

# THE MEDIATION PROCESS – FACT SHEET

- **First call** - mediation usually starts with the mediator having a short initial call with each of the parties. The purpose of this call is to talk to the parties about the mediation process and consider separately with them whether there are any issues which would mean that mediation is not appropriate.
- **Individual meetings** - following the initial calls, the mediator will have a meeting with each party separately (this is often called a Mediation Information Assessment Meeting (MIAM)) to discuss the background briefly and explain a little more about the mediation process. The initial meetings are confidential and so the content will not be discussed with the other party.
- **First joint meeting** - following the individual meetings, if the parties want to proceed with mediation, they will arrange a joint session with the mediator. The first meeting is used to go through the Agreement to Mediate form, deal with any interim or pressing issues and to set the agenda for future sessions.
- **Further joint meetings** - the focus of future meetings will depend on the issues the parties want to cover but this will usually involve discussion around the arrangements for the children followed by a review of the parties' financial disclosure and an exploration of possible financial settlement.

In the event that an agreement is reached, the mediator can record the relevant information and decisions in a number of documents called:

- **Open Financial Statement** – this records the parties' financial information as set out in the financial disclosure provided. This is an open rather than without prejudice document.
- **Memorandum of Understanding** – this records the discussions in mediation and the overall decisions reached. This is a without prejudice document and cannot be disclosed in any court proceedings.
- **Parenting Plan** – this records the arrangements for the children and any other matters parents want to document in respect of the day to day care of their children.

Any agreement reached in mediation is not legally binding until the parties have had independent legal advice on it. Once this has taken place, one of the party's lawyers will usually turn the Memorandum of Understanding into an order which can be lodged at court for approval by a judge.

# The benefits of family mediation

There are a number of benefits to the mediation process, some of which are set out below. Mediation is not right for everyone and the mediator and a party's own solicitor will consider any issues which may make mediation difficult or unsuitable. The benefits include:

## Flexibility

- The mediator will encourage the parties to set the agenda and confirm what they want to cover in mediation. You can address matters important to your own family and those which may not otherwise be relevant in a court process.
- Mediation sessions can be arranged for a time and place convenient to you and the mediator. You choose the length of time between sessions and manage its pace. You won't have to wait months for the next date as can happen in a court process, and equally you can ensure you each have enough time to collate financial disclosure and reflect on suggestions made.
- Decisions reached in mediation can be tailored to suit your family. This is in contrast to court imposed decisions where the judge may not have the power to impose similar arrangements or has not appreciated the subtlety of why a particular suggestion may be better.

**Communication** - a mediator's role is to facilitate a dialogue between the parties and encourage suggestions about the outcome. When a decision is made together in mediation, it is more likely that parties will be content with and stick to it. Mediation is designed to promote communication and an on-going co-parenting relationship. This is particularly important for parents who are going to have a relationship for the rest of their children's lives.

**Privacy** - mediation is a private and confidential process which means that parties are encouraged to be open about options they want to consider. This usually results in parties making suggestions they would be reluctant to make in court proceedings. For high profile clients, it is also a way of keeping details of your relationship out of the public eye.

**Costs and speed** - if successful, mediation can be cheaper and quicker than court proceedings. By setting the agenda and choosing the number of sessions you have, parties have much more control over the process than when they are part of court proceedings. The mediator will also manage the process and ensure that mediation does not continue if it is unproductive or making matters worse.