

Family Mediation

Dealing with relationship breakdown
without going to court



*Community
Legal Service*



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0845 345 4 345 www.clsdirect.org.uk

If your relationship is breaking down, you will probably be concerned about making arrangements for the future, especially if you have children. This leaflet explains how you can do this without going to court, by using family mediation.

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The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 7 for sources of information and advice.

What is mediation?

If you get divorced or you separate from your partner, it is usually better if both of you can sort out the arrangements for the future between you. Mediation is a process of negotiation to help you reach decisions about these arrangements together.

Mediation aims to help you to find a solution that meets the needs of you, your partner and any children, and that you all feel is fair. At the end of mediation, you should feel that there has been no 'winner' or 'loser', but that you have come to an arrangement that you can all live with.

Mediation can help to reduce tension, anger and misunderstandings, and improve communication between you and your partner. This is especially important if you have children, because you will probably have to co-operate over their care and upbringing.

You may want to read this leaflet alongside one of the Community Legal Service Direct leaflets 'Divorce and Separation' or 'Living Together and your Rights if you Separate'. These have more information about your legal rights if your relationship has broken down.

Who can use mediation?

You can use mediation whether or not you are married and whether or not you have children.

You can use mediation to help you decide whether your relationship is over. If you decide it is not, then you and your partner may want to seek counselling.

Mediation is always voluntary. However, for mediation to work, you and your former partner both need to take part, and neither of you should feel threatened or pressured by the other. It is also important that you are prepared to share information about your situation with each other.

Mediators do not act for just you or your partner. They are trained to act impartially (without taking sides).

What can I use mediation for?

You can use mediation to help make decisions about any or all of the issues between you, including:

- arrangements for your children;
- financial arrangements;
- dividing up your property;
- other practical issues to do with your separation or divorce; and
- how you and your ex-partner will communicate with each other in future.

If you need to sort out arrangements for your children, the mediator will help you decide what is best for them, and how and what you should tell them. The mediator will encourage you to concentrate on your children's

needs, and take into account their feelings and what they want when you are making arrangements for their future.

If you need to sort out financial arrangements, the mediator will ask you to fill in a form giving full details of:

- what you earn;
- what you need to spend your money on;
- your assets and property, and pension arrangements;
- loans or other debts; and
- other important information.

If you do not give correct and complete information to the mediator, a court could overturn any agreement you make.

When can I use mediation?

You can use mediation at any stage you feel it would help, whether you are:

- still living together;
- living separately; or
- already divorced.

You can use mediation whether or not you have been to a solicitor, and whether or not you have started court proceedings.

What if my partner is violent?

Mediators must make sure that mediation discussions are fair, and that you and your partner feel safe. So the mediator will check with each of you separately before and during mediation to see whether there is a problem of violence or abuse.

If you are worried about your safety or your children's safety, you should tell the mediator. In that case, the mediator will probably say that you should see a solicitor. If you need a court order to protect you from your partner, you can then apply for one.

If you decide to use mediation but do not want your partner to know your address or phone number, you should tell the mediator. You can also ask for separate waiting areas when you come to mediation discussions.

See 'Further help' on page 7 for names of organisations that can help you if you feel you are at risk of violence from your partner.

What if I don't use mediation?

You don't have to use mediation to sort out arrangements for the future.

You can negotiate directly with your partner and reach agreement without any outside help.

You can ask a solicitor to negotiate with your partner for you, either directly or through your partner's solicitor. Your solicitor may still suggest

that you try mediation to settle a particular problem between you.

You can apply to the court to settle your dispute for you. However, the court will encourage you to reach agreement between yourselves if you can. If you have not already tried mediation, the court may suggest you do.

Do I still need a solicitor?

You may find it helpful to talk to a solicitor before you start mediation so that you know where you stand legally, especially for money matters.

Mediators can give you general information about the law and how the legal system works. However, they cannot give you advice about your own legal rights or the best course of action for you. So you may need to get your own legal advice from a solicitor, both during mediation and at the end of it, to make sure the agreement you have reached with your partner is best for you. You may also need a solicitor to draw up a formal agreement or an order for the court to make your decisions legally binding.

How is mediation different from counselling?

Counselling is about you and your relationship. It can help you to understand and deal with your feelings and emotions. Sometimes counselling is intended to help couples stay together.

Mediation is about the practical and legal arrangements you and your partner make about your children or your property. It is a way of making decisions and settling any disputes after you have decided to separate.

The mediator may suggest you see a counsellor if:

- they think it would be a good idea for you to talk to someone about how you are feeling; or
- you and your partner decide you want to give your relationship another go, and you need help to do this.

What happens in mediation?

Mediation takes place in a private and informal setting, with usually only the two of you and the mediator (or sometimes two mediators).

The mediator is there to help both of you and to make sure that you and your partner:

- each listen to what the other has to say;
- understand each other's needs and concerns; and
- try to find a solution.

The mediator will not tell you what to do and will not take sides, but can share ideas with you and help you look at different solutions.

How long does mediation take?

Mediation usually lasts for between two and five sessions, each of about an hour and a half. However, the time it takes depends on how complicated your dispute is.

What happens at the end of mediation?

At the end of mediation, you will usually get a written summary of the decisions you have both made. This is not a legally binding document and you should still see a solicitor before you commit yourself to a legal agreement or a court order.

Is mediation confidential?

What you say in mediation is normally confidential, and the mediator will not pass on anything to anyone else unless both of you agree. However, there are two situations where information could be passed on:

- If it seems from what is said during mediation that someone has been seriously hurt or is at risk of being hurt, then the mediator should make sure that the police or social services are told.
- If something is said in mediation that leads the mediator to believe that you or your partner is benefiting or has benefited from the proceeds of a crime, the mediator might have to stop the mediation or report this to the police.

What you say in mediation cannot be used in court later if mediation breaks down. However, this does not apply to factual information that you give, such as details of your income and property. This can be used in any later court proceedings and passed to lawyers.

How much does mediation cost?

There is no standard fee for mediation. Different mediators charge different rates, usually by the hour. Some mediators have a 'sliding scale' of fees, which means that the amount you pay depends on how much you earn.

If you can't afford mediation, you may be eligible for public funding through the Community Legal Service. To find out more about this, see 'The Community Legal Service' on page 7.

How do I find a mediator?

If you want to use mediation, you can contact a mediator of your choice and ask for an appointment. Your solicitor will be able to give you details of local mediators. If you think you may be able to get mediation paid for by the Community Legal Service, you must choose a mediator who can do this kind of work. See 'The Community Legal Service' on page 7 for information on how to find mediators who can provide publicly funded mediation.

Further help

Community Legal Service Direct

Provides free information direct to the public on a range of common legal problems.

Call 0845 345 4 345

If you qualify for legal aid, you can also get free advice from a specialist legal adviser about benefits and tax credits, debt, education, employment and housing. You can also find a local legal adviser or solicitor.

Click www.clsdirect.org.uk to find out more.

Academy of Experts

phone: 020 7430 0333

www.academy-experts.org

ADR Group

phone: 0808 200 0033

www.adrgroup.co.uk

Family Mediation Telephone Helpline

phone: 0845 60 26 627

www.familymediationhelpline.co.uk

Where you can obtain advice leaflets

Family Mediators' Association

phone: 0808 200 0033

www.fmassoc.co.uk

The Law Society

phone: 020 7242 1222

www.lawsociety.org.uk

National Family Mediation

phone: 01392 271610

www.nfm.u-net.com

Resolution

phone: 01689 850227

www.resolution.org.uk

UK College of Family Mediators

phone: 0117 904 7223

www.ukcfm.co.uk

If you need help or advice because your partner is violent towards you or your children, contact the following.

Freephone 24 hour National Domestic Violence Helpline run in partnership between Women's Aid and Refuge

phone: 0808 2000 247

Women's Aid

www.womensaid.org.uk

Refuge

www.refuge.org.uk

The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the website: www.clsdirect.org.uk

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The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at www.legalservices.gov.uk or find the details for your local Legal Services Commission office in the phone book.

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COMMISSION

The leaflets are also available online at: www.clsdirect.org.uk

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The leaflets are also available in Welsh, Braille and Audio

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343** or email LSCLeaflets@ecgroup.uk.com or Fax 020 8867 3225



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