



# Mediators & Solicitors – How their roles differ & do I need both?

Family solicitors talk about mediation at different stages during the life of a case. This topic might be approached initially when the client contacts a firm first and is unsure as to how resolve their issues. Mediation can also be considered later in the process if this is suitable.

In any event, every solicitor should understand what mediation means and offer it as one of the options available to a person that is currently going through a difficult family time.

Family mediation has grown in popularity over the last 10 years or so and continues to attract a lot of people who feel that there must be a better way to resolve their disputes than lengthy and costly court proceedings.

Some solicitors will also train as mediators and have two hats on, depending on the needs of their clients.

Although dealing with similar if not the same issues, solicitors and mediators are using very different skills to help the people who contact them.

The differences between the role of a mediator and a solicitor are important to understand so that people approach mediation with the right expectations.

## Advice & Information

- There is a difference between advising on law, how that applies to your situation and simply providing you information on what the law is.



● A Mediator is not there to advise you and will not offer advice. They can offer information on the law and procedures in general, however if advice is needed, you would still be asked to speak to a solicitor and obtain independent legal advice through them.

## Impartiality

● One of the core principles of mediation is that it offers participants someone impartial to assist. This is often something that attracts people to mediation hoping that someone will help them with communicating their view to the other participant.

● A Mediator will facilitate a managed discussion. As part of this, they need to stay impartial and should not side with either of the participants, however as part of their job they need to manage and appreciate the opinions shared of both participants and acknowledge that these are valid, even if they are very different from the opinions of the other participant. This very much differs from the role of a solicitor. The solicitor would not be impartial, instead they would act in the best interest of their client which, in most cases is not necessarily what is in the best interests of the other person involved in the matter. They would also use language and arguments to best present their client's case, focusing on their client's case strongest points, instead of trying to appreciate both sides' perspective. Some frank discussions and advice may be happening in the background, but the way the case is presented to the other person and their representative, might differ, depending on the instructions and the way clients want to run their case.



## Confidentiality and Privilege

- Everything you say to your mediator or solicitor is confidential and privileged. That means that it cannot be shared with others. There are some clear exceptions to these rules to deal with safeguarding matters and criminal activities.
- What is quite unique about mediation is the fact that the mediator, to stay even-handed with both of the participants to mediation, cannot keep any confidences. That means that once the two participants sign the Agreement to Mediate and agree to start mediation, everything that is being shared needs to be shared transparently between the mediator and the participants. This compares quite strikingly to when you use a solicitor and they would very regularly keep confidences and not share your tactics with the other side.

## Disclosure



- Both solicitor and a mediator would expect and require to see financial disclosure before discussing any potential divisions of assets upon separation.
- Interestingly, although the mediation process is confidential and one cannot rely on the conversations that happened during mediation at court for example, the financial disclosure obtained through mediation is obtained on an open basis and therefore those documents can be used after the mediation has finished to navigate through other negotiations or court proceedings.

## Outcomes

- Depending on what the matters are that are being resolved, there will be different outcomes that can be achieved through mediation and through solicitors.
- If mediation is successful and the participants agree on the child arrangements for their children, the likelihood is that the mediator would prepare a parenting plan. The Parenting Plan though is not a binding document and therefore if something binding is needed, those parents would need to reach out to a solicitor and see if a Child Arrangements Order can be made by consent in similar terms.
- If mediation was to deal with finances and the participants were able to find a solution, the mediator would prepare Memorandum of Understanding and an Open Financial Statement. Now, very crucially these are not binding documents. They highlight the discussions and decisions made by the participants and some reasoning behind them, but



again to make these binding, there would be a need to contact a solicitor who based on those documents can prepare a consent order in relation to the finances or a Deed of Separation (depending on whether the participants were married or not) to formalise the conclusions reached.

It is important for both solicitors and mediators to work together to achieve the best result for the family. However, the clear guidance that both have and limitations in what they can and cannot do as part of their role cannot be overlooked.

Family Mediation is a great way to resolve matters between the participants whilst improving their communication, understanding of each other's perspective and allowing them more control over their family's outcome. Similarly, legal advice and having a solicitor on your side can be immensely helpful, even when you are involved in mediation and wish to resolve matters amicably. Using a mediator or a solicitor does not need to exclude the other. It is also about finding the right solution that suits you and your family and understanding the different processes that are available to support you through this already very difficult time.

Agata Osińska

[agata.osinska@iflg.uk.com](mailto:agata.osinska@iflg.uk.com)

The International Family Law LLP

[www.iflg.uk.com](http://www.iflg.uk.com)

© September 2024