.g. in relation to holidays or choice of schools.



**Improved communication** – it can help a separating couple to communicate more effectively with one another in the long run, to enable effective co-parenting.



**Children's voice** – some mediators are accredited to speak directly with children where they are old enough and both parents agree. This ensures that the children's voices are heard, which can be very powerful in helping clients to reach a resolution which works for the whole family.

## OUR INSIGHT

If you go into mediation with an open mind, a willingness to listen to what your ex has to say and a commitment to find a resolution which works for the whole family, you will have every chance of reaching a successful outcome.

Where mediation is successful it is an empowering and cost-effective process.

## CASE STUDY

A couple with young children were in the process of an acrimonious divorce through the courts. With their children's best interests in mind, they were keen to keep the children matters away from court by attempting mediation.

We acted as their mediator and over a series of meetings, guided the couple through an array of children issues, from how they should spend time between their parents' houses to how the children's nannies and holidays should be funded.

Over the course of the process the couple began to communicate more constructively and focus on the children's best interests rather than their own individual objectives. They were able to come to an agreement on the details of how best to co-parent going forward.

**At Forsters we can act as the mediator or as a solicitor supporting you in mediation. We can facilitate sessions of mediation between couples; or act for one party to the divorce or separation as their solicitor, helping you through the process, sense-checking ideas discussed in mediation and drafting/implementing agreements reached.**