

# Family Mediation

Contributed by Michael

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## What is Family Mediation?

I am a member of the UK umbrella organisation for Family Mediators members of which have to agree to its Code of Practice for Family Mediators. As this explains what Family Mediation is I thought it would be useful to reproduce most of it here:

" Family mediation is a process in which an impartial third person assists those involved in family breakdown, and in particular, separating or divorcing couples, to communicate better with one another and reach their own agreed and informed decisions concerning some, or all, of the issues relating to separation, divorce, children, finance or property "

## 1 AIMS AND OBJECTIVES

- 1.1 Mediation aims to assist participants to reach the decisions which they consider appropriate to their own particular circumstances.
- 1.2 Mediation also aims to assist participants to communicate with one another now and in the future and to reduce the scope or intensity of dispute and conflict within the family.
- 1.3 Mediation should have regard to the principles that: where a marriage or relationship has irretrievably broken down and is being brought to an end, it should be brought to an end in a way which minimises distress to the participants and any children, promotes as good a relationship between the participants and any children as possible, removes or diminishes any risk of abuse to any of the participants or children from the other participants, and avoids unnecessary cost to the participants.

## 2 SCOPE OF MEDIATION

- 2.1 Mediation may cover all or any of the following matters:
- 2.2 Options for maintaining or ending the marital relationship between the adult participants and the consequences of doing so;
- 2.3 With whom the children are to live; what contact they are to have with each parent and any other person such as

grandparents; and any other aspect of parental responsibility, such as schooling and holidays

2.4 What is to happen to the family home and any other property or assets of the adult participants and whether any maintenance is paid by one to the other, either for that adult or for the children;

2.5 How any adjustments to these arrangements are to be decided upon in the future.

2.6 Participants and the mediator may agree that mediation will cover any other matters which it would be helpful to resolve in connection with any breakdown in relationships between the participants and which the mediator considers suitable for mediation.

### 3 GENERAL PRINCIPLES

#### 3.1 Voluntary Participation

Participation in mediation is always voluntary. Any participant or mediator is free to withdraw at any time. If a mediator believes that any participant is unable or unwilling to participate freely and fully in the process, the mediator may raise the issue with the participants and may suspend or terminate mediation. The mediator may suggest that the participants obtain such other professional services as are appropriate.

#### 3.2 Neutrality

Mediators must at all times remain neutral as to the outcome of mediation. They must not seek to move the participants towards an outcome which the mediator prefers, whether by attempting to predict the outcome of court proceedings or otherwise. They may, however, inform participants of possible solutions, their legal and other implications, and help participants to explore these.

#### 3.3 Impartiality

3.3.1 Mediators must at all times remain impartial as between the participants. They must conduct the process in a fair and even-handed way.

3.3.2 Mediators must seek to prevent manipulative, threatening or intimidating behaviour by any participant. Mediators must conduct the process in such a way as to redress, as far as possible, any imbalance in power between the participants. If such behaviour or any other imbalance seems likely to render mediation unfair or ineffective, the mediator must take appropriate steps to try to prevent this, terminating mediation as necessary.

#### 3.4 Independence and Conflicts of Interest

3.4.1 Mediators must not have any personal interest in the outcome of the mediation.

3.4.2 Mediators must not mediate in any case in which they have acquired or may acquire relevant information in any private or other professional capacity.

3.4.3 Mediators who have acquired information in the capacity of mediator in any particular case must not act for any participant in any other professional capacity in relation to the subject matter of the mediation.

3.4.4 Mediators must distinguish their roles as mediators from any other professional role in which they may act and must make sure that they make this clear to the parties.

### 3.5 Confidentiality

3.5.1 Subject to paragraphs 3.5.3 and 3.6.3 below, mediators must not disclose any information about, or obtained in the course of, a mediation to anyone, including a court welfare officer or a court, without the express consent of each participant or an order of the court.

3.5.2 Mediators must not discuss or correspond with any participant's legal adviser without the express consent of each participant. Nothing must be said or written to the legal adviser of one, which is not also said or written to the legal adviser of the other(s).

3.5.3 Where a mediator suspects that a child is in danger of significant harm, or it appears necessary so that a specific allegation that a child has suffered significant harm may be properly investigated, mediators must ensure that the local Social Services (England and Wales) or Social Work Department (Scotland) is notified.

### 3.6 Privilege and Legal Proceedings

3.6.1 Subject to paragraphs 3.6.2 and 3.6.3 below, all discussions and negotiations in mediation must be conducted on a legally privileged basis. Participants must agree that discussions and negotiations in mediation are not to be referred to in any legal proceedings, and that the mediator cannot be required to give evidence or produce any notes or recordings made in the course of the mediation, unless all participants agree to waive the privilege or the law imposes an overriding obligation upon the mediator.

3.6.2 Participants must, however, agree that any factual disclosure made with a view to resolving any issue relating to their property or finances may be disclosed in legal proceedings.

3.6.3 In Scotland, admissibility as to what occurred during family mediation is protected by the Civil Evidence (Family Mediation) (Scotland) Act 1995 in any subsequent civil proceedings. Mediators must be aware of the exceptions to the general rules of inadmissibility, including where there are civil or criminal proceedings related to the care or protection of a child.

### 3.7 Welfare of Children

3.7.1 Mediators have a special concern for the welfare of all children of the family. They must encourage participants to focus upon the needs of the children as well as upon their own and must explore the situation from the child's point of view.

3.7.2 Mediators must encourage the participants to consider their children's own wishes and feelings. Where appropriate, they may discuss with the participants whether and to what extent it is proper to involve the children themselves in the mediation process in order to consult them about their wishes and feelings.

3.7.3 If, in a particular case, the mediator and participants agree that it is appropriate to consult any child directly in mediation, the mediator should be trained for that purpose, must obtain the child's consent and must provide appropriate facilities.

3.7.4 Where it appears to a mediator that any child is suffering or likely to suffer significant harm, the mediator must advise participants to seek help from the appropriate agency. The mediator must also advise participants that whether or not they seek that help, the mediator will be obliged to report the matter in accordance with paragraph 3.5.3.

3.7.5 Where it appears to a mediator that the participants are acting or proposing to act in a manner likely to be seriously detrimental to the welfare of any child of the family, the mediator may withdraw from mediation. The reason for doing so must be outlined in any summary which may be sent to the participants' legal advisers, who may be recommended that it would be appropriate for a Court Welfare Officer's (or other independent) report to be obtained.

### 3.8 Abuse within the family

3.8.1 In all cases, mediators must seek to discover through a screening procedure whether or not there is fear of abuse or any other harm and whether or not it is alleged that any participant has been or is likely to be abusive towards another. Where abuse is alleged or suspected mediators must discuss whether any participant wishes to take part in mediation and information about available support services should be provided.

3.8.2 Where mediation does take place, mediators must uphold throughout the principles of voluntariness of participation, fairness and safety and must conduct the process in accordance with this section. In addition, steps must be taken to ensure the safety of all participants on arrival and departure.

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