



The home of professional mediators

### **AGREEMENT TO MEDIATE**

The following sets out the basis for the mediations we undertake as members of the Family Mediators Association (FMA) which is a membership organisation of the Family Mediation Council (FMC).

Please read the agreement carefully, note any questions you may have and bring it to your first mediation session. At this meeting you will be asked to sign to confirm your understanding and commitment to the process and to the terms of this agreement.

#### **Mediation is Voluntary**

1. Mediation is voluntary. You are choosing to take part because you want to resolve issues that are currently in dispute. Although you may have been told that our initial assessment with you is required by the court, it is your choice as to whether you mediate or not.
2. You have the right to end the mediation at any time, although before doing so we hope you would be willing to explain your concerns in case they can be addressed and resolved.
3. Mediators also retain the right to end mediation if we consider that it would be appropriate to do so.
4. We will be concerned to ensure that each of you comes into the mediation process able to negotiate without risk of threat or harm. We ask you to tell us at any time if you have concerns about safety, intimidation or the freedom to speak.

#### **Mediators are Impartial**

5. As mediators, we are impartial and we seek to help all participants equally. We do not make judgements or express opinions about who may be right or wrong, and we do not take sides.
6. We cannot act as mediators if we have prior knowledge of the situation through any previous involvement as lawyer, counsellor or in any other professional role. Although we may have other qualifications, in this context we act only as mediators.
7. Mediators may provide legal, financial and other information and guidance to help you understand your responsibilities and the options available to you. We do not provide legal advice and we do not provide advice of any kind about your "best interests."

#### **Clients make the Decisions**

8. It follows that the choices and decisions remain yours at every stage. Whilst the mediators remain in control of the *process*, and seek to help you to explore proposals and arrangements in a way that meets the needs of all concerned; you are responsible for any decisions made.

#### **Children, Young People and Mediation**

9. Where there are children of the relationship, mediators have a responsibility to consider with their parents the arrangements that are most likely to support those children's relationships and well-being, now and in the future.

#### **Mediation is Confidential**

10. Mediators have a professional duty of confidentiality. Discussions in mediation about proposals and possible terms of settlement are 'without prejudice' and legally privileged, which means they cannot be disclosed to the court, except as explained below at para 13.

11. You each agree not to call the mediator/s to give evidence in court.
12. At your request, either during mediation or at the end, we can prepare an interim or final confidential summary of arrangements for your children and/or your proposals for settlement of financial and property matters. Mediation summaries are prepared on a 'without prejudice' basis.
13. The 'without prejudice' privilege protects the content of mediation and its outcome from disclosure to the court (except where you give your joint written consent; you should take legal advice before you give such consent.) If you are taking legal advice, a copy of your mediation summary can be shown or sent to your solicitors to assist them in advising you.

#### **Exceptions to confidentiality**

14. Whenever an allegation is made within a mediation that someone (particularly a child) is at risk of harm we have a duty to contact the appropriate authorities with or without your permission.
15. In common with all other relevant professionals, we may be required to disclose to the appropriate government authority information with regard to the commission of any relevant, previously undisclosed, criminal offence. The mediator may also be under a linked obligation to make such disclosure without informing you and may have to discontinue the meeting without further notice.
16. Exceptionally, we may disclose personal data in connection with the alleged or established commission of an unlawful act.
17. We are 'processors' of personal data for the purposes of the Data Protection Act 1998. You consent to us processing your personal data for the purposes of this Agreement to Mediate. You understand that this includes our retaining and storing your personal data for as long as is necessary in connection with this Agreement. We may retain data for research and statistical purposes but on the understanding that if used for this purpose all identifying details will have been removed.
18. It is usual to provide a session record or letter at the end of each session. However, you may not ask to see notes made during the session, which are a memory aid for and belong to the mediator.
19. Our quality assurance standards require that we monitor our mediation files. Periodically, our practice supervisors or (in relation to any legally aided mediation) the Legal Aid Agency may have sight of files, but access is strictly controlled and on a similarly confidential basis.
20. Unless otherwise agreed, or in relation to a postal address, email or telephone number which either of you wishes to keep confidential, information including correspondence and emails from either of you will be shared openly with you both. The only other exception would be where information refers to a child or adult who is, or may be, at risk of harm (as explained in para 14). This principle of openness *within the process* also applies to any sessions or part of sessions in the mediation where the mediators meet with you separately unless everyone involved explicitly agrees otherwise.
21. For the purpose of any complaint investigation as referred to at 25.

#### **Open Financial Information**

22. When there are financial issues needing settlement, we ask you both to provide complete and accurate disclosure of your financial circumstances, with supporting documents. We do not check the completeness and accuracy of the information provided. You will be asked to sign and date a statement confirming that you have made full disclosure; if it later emerges that full disclosure has not been made, any agreement based on incomplete information can be set aside and the issues re-opened.
23. Your financial information is provided on an 'open' basis, which means that it is available to your legal advisers and can be referred to in court, either in support of an application made with your joint consent or in contested proceedings. This avoids the information having to be provided twice.

**Professional Standards, Concerns and Complaints**

- 24. Our practice is governed by the Family Mediators Association (FMA) and our mediations are conducted in accordance with both the Family Mediation Council Code of Practice and the highest professional standards expected by the FMA.
- 25. We follow the FMA's complaints procedure. In signing this Agreement to Mediate, you also both give your advance consent to the release of the file to any complaints handler should that become necessary.
- 26. However, any concern you may have as to our practice should be raised with us in the first instance; we will hope to resolve matters to your satisfaction internally and informally according to our own complaints policy.
- 27. Copies of all these documents can be obtained from this service on request.

**Charges and other Terms of Business**

- 28. Our charging rates are £125 per hour per person plus VAT. If meetings run for more than 60 minutes the fees increase at the same hourly rate pro rata. This rate also applies to time spent by us preparing summaries. You authorise payments to be taken from the debit/credit card details you have provided. VAT currently runs at 20% which equates to £25 per hour.
- 29. Legal Aid is potentially available to those who can provide documentary evidence of eligibility. If you are eligible for legal aid there will be no charge for any session or summary. Late cancellation/no show fees nevertheless apply without at least 48 hours' notice.
- 30. LATE CANCELLATION/RE-SCHEDULING FEES £125 PER PERSON PLUS 20% VAT (£150 including 20% VAT) WITH LESS THAN 48 HOURS' NOTICE.**

**A Shared Commitment**

- 31. We shall do our best to help you both. We ask you to show respect to each other and commitment to the mediation process and to co-operate as fully as possible in looking for solutions.
- 32. We understand and agree to the above:-

Signed .....

Signed .....

Date:

Date:

Signed .....

Signed.....

Mediator

Mediator

Date:

Date: