

A survival guide to

Using family mediation after a break up

advicenow

Making sense of the law and your rights



Introduction

This guide is for you if you have recently split up or are struggling to agree with your ex-partner (or another family member) about what's going to happen to your home, money, children or any other issues. It doesn't matter if you are or were married, in a civil partnership, living together, or never did any of these things. This guide explains what family mediation is, how it could help you, and what your other options are.

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What is family mediation?

Family mediation is not about getting back together. In fact it is the opposite, family mediation aims to help you to agree how you will live apart.

Agreeing arrangements for the children or how you will divide money or property if your relationship has ended can be very hard. Often, it is just too hard to do by yourselves. Feelings get in the way and discussions about practical things get lost in the hurt and anger. And when you do manage to discuss them, most people are feeling less reasonable and less fair than usual. It is for all of these reasons that many people find it useful to get some help.

One option is to meet together with your ex and a mediator, who has been properly trained to help you put your feelings aside and focus on the practical issues that need to be sorted out. This is called mediation. The mediator won't take sides or decide what is fair for you – they are there to help you arrive at a decision that you consider fair. Mediators don't give you legal advice and can't draw up formal documents, so it is usually wise to see a solicitor too – the mediator can tell you when that is needed.

You can use family mediation straight away after deciding to end your relationship or later if you are still having problems.

Another option is to get a family solicitor to negotiate with your ex on your behalf. This is usually more expensive and can add to hostilities between you and your ex, which might not feel like a problem now but is unhelpful in the long term.

Some people can't agree even with help and have to take the issue to court so that the court can decide. Going to court though is stressful and expensive, so it is best to avoid it if you possibly can.

Some people feel they should go to court to 'protect themselves' but this is a misunderstanding of the system – agreements arrived at through mediation (or any other way) can be written up into a legally binding document or made into a court order. It is usually much better in the long-term to have had a say in the decisions arrived at, so that they work for your family. Before you can take a family issue to court, most people have to show that they have thought about using mediation.

What is the difference between using a solicitor and a mediator?

A solicitor is a legal expert who will give you legal advice and prepare court documents for you. A solicitor can also manage negotiations on your behalf to reach an agreement with your ex, either about children's arrangements or finances. The solicitor does not meet your ex and only represents you. The solicitor does not represent the children.

A mediator does not give legal advice, does not prepare any Court documents and does not represent you or your ex. Instead, the mediator will work with both of you to help you discuss issues and reach agreements. Mediators are experts in managing discussions and negotiations with both clients and will always keep the children's needs as the main focus.

Why choose family mediation?



Why choose family mediation?

There are a number of reasons why family mediation may be a good way to sort things out. First, it is often quicker and cheaper than using a solicitor or going to Court. It is also a good way to reduce conflict. It will provide a safe place for you and your ex to try and

work out your solutions for the way forward and, if you have children, this could be really helpful. It will be easier to manage parenting in the years ahead if you have avoided having a very hostile break-up.

How does mediation work?

To start with you meet the mediator by yourself, and they meet your ex for a private chat too. You'll be able to tell the mediator all about your situation and what is most important to you. Your ex will do the same. The mediator will check whether mediation is going to be suitable and, if so, whether it should take place with you in the room together, or whether it should happen with you in separate rooms. You can also decide then whether mediation is right for you. You do have to pay for this meeting – they are usually about £90 an hour, or less for a half hour meeting.

If you decide mediation is not for you, you could consider asking a family solicitor to negotiate for you. Phone around and talk to a few to see if you might be able to afford it.

If you decide mediation might be really helpful for you, you can organise the first mediation appointment.

The mediator will help you both (separately or together) to go through all your issues, think of your options, decide whether they would work well in practice and come to an agreement about what's best. The mediator is there to make sure that both of you get a chance to put your side of the story, particularly if one of you is better at explaining their position than the other.

In between sessions it can be helpful to get advice from a solicitor to check that what you are agreeing to is fair for you. If you don't get legal aid, some solicitors now offer advice for a fixed price.

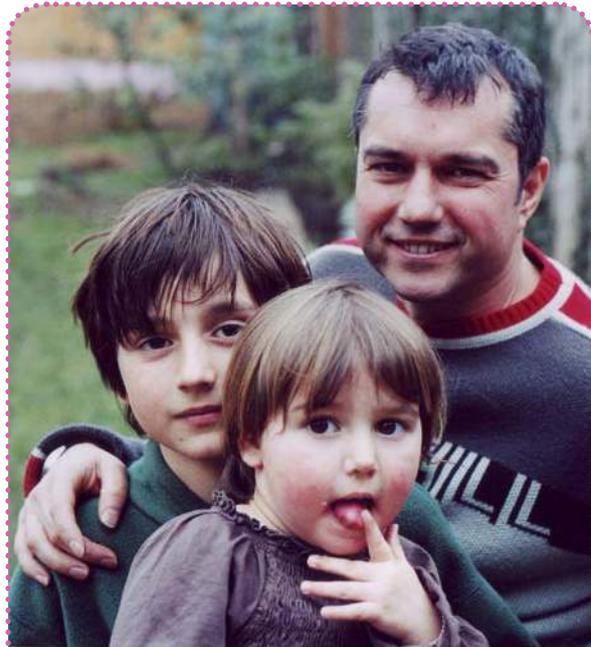
If you are dealing with decisions about money, the mediator will ask both of you to produce documents to prove the details of your finances. You do this by being asked to fill out forms giving all the details and providing evidence like bank statements.



At the end of the sessions, the mediator will write down what it is that you have agreed. This is not legally binding and, if the agreement is about finances, you will need to ask your solicitor to draw up formal documents to have it made legally binding.

If you've managed to agree some issues but not others, the mediator will record what has been agreed and what still needs to be sorted out. This should help you cut your legal costs if you need to use a solicitor to sort out the final things.

How does mediation work?



How does mediation work?

I didn't want to go....

I thought it was pointless. And I was angry that there was another hurdle I had to jump when I was already feeling overwhelmed. And I had to pay for it! I had it in my head that we had to go to court and fight it out. To my surprise my ex was a bit keen. She was taken with the idea that we might get everything sorted out in a couple of months. To be honest that made me even more convinced I didn't want to do it. I didn't see why I should make things easy for her. But we have two kids. It was hard to argue that it wouldn't be better for them if it were all done quickly. I agreed to go to the meeting – still thinking it was a waste of time. But by the end of the first session I could see how it would work. It felt like the right thing for us. And it helped us to start talking again which has made things loads easier for the kids.

How much will it all cost?

If you can't get Legal Aid it can be hard to work out how much it's all going to cost at the start. The total cost depends on how many things you need to agree on, how complicated they are, how long it takes you to reach an agreement, which service you use, and how much you earn. The initial meeting with the mediator usually costs between £70–100 each.

Most people then need between 2 sessions to agree issues around the children and 4 sessions to agree financial issues, each lasting 90 minutes. Many mediators charge people according to their income, so if you are on a low income you may pay £120–£150 per session and if you are on a high income you could pay more like £160–200. Some mediators also charge a higher fee for sessions in the evening or at weekends.

Remember that most people need to pay for some independent legal advice too so you should budget at least an extra £300 for that, and a further £500–600 to get any agreement about finances made into a court order. When you are looking for a mediator or a solicitor, don't be afraid to phone around and compare prices.

If you can get legal aid, the introductory meeting and the mediation is free. You can also get a small amount of free legal advice alongside it, and get the agreement you make about your finances made into a legally binding document for free too. To get Legal Aid you need to be on a low income *and* your savings and the value of your home are below the threshold. The mediator will work out if you are entitled to Legal Aid at the first meeting, or you can check on Gov.uk – www.gov.uk/check-legal-aid



If you think you might be entitled to Legal aid, take with you to the first meeting:

- Your national insurance number
- A bank statement(s) covering the last four weeks before the meeting
- An estimate of the value of all your capital assets, including the value of your home, savings, shares, or any other property
- (If you are employed) pay slips covering the four weeks before the meeting
- (If you are self-employed) your most recent accounts or tax return
- (If you get benefits or tax credits) the letter(s) that says what you are entitled to.

This will enable the mediator to work out if you might be entitled to legal aid, and apply for it if you might be.

How much will it all cost?

If there has been domestic violence in your relationship

You need to think carefully whether mediation is for you. If you are thinking about it, use a mediator who is used to working with clients where domestic violence has been an issue.

When you first meet with the mediator they will explain how they can help you to feel safe – this might be you and your ex using separate waiting rooms, arriving and leaving at different times, having separate meetings, or meetings where you and your ex are in different rooms and the mediator goes from one to the other.

Mediators are trained to help you decide if mediation is right for you. For mediation to go ahead you, your ex and the mediator all need to agree that you can discuss your concerns without fear, and that you will both be able to think clearly and make good decisions. If everyone decides to go ahead, the mediator will keep this in mind at every session. If you decide that mediation is not right for you, you might find it more comfortable to get a solicitor to negotiate with your ex (or his/her solicitor) for you.

How much will it all cost?

Do I have to use mediation?

Nobody has to use mediation. But if you want to go to court over a family problem (like how to divide money or property after splitting up or where the children should live, for example) you have to show the court that you have met with a mediator first and considered mediation. This is because the government thinks with good reason, that it is usually better that you decide these things between yourselves if you can, rather than the court telling everyone what to do. If you are considering going to court you need to have had an introductory meeting about mediation first. (These are sometimes called Mediation Information and Assessment Meetings or MIAMs.)



If I don't want to mediate and want to go to court, do I have to meet with a mediator first?

Sometimes you can go to court without having had a meeting with a mediator first, if:

- You have contacted three mediators within 15 miles of your home and are unable to get an appointment with any of them within 15 working days.
- There has been domestic violence between you within the past year and police investigations or civil proceedings were started. (If you didn't report it, you still need to speak to a mediator but can explain you don't want to use mediation because there has been violence between you.)
- Your problem is about money and one or both of you is bankrupt.
- You don't know where your ex is.
- You want to apply for a court order but for particular reasons don't want to give your ex any notice.
- The court application is urgent because someone is in danger.
- The issue is about a child who is already involved with social services because of concerns over their protection.

Do I have to use mediation?

Mediation information and assessment meetings (MIAMs)

A mediation information and assessment meeting (MIAM) is not compulsory mediation. It is basically the same as any introductory meeting with the mediator – you meet with a mediator on your own to talk about your situation, discuss what the issues are that need to be resolved, and to consider what options you have for sorting everything out, and you then get to choose the way forward that you feel is best. A MIAM is just what the government called these first meetings when they changed the law to mean that you have to have explored the possibility of using mediation before you can take a family issue to court.

If either you or your partner don't want to use mediation or if there is another reason it won't work for you, then the mediator will fill out the form you need to have to go to court at the end of the MIAM or introductory meeting.

This meeting isn't free. It usually costs around £90–£120 each. This usually includes the fee for completing the form for court, but sometimes not. Phone around and compare prices. See **How to find a good family mediator** on **page 12**.



You will be able to get this meeting (and any further mediation) for free if you can get Legal Aid (see **How much will it all cost?** on **page 8**). If one person is eligible for Legal Aid, the information and assessment meeting will be free for both of you.

Mediation information and assessment meetings (MIAM)

How to find a good mediator and solicitor

How to find a good family mediator



Ask friends and family for a recommendation or your solicitor if you have one. Or use the search tool provided by the Family Mediation Council to find one near you.

www.familymediationcouncil.org.uk/find-local-mediator

All the mediators included on the Family Mediation Council website have been trained by providers approved by the Family Mediation Council and most are also accredited, which means that they are experienced mediators. Mediators who do Legal Aid funded mediation are all accredited – you can search for them by ticking the middle box on the search tool.

Mediators are trained to give legal information but not legal advice. Some people feel safer with a mediator who is also a qualified solicitor. They can't give you legal advice but they are obliged to tell you if you are about to make an agreement that is very different to what a court would order. (If you want to do it anyway, you can.) If you want a mediator who is also a solicitor, use the search on the family mediation council's website and check what it says on

the mediator's website about their background. Or the search on Resolution's site, explains in the results how long the mediator has been a family law solicitor. **www.resolution.org.uk/findamember** (Not all good family mediators and solicitors appear on Resolution's search, only their members).

Don't be afraid to phone around and compare prices. You need to ask:

- What the mediator's experience is? Is the mediator accredited?
- If the mediator is also a solicitor, ask how many mediations the solicitor does each year. (Choose an experienced solicitor-mediator who does many).
- How much the initial meeting is?
- How much each mediation session will cost each of you?
- If there are any other additional fees (for example, is there a separate cost for writing up the agreement at the end?)
- How busy they are – are they likely to be able to see you at a time that both you and your ex can do?

How to find a good mediator and solicitor

How to find a good family solicitor



You can find a good family solicitor near you on Resolution's website: www.resolution.org.uk/findamember. All members of Resolution have signed up to their code of practice which says that they should find a constructive approach to family issues and consider the needs of the whole family (and in particular the children), so they shouldn't be like the divorce solicitors you have seen on American TV dramas. It's ok to phone around and compare prices. Some will offer help for a fixed fee, others may offer a first meeting for free.

How to find
a good
mediator
and solicitor

Common questions

“I like the idea of mediation, but I’m not sure I can face the idea of seeing my ex again and again.”

Many people feel this. Having to see and speak to your ex is both a challenge and a very positive side-effect of mediation.



Many people find it enables them to find a way to communicate with their ex again, which if you have children together can only be a really good thing.

If you are dead set against it, many mediators can see you separately and offer mediation where you and your ex are kept in separate rooms. Your other option is to use a solicitor to negotiate on your behalf. This can be more expensive but, particularly if there are issues of abuse, it can feel safer to have an expert on your side, making your case for you. You can find a good family solicitor who believes in a constructive, non-confrontational approach on Resolution’s website: www.resolution.org.uk/findamember

If you have children, it’s worth thinking about how you’re going to manage in the years ahead and what it will feel like dealing with your ex when you no longer have your solicitor involved. Using a mediator can be a useful way of reducing conflict with the ex in a safe and controlled way, which could make it easier for you in the years ahead.

“We need to sort out arrangements for our children who are now 12 and 15. Can/should they be involved in the mediation?”

It is important to listen to the children and understand their wishes and feelings. If you, the children and the mediator agree, then the children can speak to the mediator themselves. Some mediators are specially trained to talk to children (you can search for them by ticking the bottom box on the FMC search tool). It can be helpful for them to be involved about the issues that affect them such as where they will live, which parent they live with, and how often they’ll see their other parent.



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“I wouldn’t trust my ex to actually do what she’s agreed to do. Would I be better off sorting it out another way?”

You can ask the court to make the agreements about finances you have arrived at during mediation (or those negotiated by solicitors) into a court order so that they are legally binding. Then they have the same weight as any other court order. Bear in mind this is likely to cost you approximately an extra £600 for the necessary solicitors and court fees. If you think your ex will lie about their finances you might want to consider using a solicitor instead of mediation. Some people feel that it’s easier to hide



the true financial picture in mediation than if a solicitor is more involved.

You cannot usually get agreements about the children made into a court order in the same way. But, as court orders about children are very hard to enforce anyway, coming to agreements that work for everyone involved is probably still your best option.

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“I’m worried about having to make my case myself. Can my solicitor come to the mediation sessions with me?”

Yes in theory, but this rarely happens. You can get advice from a solicitor between sessions to check that the agreements you are coming to are fair but they are unlikely to agree to come to the mediation session as it will be very expensive for you. The mediator will ensure that you are properly heard and that your case is understood by everyone present.



However, there is another option – usually called ‘collaborative law’ – where you and your solicitor meet with your ex and his/her solicitor to come to an agreement. If you can afford it (and it is quite expensive), that might be a better choice for you. You can find a collaborative lawyer on Resolution’s website: www.resolution.org.uk/findamember

“My ex is very persuasive and charming. How can I be sure that the mediator won’t be biased?”

Mediators are trained to be unbiased. They won’t take sides or decide who they like best. They make sure that both of you have the opportunity to say what you need to say and help you come to agreements. When you have the first meeting before you start mediation talk to the mediator about any concerns so that you can ensure you have complete confidence in their ability to remain impartial.



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“Is mediation cheaper than using a solicitor to negotiate for me?”

If you are financially eligible for legal aid, then mediation will be free for you, including a small amount of legal help you have alongside it. In most cases, legal aid is not available for solicitors to represent you and sort things out for you anymore, so you would have to pay for a solicitor to negotiate for you.



If you are not eligible for legal aid it usually is substantially cheaper to mediate. But it does depend on whether you are able to come to an agreement or not, and if so how quickly. If you can agree on some issues fairly quickly and narrow the points of disagreement you will have saved money. If you can’t come to an agreement or have only agreed on some things, you have to pay for the mediation and for whatever solicitors and court fees it takes to get the rest of the matter sorted.

Common questions

“I’ve been given legal advice that says what I should get, but my ex is never going to agree to that. Is there any point in going to mediation?”

Yes. It is very normal in a time of relationship breakdown to see the problems as too big to make mediation worthwhile, but the mediator is an expert in problem-solving and resolving conflict.



Also, bear in mind that the advice you have been given by your solicitor was probably that they thought you could argue for ‘this’, not that a judge would definitely award you ‘this’ or that such an award is the only thing that would be fair. A solicitor may well give your ex very different advice about what a court might order.

If you can come to an agreement (through mediation or any other method) you will save money on court fees, solicitors fees if you have a solicitor, save yourself a considerable amount of stress, and usually save yourselves from further souring your relationship – which has got to be good if you have children together.

“I don’t think we’re ever going to agree. Going straight to court just seems quicker and easier.”

Sometimes people have the idea that going to court is what you should do. But if you want to go to court over a family problem, you have to show the court that you have met with a mediator first and considered mediation. In practice very few cases end up in a court hearing, and for good reason. You have to wait quite a long time for court proceedings and for most people it costs a small fortune – so it is neither quick nor easy.



The information in this guide applies to England and Wales only. The law may be different if you live in Scotland or Northern Ireland.

The law is complicated. We have simplified things in this guide. Please don't rely on this guide as a complete statement of the law. We recommend you try and get advice from the sources we have suggested.

advice**now**.org.uk

If you would like this guide in another format please email guides@lawforlife.org.uk

This guide was written and produced by Law for Life's Advicenow project. Advicenow would like to thank all those who provided feedback on this guide and took part in the pilot.

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