

## MEDIATION INFORMATION SHEET

### **WHAT IS MEDIATION?**

Mediation is the use of an impartial person or persons to guide couples in reaching decisions on separation and divorce. It provides an alternative to Court proceedings.

Mediation can deal with separation, divorce, children, property and finance. The benefits of mediation are felt to be that mediation promotes better communication and co-operation between couples; allows the parties involved to control the decisions affecting their lives; helps children by reducing conflict; is confidential and is generally a quicker and more cost effective process than Court proceedings

Mediation is available for heterosexual and same sex couples.

### **MEDIATION PROCEDURES**

Mediation on separation or divorce is undertaken under a specific code of practice usually by a sole mediator but where appropriate with a co-mediator who may be a professional with experience in marital and family work.

In either event this provides a supportive professional forum in which a couple can be helped to deal with all issues arising on separation or divorce including for example the practicalities of separation; divorce; arrangements for children; housing, property and capital adjustments; maintenance and any other issues which either party may raise.

Mediation is generally undertaken with the couple together. Exceptionally (and by agreement with both parties) separate discussions can be held with each party and then the matters discussed brought back into the joint sessions. When working in this way separate confidences are not maintained as between the couples.

In all cases parties will not be required to reach any complete and binding agreements in the mediation without having had the opportunity to review matters with their own solicitors.

Summaries of the financial information and of the settlement proposals will be furnished to the parties for this purpose as required.

Mediation sessions generally last one and a half hours each. The number of sessions will depend on the issues; 5 or 6 sessions are not uncommon but more or less may be needed. They may take place at approximately fortnightly intervals or as otherwise agreed. Parties do not need to commit themselves for a fixed number of sessions but can decide at the end of each session if they wish to continue.

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Before mediation commences each party will be required to enter into an Agreement to Mediate which will include within the terms and conditions that all matters in mediation will be treated as confidential (unless a child or other person is suffering or likely to suffer significant harm) and that both parties undertake to provide a complete and accurate statement of their financial circumstances.

### **REFERRAL**

A referral can be made direct to a mediation service by a prospective client or clients. Alternatively, a referral can be made via Solicitors.

As a result of a Court protocol, from 6 April 2011, for financial and children cases, if a person (Applicant) is considering applying for a Family Order against another party (Respondent) there has to be a referral to a Mediator. If the proposed Applicant and/or Respondent are eligible for Legal Aid there will be no charge for the meeting. If either the proposed Applicant or the Respondent is not eligible, then there will be a charge made by the Mediation Service, which is set by each individual Mediation Service. These meetings are known as Mediation Information and Assessment Meetings, or a MIAM.

There are a number of Mediation Services operating in the Brighton and Hove area. Not all local Mediation Services have a contract with the Legal Aid Agency to offer Legal Aid for mediation. The three services currently able to offer Legal Aid for mediation are Harney & Wells Family Mediation Service, Mediation East Sussex (which will be operating in the Brighton area from the Dialogue Centre, 24 Windlesham Road, Brighton, BN1 3AD) on a Friday, and Family Mediation in Sussex.

### **WHAT HAPPENS NEXT?**

For the first meeting, there will be a choice between meeting with the mediator separately or having a joint meeting with the other party. At the first meeting eligibility for Legal Aid will be assessed and, therefore, you should bring to the mediation appointment details of your National Insurance number, salary/wage or benefits received and details of savings/capital.

If you or the other party are not eligible for Legal Aid, then either the meeting can end or the mediator will discuss with you your ability and willingness to fund mediation privately and the likely cost.

The Mediator will discuss whether you and the other party are willing and able to meet and negotiate; the issues involved and whether they are suitable for negotiation;

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whether both of you would feel safe if mediation took place; that both of you feel that the mediator will ensure a safe forum for you; and that there is confidence in each other's ability to keep to an agreement.

During the mediation process it is advised that both you and the other party have the benefit of independent legal advice. If you are eligible for Legal Aid in the mediation process then you will be eligible for free legal advice from a solicitor to advise you and assist you during the process and to finalise any agreement reached in mediation. A mediation agreement is not subject to the Legal Aid Agency's Statutory Charge where the Legal Aid Agency would require that legal costs and disbursements be met from any money or property recovered, acquired or preserved.

If and when an agreement is reached, this will be summarised by the mediator in a document usually called a Memorandum of Understanding or a Summary of Financial Proposals which may not be disclosed to a Court. However, the financial information disclosed during the mediation and attached to the Memorandum of Understanding/Summary of Proposals is disclosable. Please note, the Memorandum of Understanding or Summary of Financial Proposals may be used by the legal advisors to prepare a consent application to be put before the Court for the Court's approval. Any agreement reached in mediation is not final and binding. Separate legal advice will have to be obtained by each party as to how any agreement reached in mediation may be ratified and formalised.