

Agreement to Mediate

Thank you for considering mediation. This document sets out the terms for your mediation. May I ask that you read it through carefully and I will be pleased to answer any questions you may have at our next meeting.

At your first joint mediation meeting, I will ask you to sign this document as an indication of your commitment to and your acceptance of the arrangements set out in the Agreement.

The Agreement sets out important information for you about the way that I will conduct your mediation and the principles of mediation which include that:

- **you come to mediation by choice** (no-one can make you take part in a mediation),
- **mediation is confidential** (except for certain conditions that are set out in the Agreement),
- **it is for you to make decisions about your situation**
- **I will do my best to act in an even-handed way** between you and to help you both reach an outcome that works for all those involved.

It is important that your mediation is tailored to suit your particular circumstances and set out in the Agreement will be any arrangements we have agreed together which may include arrangements to link with another family resolution service (such as getting an early evaluation of your legal or financial circumstances, support as you plan together for the future or getting a binding decision). Information about the range of other professionals and services that you can choose are set out in the document 'Helping you to get the Best Solutions'.

It is very important that you are clear about arrangements and agree (by signing this document) that I have explained and that you have fully understood the arrangements in this Agreement.

I am looking forward to working with you.

Mediation organisation and Code of Practice

I undertake this mediation as a member of Resolution. In doing so I am guided and bound by the Family Mediation Council Code of Practice. You can access a copy of the Code at the website of the Family Mediation Council:

www.familymediationcouncil.org.uk

How I work and will conduct your mediation

- 1. My role is to assist you both** to consider the ways of resolving any issues that you may have for making future arrangements for yourselves and any children. I will help you both to explore the options you may have, with a view to your reaching an outcome that you both consider will work for you all. That might not be the same as a solution arrived at by a court. I will tell you if I think that your proposals might fall outside of what a court might approve or order and can give you information about what courses of action are open to you to seek individual advice.
- 2. The choices and decisions are yours.** I appreciate that you would prefer to be able to resolve matters together, I will always look to help you both to find ways of reaching an outcome without having to use Court proceedings, other than to finalise your agreement as a Consent Order. There are a number of ways in which we can work together with other professionals or services to help you reach decisions as part of your mediation. Whatever your needs, I will do my best to help you reach an outcome.
- 3. I will not tell you what you should do** or comment about what your individual 'best interests' are or might be. It is possible and often very helpful for you to have advice from a (or your own) solicitor during the course of your mediation so that you are able to make informed decisions and so that each of your solicitors (if you have them) is aware of how the mediation is progressing.
- 4. When working as a mediator, I will provide you with legal and other information,** on an even-handed and general basis to assist you both in working towards your own decisions and particularly to assist you in how the general principles of the law may affect anything you are planning or proposing to do as a result of your discussions together, including how the courts consider what would be within a reasonable range for any outcome/settlement. This is different from providing individualised legal advice (or representation), which I cannot provide to you and I

will talk with each and both of you about when it would or might be helpful to have legal (or other) advice to help you.

5. **Mediation is a voluntary choice**, and it is important that each of you enters the mediation process able to discuss matters freely and without risk of threat or harm. Please let me know me if there are any concerns for you about your ability to discuss matters in front of the other person.

Conflict of interests

6. It is very important that I ensure I can work independently and in an even-handed way with each and both of you. If I identify that there may be a potential conflict of interest because of some prior contact either of you may have had with a practice or service with which I am associated, I will discuss with you the nature of that potential conflict.
7. If we decide together that the mediation can go ahead, I will ask you to provide me with your consent in writing that you agree to my acting as your mediator.
8. It is also important that I do not have any direct prior knowledge of either of you or your situation through a previous professional involvement of any kind. This is to ensure that you can be confident that I am working independently and impartially. If it is clear that there is an actual conflict, or one emerges during the mediation, I will not continue to act as mediator and will discuss with you what your alternative or next steps might be.

Confidentiality and privilege

9. I will treat all matters in the mediation as confidential, except as otherwise agreed, and subject to the terms of this Agreement, (in particular Paragraphs 14 and 15).
10. Once your mediation begins, information including any correspondence, emails etc., provided by either of you will be shared in the mediation. However, if you wish to keep an address or contact details confidential you may do so – please let me know if this is the case.
11. It is important to know that all your financial information is provided on an "open" basis, which means that it can be used in court. This may be in support of a consent

application made by either of you or in contested proceedings. Completing your financial disclosure will assist you and your individual legal adviser and will avoid information having to be provided twice over. The information can be 'portable' for you and you will be able to use it with your solicitor, independent financial adviser or any other professional who you may choose to assist you with your finances. This is important as your individual legal or financial adviser will need to see your disclosed finances before they can advise you on any proposals you have reached or are considering.

- 12.** Conversations, any communication and information about possible options, proposals and the terms of any financial settlement are on a "without prejudice" basis, which means they cannot be referred to in court (except by order of the court or where the law imposes an over-riding obligation of disclosure on a mediator). Also, an 'evidential privilege' will ordinarily apply for all attempts to resolve issues in the mediation.

This allows you both to be able to share ideas and proposals that you may have thought about as possible options for resolving things without having to be concerned that that information might latterly be used against you in any way. It also means that it is only if both of you agree to waive that privilege that you might do so and allow a court to know any details of your possible options, proposals and terms of financial settlement discussed in the mediation.

However, the actual discussions in mediation remain confidential between us and Courts will normally uphold the confidentiality of the mediation process unless there is an over-riding right or obligation of disclosure in law. As this is generally the case, I ask that you both agree not to call me (and/or any co-mediator, or any other professional working as part of your mediation) to give evidence in court, or ask to have any of my notes brought into evidence (excepting as above, where there may be an order of the Court or where the law imposes an over-riding obligation of disclosure on a mediator). This does not affect your rights in relation to data protection.

- 13.** If you choose to have advice or support from other professionals either as part of your mediation or alongside it, I can discuss with you how and if any information might be shared between us. I will not contact other professional/s working with you without having your joint agreement first.

14. These arrangements for confidentiality and privilege **will not apply** if it appears that a child or other person is suffering or likely to suffer significant or serious harm. In this event, I would normally, as far as practicable and appropriate, discuss with you what will happen before taking any action to contact an appropriate agency or authority. I have a responsibility to do so under the FMC Code of Practice and in order to ensure the safety and protection from harm of children and vulnerable adults.
15. Generally, I am required to have regard to and comply with relevant law/s and regulations that relate to any obligation to make a disclosure to the relevant authority/ies. Therefore, arrangements for confidentiality and privilege **will also not apply** if information is shared with me about any intention to commit an unlawful or criminal act or where I suspect that I may be required to make disclosure to the appropriate authority under the Proceeds of Crime Act.

Financial and other information

16. Where and when appropriate, you both agree to provide appropriate and accurate disclosure of all your financial circumstances, with supporting documents where necessary. I will try to help you to identify what information and documents will help you to be clear about your financial situation, and to consider how best these may be obtained.
17. I do not check or confirm the completeness and accuracy of the information you provide but I can help you to consider the ways in which you may do so. I will ask you to sign and date a statement in an Open Financial Statement confirming that you have made a full disclosure. It is important for you to know that you each have a duty to make full and accurate disclosure of your finances if you are going to be able to make decisions that can be endorsed by the court by way of a Consent Order. It is important that you know that if it should emerge later that full disclosure has not been made, any decisions or Agreements flowing from the proposals reached in mediation could in some cases be set aside and the issues re-opened.

Professional advice and outcomes

- 18.** Any significant decisions arrived at in mediation (including any proposals you make together) will not usually be turned into a binding Agreement (generally a Consent Order) until you have each had the opportunity to seek advice on them from your solicitors which I will encourage you to do. If during the course of the mediation it would be helpful for me to draw up an Interim Summary or Outcome Statement on a 'without prejudice' and confidential basis to record interim decisions on minor matters or options/proposals discussed, I will do so. Such a document would be privileged and could not be produced in evidence to a court (excepting as stated in 12. above, should the court order and/or the law impose an over-riding obligation of disclosure).

Links with other services to help you in reaching a binding outcome

- 19.** It is important to me that you are able to reach an outcome that will work for you both for the future. I work with other professionals who are able to provide a range of services designed to assist you to do so, either as part of your mediation or following it. [Details of the range of professionals and services are available in 'Helping you to get the Best Solutions', which is attached to this Agreement].
- 20.** As an example, mediation usually takes place without your solicitors attending. However, they may by agreement with them and between you both and me, participate in the mediation process in any useful and appropriate way.
- 21.** I will also assist you to consider whether it would be helpful to have assistance from other professionals such as accountants, financial advisers, expert valuers or others, by helping you to consider whether it would be helpful to have an early neutral evaluation (usually by a trained and experienced barrister), providing you with an indication of the range of possible or likely outcomes in respect of one or more issues, or assistance from family consultants, counsellors or therapists and parenting coordinators, either in, alongside or following your mediation process.

Where there is an agreement to consider Arbitration, please add:

We have agreed together that we will keep arbitration under review should you wish to use it alongside your mediation and especially if it proves to be a helpful means of resolving any issues arising from your discussions and which you feel unable to reach a consensus on without help. As I have explained, unlike any

decisions reached by you in your mediation together, any decision made by an Arbitrator would be binding on you both. Should you decide to appoint an Arbitrator, I will agree with you both the information to be prepared and provided to your Arbitrator of choice including any statement regarding those issues you have identified as requiring the decision of your Arbitrator.

I can also remain available to you after you have received any decision/s from your Arbitrator to assist you to put into place any arrangements as a result of a binding decision.

Summaries and recording of your outcome proposals

22. If you are discussing future financial arrangements between you as part of your mediation, during the course of the mediation and once financial disclosure is complete, I will ordinarily draw up:

- **An Open Financial Statement/Summary** of your financial circumstances which will be on the record (and could be used in evidence in a court if need be).

23. At the end of the mediation (or earlier if appropriate), I will also draw up:

- A privileged summary called a **Memorandum of Understanding** of your proposals discussed and decided in the mediation, outlining the context in which those proposals have been reached. This is a 'without prejudice' document.

If you intend to consider drafting more detailed terms/draft standard order, please include:

In appropriate circumstances, I may also provide a more formal and detailed summary of your decisions or use a template order to set out your proposals in a way that allows you to progress matters once you have sought and have received individual legal advice. Please note that this will not be a binding agreement and it will be part of your Memorandum of Understanding document, which is a privileged and 'without prejudice' document. I will discuss with you what is the best and most appropriate way to prepare your Memorandum of Understanding and provide you with information to help you in relation to the ways in which you can reach a binding agreement.

If I do provide you with detailed draft terms or a template order draft, I ask that you agree (inclusive of your signatures to this agreement) that you will not seek to enter into a binding agreement or order for 28 days from the date of your Memorandum of Understanding and/or having received individual legal advice [this is to ensure you have a 'cooling off period' and time to take advice]. It is very important that you are aware that once you have entered into a binding agreement through the making of an order, it is often not possible to re-visit the terms you have agreed.

- 24.** These documents are generally provided to enable you both to obtain separate and individual legal and/or other advice before entering into a legally binding Agreement. It is important to have independent advice to assess how your joint proposals may affect your own individual position.

Your solicitors (if you have them), will usually undertake the formal procedures for any binding Agreement that may be reached after you have each been able to seek their advice, including for example, dealing with any draft Consent Order. If you do not have a solicitor, I can provide information about specialist family solicitors in the area who will be able to help you.

Concerns and complaints

- 25.** I hope I will work with you as a mediator in a manner that is satisfactory to you both and that assists you in reaching decisions for the future. I ask that any concern you may have as to my practice or the service provided by me is referred to me in the first instance. If I'm unable to resolve this with you directly or otherwise, my firm/practice/service has a complaints procedure and I will provide a copy of that to you. If it does not prove possible to settle things using that procedure, you may then refer your complaint to Resolution for consideration in accordance with their complaints procedure. You can see the Resolution complaints policy on their website www.resolution.org.uk.

In certain circumstances, it may be possible for you to refer your complaint to another external complaints handler such as the Legal Ombudsman (www.legalombudsman.org.uk) or the Solicitors Regulation Authority (SRA) (www.sra.org.uk). Further information is available on the website links.

Data protection – important information for you

26. Data protection protects the privacy of information about you and how it might be used, shared or stored.

Our Privacy Notice/Policy sets out our commitment and the arrangements for the collection, use, storage and destruction of any information provided by you. For the purpose of your mediation, I will keep any information that you provide to me securely and will not share it without your individual permission. However, I ask that in the event of any complaint that is referred to my membership organisation or to any other regulator or relevant complaints handling organisation, that you agree that I may release any information or your file to either or both for the purposes of resolving any complaint. I will ask you to sign a separate document to this effect.

My practice's quality assurance standards also require monitoring of my mediation files. From time to time, my practice consultant and/or the Legal Aid Agency may have sight of files, but access is strictly controlled and on a similar confidential basis. I also ask you to agree that the mediation and any summaries may be reviewed on a strictly confidential basis by my Professional Practice Consultant/Supervisor.

I will only retain information about you for as long as is necessary in relation to your mediation. This means that any notes or personal information will be securely destroyed by me after XX months. I will, however, retain copies of any Memorandum of Understanding and Open Financial Summary for XX years, after which time, they will be securely destroyed. I may also keep data for research and statistical purposes but on the understanding that if used any information or details about you have been removed so that you cannot be personally identified.

Ensuring that your personal data is managed professionally and lawfully is important to me/us. If you have any concerns about any aspect of Data Protection and your own personal data, I ask that you raise it with me so that I can provide you with the information you need.

Professional development

- 27.** I operate a learning and professional development practice. From time to time colleagues may work with me for the purposes of their own professional development and/or my own (this would be at no extra cost to you). If you would

prefer that your mediation does not involve my colleague/s, then please let me know. I will not involve another person without your joint agreement.

Ending a mediation process

28. Under the Code of Practice to which I am guided, I will be concerned to ensure that each of you enter into the mediation process able to discuss and plan freely together and without risk of threat or harm. I ask that you inform me if there are concerns for you about your ability to negotiate freely.
29. Either of you may end the mediation at any stage. I may also end the mediation if I do not think it appropriate or helpful to continue. In either such event, I will provide information as to other options and approaches available to you.

Mediation fees

30. My fees, which may be paid at the end of each session or as otherwise arranged, are usually £ per person per hour. Fees can be shared between you in any way you may agree. Meetings can be arranged flexibly to suit your needs, depending on how you choose and agree to mediate,
31. I will ensure that I have given you an estimate of how much the costs of your mediation will be for each of you. Usually 3 – 5 sessions of up to 90 minutes each are required (it may be more or less, depending on what you have to deal with). It is also possible to arrange your mediation to take place over a half or full day or in any way that is agreed between us as most appropriate to your needs and situation. Once you have arranged dates for your mediation sessions, if these are cancelled, a cancellation charge may be required.

OR (for legal aid clients)

If either of you is eligible for legal aid for mediation, the cost of any Mediation Information and Assessment Meeting and your first joint mediation meeting will be met by the Legal Aid Agency. After that, the eligible person's meeting fees will continue to be met by the LAA. If you are not eligible for Legal Aid beyond your first joint meeting, my fees for private mediation clients, which may be paid at the end of each session or as otherwise arranged, are £ per hour, per client. As mediation meetings are usually 90 minutes, the cost for you as a private client per meeting is £.

Depending on the issues, 3 to 5 sessions of up to 90 minutes each are usually required, but more or less may be needed. Once you have arranged dates for future mediation sessions, if these are cancelled, a cancellation charge may be required.

It is also possible to arrange your mediation to take place over a half or full day or in any way that is agreed between us as most appropriate to your needs and situation and is allowable within the Legal Aid scheme. Once you have arranged dates for your mediation sessions, if these are cancelled, a cancellation charge may be required.

- 32. The hourly rate also applies for any work that may be required between sessions for example in drafting documents or in reviewing financial disclosure, I do not normally charge separately for routine telephone calls or letters. Depending on the degree of complexity, it usually takes around 2 hours to prepare mediation outcome documents and if I think that it may require more time to do so, I will discuss this with you first.
- 33. If your issues are particularly complicated or you require interim documentation for consultation with your personal adviser/s or for any service or professional you are working with (*or for your Arbitrator*), I will always discuss with you beforehand any likely additional cost. I will provide you with cost estimates wherever practicable to assist your planning of likely costs.
- 34. Where it is the case that your mediation involves another supporting professional or co-mediator, I will have discussed with you the likely costs for such an arrangement and will provide information about how payment can be made.

Means of working with you

- 35. **If we have arranged to work remotely** or in a way that includes both remote working and attended meetings, in signing this agreement, you have also agreed to the arrangements set out in the attached addendum.

Mutual commitment

- 36. It is important to me that you receive a service which you can value. I will do my best to help you both. I ask you both to give your commitment to the mediation process and to co-operate as fully as possible in looking for workable solutions.

Dated the day of 202

Signed:

[Name]:

Signed:

[Name]:

Signed:

Family mediator

Signed:

Family mediator/other

[please specify]