

RACHEL JAYSAN

Family Law. Together

Mediation

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What is Mediation?

Constructive discussions between (usually) two people who have a common problem that they wish to resolve. These discussions are facilitated by a mediator who can offer helpful suggestions and detailed information to allow the parties to reach sensible, pragmatic and workable solutions.

The mediator will remain impartial and not give advice.

When is Mediation Relevant?

Family mediation can be used to help resolve the following issues:-

- How to divide /distribute the income and the assets of families when parties divorce or separate
- Arrangements for children
- Variation of existing agreements or court orders
- Grandparents time with children
- Discussions around nuptial agreements
- Discussions around cohabitation agreements

The Mediation Process

(1) Mediation Information and Assessment Meeting (MIAM)

In many cases, before applying to the family court for family finance or child arrangement matters there is an obligation to attend a MIAM. The purpose of this meeting is to discuss with the prospective parties, on an individual and confidential basis their specific circumstances, the mediation process and its suitability as well as other options for remedying the dispute.

(2) The Mediation Sessions

Financial agreements Parties will provide each other with financial disclosure. The mediator will guide this process. Once disclosure has been provided it can be sensible for each party to obtain independent legal advice. Receiving independent legal advice provides each party with confidence when reaching agreement in mediation.

Arrangements for children When parents wish to agree on how much time they will each spend with the children, the flexibility of the mediation process means that this agreement can be reached quickly, or over time, depending on the given situation. Often parents choose to have a gap of a couple of weeks or even longer between mediation sessions to ensure that any arrangement works on a practical level. An interim agreement may be reached early on and then tweaked during the course of the mediation, depending on issues that may arise or specific logistical or practical issues, which become apparent with time. Inevitably, this means that long term, workable agreements can be reached through mediation and often results in solutions that both the parents and children are more likely to be happy with.

(3) Reaching agreement

Once agreement is reached, the agreed proposals will be drawn up by the mediator and a lawyer will then convert them into the necessary financial order. When it comes to children arrangements these can be drawn up into a parenting plan or an order, depending on the circumstances. This will be discussed in detail, depending on the issue that has been resolved.

Voice of the Child(ren)

Within the mediation process there is a place for your child(ren)'s voice to be heard. If both parents agree, they will be asked their thoughts and opinions on the situation that is being discussed. Although the role of decision maker will always lie with the parents; including children in the mediation process allows their views, concerns and suggestions to be heard in a neutral, confidential and unpressurised environment.

Many parents feel that hearing their children's voice, through a third party, to be extremely insightful, which often brings about a more positive co-parenting relationship.

Hybrid Mediation

This model is most suited to high conflict and complex situations. Unlike traditional mediation, it can be utilised where there is/ has been abuse and/ or an imbalance of power. This model can also be used to resolve any matter, which concerns families, including:

- Inheritance disputes
- Family business disputes
- Shareholder disputes involving family members
- Trustee/beneficiary disputes involving family members; and
- The administration of jointly owned property or assets.

Hybrid Mediation Process

This is similar to traditional mediation. The only differences being:-

- (1) If the parties are supported by lawyers within the mediation process the mediator will conduct a short "lawyers" only meeting to agree an agenda prior to the mediation.
- (2) There will be increased fluidity and flexibility. The mediator can shift between joint meetings where both parties (and possibly lawyers) will be present to single meetings where the parties will separate out. Single meetings may be used throughout depending on the level of conflict. The mediator will gauge at every stage which method to utilise to assist the negotiation process.
- (3) Financial disclosure will usually take place prior to the mediation sessions, although the mediator will guide this process.

How This Model Differs from Traditional Mediation

- (1) The most significant difference is that the mediator can keep certain things private - like what one side is willing to agree to - for a short time. These are known as "confidences". The mediator can use these "confidences" to guide the conversation and make it easier for both sides to reach a deal.
- (2) Lawyers are often (but not always) present during the meetings. They will support their clients and provide contemporaneous advice allowing for swifter negotiations. They will promptly draft any legal documents, often at the mediation session itself, allowing both parties the confidence that the agreement reached is final.
- (3) Sessions can be much longer to allow for a more expeditious resolution.



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