



# our agreement to mediate

## aims of mediation

Mediation can offer you the opportunity, in a safe and controlled environment, and with the help and guidance of the mediator, to hold constructive and positive discussions. These discussions can help you:

- communicate better and more effectively with those you're in conflict with
- establish what needs to be sorted out
- understand what is important for you and for anyone else involved
- gather together the information you need
- consider your own solutions for the short and longer term
- create workable and sustainable plans
- take control of your situation and make your own decisions

## the mediation process

The process usually involves a series of mediation sessions. Initially, the mediator will meet with those involved in individual sessions. Then, future sessions are normally held jointly with all parties and the mediator present. Further individual sessions can be held if this will assist the mediation process.

The individual sessions offer you the opportunity to meet the mediator, and gives the mediator the chance to check that you understand what is involved in the mediation process. It also gives you the chance to provide the mediator with some background information and for the mediator to confirm what you hope to achieve from the process. This should help make the first joint session more productive.

The individual session is likely to take up to an hour. Each of the joint sessions are likely to take about an hour and a half to two hours. These timings may differ depending on the matters to be discussed. The number of joint sessions will depend on how those involved approach the mediation process, on the matters to be addressed and on the progress that is made. Three or four joint sessions, sometimes more, are often needed to deal with what has to be sorted out, although less complex matters could be completed more quickly.

In some cases, a second mediator may also be present to act as co-mediator. You will be asked to confirm that you have no objections to this. Where a co-mediator is involved, the mediator will still have overall responsibility for the mediation.

## your role

The mediator understands that there may be many tensions and disagreements between parties in the middle of conflict. The outcome of mediation can never be guaranteed, and its success can depend often on the behaviour and approach of all parties. The mediation process will work better, and will have a greater chance of a positive outcome, if you all engage in a positive and constructive way. You will be expected to:-



- behave in a civil manner towards others including the mediator
- be willing to listen to the others in the mediation, and to consider their points of view
- commit to exploring differences in a respectful way
- undertake to approach the discussions in good faith and in a spirit of honesty and co-operation
- take joint responsibility for gathering all information that is relevant to the discussions at mediation.

### **the mediator's role**

A mediator's role is different from that of a lawyer or judge. The mediator will, at all times, remain impartial. The mediator is not there to judge you, offer you legal advice or to make decisions for you.

The mediator can:-

- provide parties with a safe and controlled environment
- help parties communicate better with each other
- encourage constructive and positive discussions
- provide clarity and focus
- encourage parties to listen to each other
- where appropriate, ascertain the views and wishes of any child or children in the conflict
- gather and understand all the relevant information
- help parties reassess their situation and find common ground
- help parties work towards their own solutions
- provide information in an impartial way
- communicate about what matters to you in a way the others involved are more able to hear
- check you all understand the information which you are using to make plans
- think through the consequences of any plans you are considering
- explain how any proposed settlement terms can be made legally binding.

### **your lawyer's role**

In some cases, parties will have already consulted a lawyer or other adviser before coming to mediation. Although they may not be involved directly in the mediation sessions, their role can remain an important one.

Your lawyer or adviser can advise and support you during the mediation process. It is quite in order to take advice from your lawyer at any point when you are going through the mediation process. Your mediator may encourage you to do so, particularly in relation to an issue that might require you to take legal advice before continuing with discussions at mediation.

### **information**

It is important that the discussions that take place at mediation are based on everyone involved, including the mediator, having a full and accurate understanding of all information relevant to your situation.

The mediator will ask you to provide full and accurate details and, where required, relevant vouching or documentation. The mediator can help you to identify the information, and to consider the documents that may be relevant to the issues you wish to settle. However, the mediator will not carry out any independent investigations to verify this information.



Accordingly, by signing this agreement, and by embarking on the mediation process, you undertake to provide a full disclosure of all relevant information in relation to the matters to be considered at mediation.

### **mediation summaries**

No oral contract will be entered into during mediation. Plans formulated in mediation are not binding except in very limited circumstances which would be discussed specifically, and which would be set down in writing and signed by those involved. At the request of all parties, the mediator can prepare a written summary setting out the terms of any proposed arrangements agreed during the mediation process. If you wish, your lawyers may use that summary as the basis for a legally binding settlement.

### **ending mediation**

You may terminate the mediation at any stage. However, it is hoped that you would be willing to discuss your concerns so that every effort can be made to address these. The mediator may also terminate the mediation at any time. Should the mediator reach the conclusion that mediation is not appropriate in your situation, or that no further progress can be made in your case, the mediator will advise you of this at the earliest opportunity and explain the reasons for deciding to terminate the mediation.

### **confidentiality**

One of the main aims of the mediation process is to encourage open and problem-solving discussion. To foster a solution-seeking climate, no formal record or report will be provided on the discussions that take place at mediation, other than the preparation of a mediation summary if required. These discussions, with the exception of certain information and circumstances outlined below, will remain confidential. Accordingly, you agree to the following:-

- what is discussed in mediation is confidential to the people who are involved in the mediation, and cannot be referred to in any other dispute resolution process, including court
- any written communications, whether by letter, fax, email, text or other means, between the mediator and those involved including you will also be confidential to the people who are involved in the mediation, and cannot be referred to in any other dispute resolution process, including court
- any *factual* information provided in mediation is not confidential. It will be available to both of you, your lawyers and to the court if matters have to be resolved by court action
- neither the mediator nor any co-mediator will be called as a witness in any court or other proceedings at any time
- the mediator cannot receive any information that one of you wishes to be held in confidence from the other parties, even in the individual sessions. The only exception is a private address or telephone number that one of you may wish to keep confidential. If that is the case, please make it clear when you provide the information
- the mediator can only send information to a third party if you both agree (for example, if you ask the mediator to send a copy of your mediation summary to your lawyers). The only exception is where someone relevant to the process is, or appears to be, at risk of serious harm. In that situation, the mediator would discuss the action to be taken with all parties before considering taking action to contact a medical or welfare agency.



## online mediation

In the event that one or more of your mediation sessions are held via online video, the following understanding will apply:

- The mediator will not audio or video record any mediation session, and nor will you. The mediator will check with you that neither you, nor anyone on your behalf, will do so
- The mediator may terminate online video mediation if there is inadequate quality of connection or if a breach of this agreement may have occurred
- The mediator may suspend the mediation if there is any remote interruption, and will restart the online session once satisfied that any interruption has been resolved and that it remains appropriate to continue following such interruption
- Only the people who have signed this agreement to mediate online may be present in the same rooms used by the participants during any online video mediation session. You will confirm that you are not able to be overheard from your location
- You agree to do all you can to ensure that you are not interrupted during online video mediation by anyone else such as children, relatives, pets, or deliveries
- You agree to turn off or put to silent any phones, tablets or computers, and disable any alerts, announcements or notifications of texts, emails, tweets or other social media activity, and to close all or any other open application
- You agree to there being no live or deferred video or audio relay of the online mediation to non-participants
- You assign all intellectual property rights in the online video mediation sessions to the mediator
- If you create any video or audio recording of the online mediation, inadvertently or otherwise, you undertake to destroy any such recording as soon as you become aware of its existence
- Online video mediation is a without prejudice process to seek a negotiated settlement.

## contacting the mediator

The mediator will confirm whether he or she can be contacted by telephone or other correspondence between mediation sessions. Unless otherwise agreed by the mediator, contact with the mediator and the mediator's office should be kept to a minimum between mediation sessions. This helps to ensure that all information passed to the mediator is available to all parties.

## the costs of mediation

The fees for mediation are charged on a fixed fee basis plus VAT which will be charged at the rate of 20%. The mediator will charge:

For individual sessions (usually up to 1 hour): **£200 + VAT**

For joint sessions (usually up to 2hrs): **£400 + VAT**

Preparation of an interim or final mediation summary: **£200 + VAT**

This will vary if, following discussion with you before or during the process, the mediator considers that the mediation will be sufficiently complex or longer to justify a varied cost. The charge applied covers all work undertaken in connection with the mediation, including all correspondence with the parties and their lawyers or advisers, preparation for and attendance at mediation sessions, and, where appropriate, travel time.



Each party will be responsible separately for the fees and VAT incurred in relation to any individual mediation sessions. Each party will be responsible for a one half share of the fees and VAT incurred in relation to any joint mediation sessions, the preparation of interim or final mediation summaries, and any other joint costs agreed in advance. However, the fees and VAT incurred may be shared between you in any way you may agree. The mediator will discuss with you how the costs are to be shared at the start of the mediation.

If you are entitled to Scottish Legal Aid cover under civil advice and assistance or civil legal aid, your share of the mediation costs will be charged in accordance with the guidelines and the hourly rate as approved by the Scottish Legal Aid Board from time to time. You should discuss with your lawyer the legal aid cover available to you for mediation and any conditions applicable to your grant of legal aid before the mediation process begins.

**other terms**

This agreement to mediate is also subject to the [terms and conditions](#) and [privacy policy](#) of *Mediation In Your Pocket*, and also of [McArthur Stanton](#) (the mediator’s law firm).

Signed .....  
Mediator (Scott C. Docherty)

Date.....

**acceptance of agreement to mediate**

I have read over this agreement to mediate. I confirm that I understand them and agree to be bound by them.

Signed.....

Date.....

Name:.....