

familymediation



www.familymediationhelpline.co.uk

Tel: 0845 60 26 627

How mediation works



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Michelle drops a bombshell...

“ When we first split up, we both agreed that the kids should live with Michelle. It took a long time for me to get used to not seeing them every day but, being so young, I thought that the girls needed their mum. We managed okay for a couple of years, until Michelle dropped a bombshell. She'd decided to move to be near her parents; the problem was, they lived over 300 miles away.

By the time she told me, she'd already accepted an offer on the house. I was so angry; it was bad enough only having the girls at weekends but now I'd hardly ever get to see them.

I went to see a solicitor to find out what I could do to stop her. But the solicitor suggested that I consider going to mediation instead to see if we could work things out together.

It didn't exactly turn out how I wanted. Michelle and the kids still moved. But the mediator helped us make the best of a bad situation, I suppose. Michelle and I started talking again and that made sorting out contact arrangements a lot easier. I go and visit my daughters as much as I can and, in between visits, we phone and email. This year, they'll be spending the summer with me. ”

Although more and more people are using family mediation to sort out disputes when they separate or divorce, it's still pretty foreign to most of us. So here is a guidebook to that foreign territory, which will show you when to go, how you can get there, and what it's like when you're there. There's also a jargon busting section at the end to help you translate some of the words that mediators use into plain English.

Why go to mediation?

Mediators help people find solutions to all sorts of disputes caused by the ending of their relationship – whether they are married, civil partners, living together or parents who have never lived together. A lot of the problems separating couples need to sort out crop up straight away. But, where they have children together, old arguments (about contact for example) can resurface years later as the children get older and everyone's lives change.

Who's going to move out?

It seems like such a big step to get a divorce. Should I just do it, or can I wait for a while?

I'd like to visit my grandchildren. I haven't seen them since my son got divorced.

My new partner has asked me and the kids to move in with him. I want to, but I'm worried that my ex-husband's going to kick up a fuss about it.

Am I going to have to pay child support?

I want to live with my dad.

How do you get there?

You can find out more about family mediation and get contact details for mediators in your area by calling the National Family Mediation Helpline on: 0845 60 26 627 or visiting their website at: www.familymediationhelpline.co.uk. There might be more than one mediation service in your area. If so, have a look at the 'Choosing a mediator' checklist in our 'We're splitting up' guide to help you decide which one will be best for you. You can download the guide from: www.advicenow.org.uk/familymediation.

If you already have a solicitor, they will be able to refer you to a local mediation service. If you are applying for legal aid for a family matter the rules say that you must look into mediation to see whether it could help you. In practice, this means that your solicitor will refer you to the mediation service who will set up a meeting for you with a mediator to talk about whether mediation is right for you. You don't have to do this if your ex-partner is violent or abusive.

It might be your ex who starts the ball rolling. You might not have thought about mediation but you could get a phone call or a letter – from your ex or the mediation service they have been in touch with – asking you to go along for an appointment. You don't have to go, but it's probably worth finding out what the service can offer you. If it doesn't sound like something you want to try right now, you don't have to go back.



On arrival

However you get to a mediation service, you won't start mediation straight away. The first time you have contact with your mediator is a chance for you to find out more about what mediation involves and for the mediator to find out more about your circumstances so you can decide together whether mediation will be suitable for you. Some will do this over the phone, but others will want to see you face-to-face. Some will go through this process with you and your ex separately, and others will suggest a joint meeting. If you don't feel ready for a joint meeting yet, tell them and explain why. You should also tell them if you don't want to be left on your own with your ex. All mediation services should be able to provide a separate place for you to wait.

These are things that will be covered in the first meeting:

Suitability

You and the mediator need to work out whether mediation is going to be suitable for you. Sometimes it may suit one person but not their partner, so this isn't just your decision.

Domestic abuse

Don't be put off if the mediator asks you some questions about whether you or your ex have been violent or threatening towards each other – it's

really important to check that if you meet together to mediate you will both be safe and that it's okay for you to sort out arrangements together without the fear of being bullied.

Legal aid

This is available to cover the cost of mediation if you are eligible. And you won't have to pay it back, even if you receive money or property in your final agreement. Either your solicitor or the mediator can work out if you are eligible. The mediator will then fill in the application forms at your first meeting. Each person is charged and assessed separately. It is possible for you to be legally aided and your ex to pay privately. Even if only one of you can get legal aid, you can generally both have the first meeting for free.

You can use the legal aid calculator on the Community Legal Advice website to work out if you may be eligible:

www.communitylegaladvice.org.uk/en/legalaid

Costs

If you can't get legal aid, the mediator will explain to you how much mediation will cost. They should tell you the cost of each session and how many sessions you are likely to need. For more information, see the 'How much does it cost?' section of our 'What is Mediation' guide. You can download the guide from: www.advicenow.org.uk/familymediation.

Signposts

Family problems can need all sorts of help. Mediators generally know about the various services that you can access locally and will be able to give you information about them.

What's it like when you get there?

Mediation sessions generally last between one and two hours. You may find that you and your ex spend the whole of that time together, in the same room, along with the mediator. But some mediators will spend a few minutes talking to each of you separately at the start of the session (or even during a session if they think either or both of you need some time out).

People might have told you that going to mediation will be less stressful than taking your case to court. But this isn't necessarily true – mediation is stressful in a different way. It's far more informal than going to court, but it can be very stressful sitting down and talking face-to-face with your ex when you still have strong feelings about your break-up. If you don't feel up to talking to your ex face-to-face straight away, some mediation services can offer 'shuttle mediation' where you and your ex sit in separate rooms and the mediator goes to and fro between you.

Confidentiality

Discussions with a mediator are confidential. The mediator can't tell anyone else about them without your permission, so you can consider all sorts of possibilities without committing yourself. But this doesn't apply to the financial information you provide. This can be used later on by solicitors in negotiations, or in court if the mediation doesn't work out.

Despite the rules about confidentiality, the mediator may pass on information they've heard in a mediation session if they're worried that there is a risk of harm to children or adults.

Ground rules

The mediator will suggest some ground rules to help you have a sensible discussion with each other, such as:

- try not to interrupt each other, but listen to your ex's point of view – the mediator will make sure you both have a chance to speak
- it's okay to feel angry at times but don't start shouting, swearing and insulting each other
- if you get stressed, tell the mediator and you can have some time out to calm down.

Agreement to mediate

Most mediators will ask you to sign an 'agreement to mediate' before you start. A typical agreement will:

- set out some ground rules
- explain the rules about confidentiality
- ask you to promise to disclose your finances honestly
- deal with costs and legal aid.

Don't worry, the aim of the agreement is to help you both to think through what you're doing and whether you really want to go ahead with mediation. You can still pull out if you change your mind.



Route planner

Mediation is a journey. There's a route you'll need to follow to get the most out of it and reach an agreement that will work for both of you. The mediator's job is to steer you along that route. It doesn't always go in a straight line; sometimes you might skip a stage, and sometimes you'll need to double back and start parts of the journey again.

This section of the guide describes the typical route, and tells you what you can do at each stage to get the most out of the journey.

Getting those forms filled out about my finances was a nightmare. When I started I didn't have a clue what I spent my wages on, or how much debt I was in, so every time I sat down to do it, I kept having to stop to look for bills and bank statements and pay slips. But I suppose it needed doing. It gave me a much better idea of what I needed to live on. So when we were discussing our options in the later sessions, I knew what was reasonable and what wouldn't work.

The route

What you can do

1

Working out what the issues are

The mediator will start by finding out from each of you what you think are the important issues that need to be sorted out. To start off with, you may have very different views on this, and which issues are the most important. The mediator will help you make a list and flag what's most important to whom. You then need to agree the order in which you deal with these issues.

Before this stage

Jot down what issues are important to you and how you want to resolve them. Don't worry at this stage about whether your wishes seem realistic.

During the meeting

The mediator will help you find a way of talking to each other without arguing. Be prepared for a bit of give and take. But don't be a martyr – if you really can't accept what your ex is saying, don't.



2

Going through your finances

If you are using mediation to sort out financial issues, your mediator may have given you forms to fill in and bring along to the meeting, together with documents proving what you've written. You can generally skip this stage if you are only using mediation to discuss issues about the children.

Before this stage

Fill in any forms carefully and get all the documents that you need together. It's a difficult and time-consuming task but stick at it. And be completely honest. Telling your ex about what money and property you have doesn't mean you'll have to share it all. But if you don't have a clear picture of each other's finances, you can't have a realistic discussion, and any agreement you reach through mediation could be overturned.

During the meeting

You should have enough time to look at your ex's finances. If you don't understand something, don't be afraid to ask and keep pressing for a clear answer. If you don't believe your ex has been honest about their finances, say so. It would be a good idea to speak to your solicitor about this before the next meeting.

(continued)

The route (cont.)

What you can do (cont.)

3

Exploring the issues

Now you can start to tell each other how you feel about the issues you've listed. This is important because mediation is about working out what seems like a fair result to both of you. This may be different from what a court would do.

Before this stage

Think about the list of issues and work out what your priorities are. Is there anything you aren't prepared to compromise on? Where you are prepared to compromise, are there things that you would like in return? What do you think is best for your children? And what about what they want?

If you need to, check your legal position with your solicitor so you are clear where you stand.

During the meeting

This can be a difficult stage of the process. You may have very strong feelings about some of the things that have happened between you in the past, but you can't change them now. Try to stay calm and don't get sidetracked from sorting things out for the future.

4

Working out what your options are

There is always more than one solution to a family problem. Mediation gives you the freedom to think about a wider variety of options than a court would consider. Together you and your ex can think through what each option might mean for both you, and the children. The mediator will help you to explore all the choices open to you but won't tell you what to do.

Before this stage

Think about what you want to happen in the short-term and long-term. Don't forget to think about what the children want, and what they need. Try working out where you want to be in five or ten years' time. Will the proposals allow you to do this? Don't feel limited at this stage by what you think the outcome of the mediation is likely to be; this is an opportunity to test out all the options. You never know what might happen.

During the meeting

Be open to ideas. Don't dismiss things out of hand but think them through with your ex. Aim for something where you both get a good result; your agreement is much more likely to last if you do that.

5

Working out an agreement

When you get to this stage you should be able to start agreeing things. The mediator will make sure that you are both clear about what you have agreed and may remind you about things you haven't yet covered. If you do reach an agreement, the mediator will put together a document for you setting it out in writing. Ask your solicitor to look at this before it is finalised. If you both agree to it, you can get your solicitors to make it legally binding. This means that you'll both be required by law to stick to your agreement.

Before this stage

Get some legal advice about the final proposals so you know where you stand. Think about the practicalities such as the dates when things need to happen.

If necessary, make sure that you get the agreement of other people to the proposals, such as mortgage companies or landlords if you're planning to transfer your tenancy or ownership of your home.

During the meeting

Don't rush things. Make sure that anything you both agree is clear to you both. You should make sure that older children are happy with the final proposals – it could make life difficult if they're not.

Involving other people

Mediation is generally just for the couple who are separating or have separated. But sometimes it's helpful to let someone else take part in the discussions, such as grandparents, new partners, or even your children if they are old enough. This should be a decision you make jointly with each other, and the mediator. You could talk this through at your first session together. Don't just turn up with the other person and expect them to be able to take part. And bear in mind that, if you want to bring someone along who your partner will see as being 'on your side' (like a member of your family or your new partner), mediation is unlikely to work well unless they also have someone there for support.

Children

It's very hard to remember that you are parents as well as someone's ex partner when you're going through a break-up. But you have to try and think about what your children need, and what they want, as well. The mediator will help you to do this. If you get stuck during a mediation session, they may suggest that you try to imagine that your children are in the room with you. What would they say? They may also encourage you to go home and talk to your children about the options you've discussed in the mediation sessions. If you can bear to be in the same room as each other outside of mediation, try to do this with your partner. Your children need to see that you both care about them, and are trying to sort things out.



Some mediators are trained to consult with older children. They will arrange to do this if you both agree, and your children feel comfortable about it. This means that your children can see the mediator and talk to him or her about their views on the proposed arrangements. If they are old enough, you may all be able to discuss this together. Children often feel powerless, when their parents are arguing about them; talking to the mediator can help them.

For more information on making arrangements for your children when you no longer live together, see our 'Parent's Apart' guide. You can download the guide from: www.advicenow.org.uk/parentsapart

Since I moved in with my partner, his kids have made life as difficult for us as possible. There are rows and sulks almost every day but I've noticed it gets worse when they get back from visiting their mum. Now they've said they want to go and live with her ...

New partners

It is sometimes helpful to involve a new partner. This could be where there are issues about the children and their relationship with all of you, or practical arrangements which will need a new partner's co-operation to work.

Other family members

Arrangements for children often affect other people in the family. This could be because they want to have contact with the children or because they are involved in their regular care. It can be useful to ask them to take part in the mediation.

I can't say we were surprised, or that upset, when our son and his wife split up. We never really got on with her that well. But our grandson lives with her and now we never see him. Whenever we phone up to speak to him, she says he's out or slams the phone down on us ...

Advisers

You may both benefit from having advice from an expert financial adviser. Sometimes a mediator may suggest that you have a joint meeting with someone who can tell you about mortgages or pensions so that you are both fully informed about the options open to you. And don't forget that you should each have a solicitor to give you legal advice to make sure that what is being proposed is fair to you. With help from your mediator, you can work out when that advice is most needed. Be sure to check the agreement out with your solicitor before anything is finalised.

Questions to ask yourself when you are thinking about the children:

- How much do they understand?
- What else should we tell them?
- How will each one react to the plans that we are discussing?
- What does each child need?
- What does each child want?

What happens afterwards

If you reach an agreement

If you are able to reach an agreement the mediator will put together a document for you setting out your agreement in writing. This is usually called a Memorandum of Understanding or a Statement of Outcome. You should ask your solicitor to look at this before it is finalised to make sure that it is fair. If you both agree, you can get your solicitors to make it 'legally binding' so that you will both be required by law to stick to your agreement.

If you are divorcing/dissolving a civil partnership **it is very important** that you take this final step so that you are protected against any financial claims in the future.

If you reach a partial agreement

By the end of the mediation sessions, you may have agreed on some issues, but not others. The mediator can record what has been agreed and list what points remain unresolved in a written document for you. This should help to cut your legal costs if you ask your solicitor to negotiate the remaining issues for you.

If you can't agree

You might feel as though mediation has failed. But you might find that it's helped you to start talking to each other again. And, although you haven't sorted all of the issues out, it may have helped make clear to both of you exactly what your disagreements are really about.

Coming back to mediation

Mediation may not feel right for you when you first try it. Sometimes other things need to happen first. You may both need to see lawyers, for instance, or you may each have other issues that need sorting out. If mediation doesn't work out the first time, it may be useful later on.

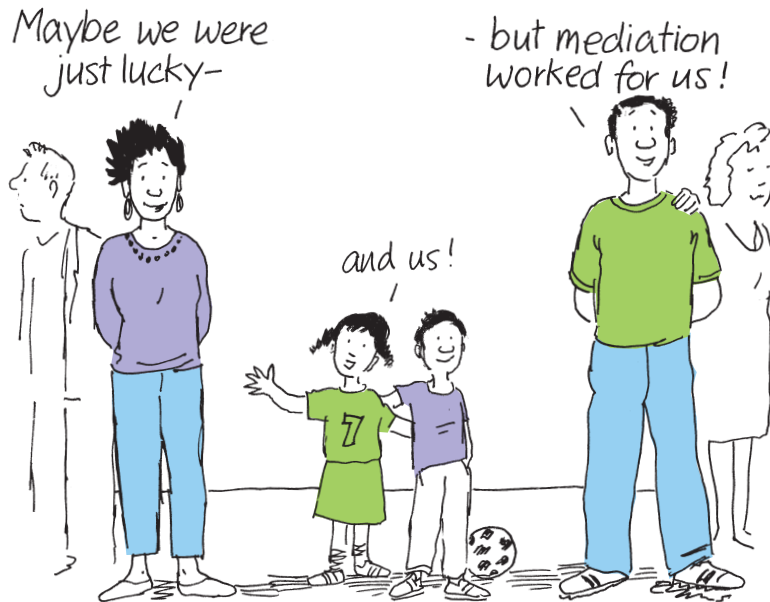
Family life never seems to stand still. As time goes on you may find

Jargon buster

The jargon	What it means
Cohabitants	Couples who are or have been living together who are not married or civil partners. It includes both male/female and same sex couples.
Financial disclosure	For mediation to work, you need to tell your partner honestly about your finances. Otherwise the mediation could be stopped by either the mediator, or your partner. Mediators call this financial disclosure. Most services will have forms for you to complete so that the information can be set out tidily. These will either be their own financial information packs or the Divorce Form E.
Initial assessment meeting/ Intake meeting	The first appointment at the mediation service that allows you and the mediator to work out whether mediation will be suitable for you. If the service offers legal aid your eligibility will be assessed at this meeting. Some mediation services suggest joint intake meetings that you go to together, but it's up to you whether you want to go together or separately.
Legal aid	A government scheme to help people with low income and limited savings to pay for legal advice, assistance, mediation and representation.
Memorandum of understanding/ Statement of outcome	A document put together by your mediator at the end of the mediation sessions, setting out your agreement in writing.
Open statement of financial information	This document is prepared by the mediator and sums up the financial disclosure that you have each made.
Parental Responsibility	All the rights and duties that go with being a parent. It can be quite complicated working out who has it, or how to get it if you don't have it already. For more information, see the parental responsibility guides at: www.advicenow.org.uk/livingtogether .
Without prejudice	If something is said or written 'without prejudice' it means that it cannot be used as evidence in court. It is a particular form of confidentiality. Your discussions with the mediator are 'without prejudice', but your financial disclosure is not.

that new issues come up that you need to resolve. Mediation may have shown you a way of dealing with those problems without further outside help. But you may feel that it would be useful to go back to

your local mediation service to work through them. A second go at mediation often feels less scary because you know what to expect.



This guide was written by Imogen Clout.
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The Family Mediation campaign applies to England and Wales only.

The law is complicated and every case is different. Always get advice.

This guide is one of a series produced by Advicenow's family mediation campaign.

The family mediation campaign aims to increase awareness and understanding of how family mediation can be used during divorce and separation and in resolving other family problems.

We provide information and practical help on:

- What mediation is
- How it works
- How it fits in with using solicitors and the courts
- How to make the most of family mediation.

You can listen in on mediation sessions with our podcasts at www.advicenow.org.uk/family-mediation/how-mediation-works

For more information about family mediation, see www.advicenow.org.uk/familymediation

The Family Mediation campaign was paid for by the Department for Constitutional Affairs, now the Ministry of Justice



To find out about your local family mediation providers, give the Family Mediation Helpline a call on:

0845 60 26 627

or visit their website at:

www.familymediationhelpline.co.uk

Advicenow is an independent, not for profit website. We provide up-to-date and helpful information on rights and legal issues in language you can understand. Other Advicenow guides include:

- **Parents apart**
- **Divorce: A survival toolkit**
- **LivingTogether**

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ASA members include AdviceUK, Age UK, Citizens Advice, DIAL UK, Law Centres Federation, Shelter and Youth Access.

ADRnow, run by ASA, provides information about family mediation and other forms of alternative dispute resolution. See www.adrnow.org.uk

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