



myerson

Myerson **Family**

Our guide to mediation

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Mediation

What is family mediation?

Mediation is private, non-confrontational and out of court dispute resolution process where participants attend joint sessions arranged by a family mediator to discuss issues stemming from a relationship breakdown including:-

- Practical arrangements for separation
- Arrangements surrounding the children
- Financial settlement proposals

Conversations in mediation are private and confidential, and proposals discussed in mediation are without prejudice, which means that they cannot be referred to outside the mediation process in solicitors' correspondence, or discussions and within the court process. This promotes full participation in option solving by the participants, and provides a safe space for discussions without pressure. Neither participant is under any obligation or pressure to agree to anything they feel uncomfortable with within the mediation session. The mediator will always propose to the participants that legal advice and financial advice can be sought alongside the mediation process.

Any financial documents produced within the mediation process can be disclosed to your professional legal and financial advisers, and can be referred to within the court process. Financial disclosure needs to be undertaken transparently, so that each participant can come to an agreement with the full knowledge of their ex-partner's financial affairs. The duty of full and frank disclosure is the same within the mediation process as it is within the court process.



At Myerson, we offer a bespoke mediation service to assist with disputes over finances, children or other family issues. Our experienced accredited family mediator helps you through each step, and provides fair and practical outcomes which work well for both participants.

What is a MIAM?

A MIAM is an assessment intake meeting, known as a “mediation information and assessment meeting”, or MIAM for short, which is undertaken by an accredited mediator. The purpose of the MIAM is to assess whether the participants are suitable for mediation. In some circumstances where there has been domestic abuse, there is an imbalance of power which may be difficult for the mediator to manage, or where one or both of the parties is unable to shift from their opening negotiating position, mediation may not be suitable. In which case the mediator will provide the participants with a MIAM certificate to enable them to issue proceedings. A MIAM certificate lasts for 16 weeks following which the participant must return for another MIAM certificate. Participants are not able to issue court proceedings in respect of private children proceedings or finances without first receiving a MIAM certificate (unless special circumstances exist).

Conversations between the mediator and the participant are private and confidential and will not be shared in later joint sessions or with the other participant, unless consent is provided.

If the mediator considers it appropriate, and both participants are willing, the mediator will then arrange for a mutually convenient joint mediation session to take place with remotely via Teams or in person at our offices.



What are the benefits of mediation?

The process is more cost-effective and quicker than the court process.

It promotes and supports better communication between separating couples.

Conversations in mediation are private and confidential to encourage better participation and to allow the participants to freely engage in option solving and putting forward proposals. These proposals cannot be relied upon outside the mediation process, either in solicitors' correspondence or discussions or within the court process. Full and frank financial disclosure is required to the same extent as in the court process, to ensure that each participant has a full knowledge of the other participant's financial circumstances to be able to make the right decision.

Participants have more control over the mediation process and can reach decisions which feel right for them and for their family, rather than having a decision imposed upon them by a third-party judge.

Meetings are fixed fee so that it is easier to budget.

Experts such as pensions advisers, accountants, independent financial advisers, therapists, independent social workers can be invited to mediation to provide information to both parties on areas they are unsure of, to assist progress of the mediation process.



What issues can be resolved in mediation?

Children issues such as:-

- Where a child lives.
- How much time the child spends with each parent.
- How the child spends holiday time and special days such as parental birthdays, child's birthday, Christmas and Easter.
- Whether there are different arrangements the children in the holidays as in term time.
- Payment of school fees and nursery fees.
- Whether the child is allowed to leave the country to go on holiday with either parent.
- Discussions as to whether a parent should take the child to live in another part of the country or to live overseas.

To discuss finances after full and frank financial disclosure such as:

- Options for settlement alongside advice from pension experts, independent financial advisers and accountants.
- What happens to the Home? Should there be a sale, transfer or delayed sale/transfer.
- What happens to the contents of the Home?
- How much of a lump sum should be paid in return for giving up an interest in the Home?
- Should spousal maintenance be paid, and if so, how much and for how long?
- How much child maintenance should be payable
- Should there be a pension sharing order, and if so, how much?
- What happens to the life policies?
- Who is liable for payments of our debts?
- What happens to school fees?



What is shuttle mediation?

Shuttle mediation is where the mediator separates the participants into separate rooms and shuttles between rooms to obtain the participants' opinions/views on issues, and relays these to the other participant in a separate room. Shuttle mediation can be helpful when there is a high conflict or to reduce stress and tension and is a good option, compared to terminating the mediation session.

What is hybrid mediation?

Hybrid mediation means that the mediator invites the parties' solicitors to attend and support the participants within the mediation process. Arrangements need to be made that each party has the option of obtaining independent legal advice. It is not appropriate for one participant to simply have legal representation and the other not to have legal representation. The mediator remains in control of the agenda and how the mediation process is undertaken, and the solicitors will not participate in the process unless invited to do so by the mediator.

Hybrid mediations are suitable in high conflict cases where participants would benefit from legal advice and from their legal advisers being present.

What is child-inclusive mediation?

Child-inclusive mediation is aimed at ascertaining the wishes and feelings of a child. Mediators who are qualified to undertake child-inclusive mediation must be qualified to do so. The child-inclusive mediator may see a child who is over 10 years old to ascertain their views. In cases where there are siblings under 10, the child-inclusive mediator may ask younger children to participate in child-inclusive mediation, but will make clear that the child's views are not determinative.



The purpose of the consultation needs to be clear and agreed, i.e. to establish the child's wishes and feelings about the current situation and any thoughts and worries they might have about their future.

Both parents must consent to the child being seen by the child-inclusive mediator.

Parents must not expect the child choose or make adult decisions and must be open to hearing the worst possible feedback.

Parents must agree not to prime the child beforehand or grill the child afterwards.

Parents must be committed to listening to the child.

There must be no other professionals currently working the child such as a school counsellor, Cafcass officer, or if they are this must be brought to the mediator's attention.

There must be no current child protection issues and the child must want to see the mediator too.

When is mediation not suitable?

When either participant is frightened of their ex-partner and does not feel comfortable discussing issues in their presence.

When there is an imbalance of power between participants which cannot be effectively managed by the mediator.

When there are instances of domestic abuse which may mean financial abuse.



Do I need to obtain legal advice from a solicitor if I am participating in the mediation process?

It is a good idea to obtain legal advice from a solicitor alongside the mediation process, as a mediator will guide and assist you in reaching decisions and provide information but a mediator will not provide you with legal advice. A mediator can assist you in forming options and exploring options for settlement.

From time to time a mediator may advise you to obtain independent legal advice outside the court process.

In financial cases, a court order must be obtained after the mediation has finished, so that your financial and legal obligations are recorded in the terms of the order and, if appropriate, a clean break order is obtained.

Can a mediator draft a consent order on the conclusion of mediation?

Sometimes, an accredited mediator, who is a solicitor, may draft a financial consent order at the conclusion of mediation if both parties agree to obtain independent legal advice on the terms of the court order. The mediator does not provide legal advice to either participant during the mediation process.



You're in safe hands!

If you would like further information about how we can help you with **mediation**, or if you have any questions, please don't hesitate to contact a member of our **Family Law Team** today.

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