

# Agreement to Mediate

**Clients names  
with  
Nicholas von Benzon/Lucy King**

The following sets out the basis for the mediations which we at Cheltenham Mediation Services Limited undertake as members of the Family Mediators Association (FMA) or the College of Mediators which are membership organisation of the Family Mediation Council (FMC).

Please read the agreement carefully, note any questions you may have and bring it to your first mediation session. At this meeting you will be asked to sign to confirm your understanding and commitment to the process and to the terms of this agreement.

## **Mediation is Voluntary**

1. Mediation is voluntary. You are choosing to take part because you want to resolve issues that are currently in dispute. Although you may have been told that our initial assessment with you is required by the court, it is your choice as to whether you mediate or not.
2. You have the right to end the mediation at any time, although before doing so we hope you would be willing to explain your concerns in case they can be addressed and resolved.
3. Mediators also retain the right to end mediation if we consider that it would be appropriate to do so.
4. We will be concerned to ensure that each of you comes into the mediation process able to negotiate without risk of threat or harm. We ask you to tell us at any time if you have concerns about safety, intimidation or the freedom to speak.

## **Mediators are Impartial**

5. As mediators, we are impartial and we seek to help all participants equally. We do not make judgements or express opinions about who may be right or wrong, and we do not take sides.
6. We cannot act as mediators if we have prior knowledge of the situation through any previous involvement as lawyer, counsellor or in any other professional role. Although we may have other qualifications, in this context we act only as mediators.
7. Mediators do not give advice (save the advice to seek legal or other advice after every session). They are however able to give detailed and impartial guidance, often including assistance with evaluating or reality testing proposals in the light of their professional knowledge of family law and practice, research or child development. Neither are they professional assessors of risk or capacity, although at assessment meetings they do professionally assess suitability for mediation.
8. In some circumstances we may use a co-mediator or involve another professional. This is part of our responsibility to provide the best model for helping you to resolve your dispute, in consultation with you.

## **Clients make the Decisions**

9. It follows that the choices and decisions remain yours at every stage. Whilst the mediators remain in control of the process, and seek to help you to explore proposals and arrangements in a way that meets the needs of all concerned; you are responsible for any decisions made.

## **Children, Young People and Mediation**

10. Where there are children of the relationship, mediators have a responsibility to consider with their parents the arrangements that are most likely to support those children's relationships and well-being, now and in the future. We support the principle of child inclusive practice and the presumption that all young people aged ten and above should be offered the opportunity to have their voices heard during mediation unless there are reasons to the contrary.

## **Mediation is Confidential**

11. Mediators have a professional duty of confidentiality. Discussions in mediation about proposals and possible terms of settlement are 'without prejudice' and legally privileged, which means they cannot be disclosed to the court, except as explained below at paragraph 15.
12. You each agree not to call the mediator/s to give evidence in court. However in the event of our being required to attend Court or produce any written or other evidence, you agree to pay our professional charges and expenses for so doing.
13. At your request, either during mediation or at the end, we can prepare an interim or final confidential summary of arrangements for your children and/or your proposals for settlement of financial and property matters. Mediation summaries are prepared on a 'without prejudice' basis.
14. We may assist you with the preparation of a Parenting Plan which when signed is likely to be treated by the Court as an "Open" document and which can then be produced as evidence in any subsequent Court proceedings relating to your children.
15. The 'without prejudice' privilege protects the content of mediation and its outcome from disclosure to the court (except where you give your joint written consent; you should take legal advice before you give such consent.) If you are taking legal advice, a copy of your mediation summary can be shown or sent to your solicitors to assist them in advising you.
16. You each agree to us communicating with the solicitor or other legal adviser that either of you is consulting to enable them to give advice about the matters you are discussing in mediation. In any such communication we will maintain our professional impartiality.

## **Exceptions to confidentiality**

17. Whenever an allegation is made within a mediation that someone (particularly a child) is at risk of harm it may be necessary for us to contact the appropriate authorities with or without your permission.
18. In common with all other relevant professionals, we may be required to disclose to the appropriate government authority information with regard to the commission of any relevant, previously undisclosed, criminal offence. The mediator may also be under a linked obligation to make such disclosure without informing you and may have to discontinue the meeting without further notice.
19. Exceptionally, we may disclose personal data in connection with the alleged or established commission of an unlawful act.

20. We are 'processors' of personal data for the purposes of the Data Protection Act 1998. You consent to us processing your personal data for the purposes of this Agreement to Mediate. You understand that this includes our retaining and storing your personal data for as long as is necessary in connection with this Agreement. We may retain data for research and statistical purposes but on the understanding that if used for this purpose all identifying details will have been removed.
21. We may provide a session record or letter at the end of each mediation session. However, you may not ask to see notes made during the session, which are a memory aid for and belong to the mediator.
22. Our quality assurance standards require that we monitor our mediation files. Periodically, our practice supervisors or (in relation to any legally aided mediation) the Legal Aid Agency may have sight of files, but access is strictly controlled and on a similarly confidential basis.
23. Unless otherwise agreed, or in relation to a postal address, email or telephone number which either of you wishes to keep confidential, information including correspondence and emails from either of you will be shared openly with you both. An exception would be where information refers to a child or adult who is, or may be, at risk of harm (as explained in paragraph 16).
24. As part of the mediation process, in addition to any joint meeting, we may have separate meetings or discussions with each of you and with your lawyers. Anything discussed in those meetings will be maintained confidentially and not disclosed to the other, save as we may be authorised to disclose. This is subject to the exceptions to confidentiality and clarifications set out in this section; any financial information even if disclosed in the separate sessions will be open and not kept confidential.
25. For the purpose of any complaint investigation as referred to in paragraphs 27 – 30 of this document.

### **Open Financial Information**

26. When there are financial issues needing settlement, we ask you both to provide complete and accurate disclosure of your financial circumstances, with supporting documents. We do not check the completeness and accuracy of the information provided. You will be asked to sign and date a statement confirming that you have made full disclosure; if it later emerges that full disclosure has not been made, any agreement based on incomplete information can be set aside and the issues re-opened.
27. Your financial information is provided on an 'open' basis, which means that it is available to your legal advisers and can be referred to in court, either in support of an application made with your joint consent or in contested proceedings. This avoids the information having to be provided twice.

### **Professional Standards, Concerns and Complaints**

28. Our practice is governed by the Family Mediators Association (FMA) and our mediations are conducted in accordance with both the Family Mediation Council Code of Practice and the highest professional standards expected by the FMA.
29. We follow the FMA's complaints procedure. In signing this Agreement to Mediate, you also both give your advance consent to the release of the file to any complaints handler should that become necessary.
30. However, any concern you may have as to our practice should be raised with us in the first instance; we will hope to resolve matters to your satisfaction internally and informally according to our own complaints policy.

31. Copies of all these documents can be obtained from this service on request.

### Charges

32. After taking your income into account, we have agreed to charge **NAME** £..... for each mediation session. As **NAME** is eligible for Legal Aid, the fees for the first mediation meeting will be paid by Legal Aid **[Delete this sentence if not applicable]**. Each session will usually last about an hour and a half. This charge includes VAT and the work which we do in connection with that session, but not the preparation of any Mediation Summaries. We shall ask him/her to pay at each session, and shall then issue receipts for payments received. We will generally charge him/her £150 for the preparation of each Mediation Summary or Parenting Plan. This sum includes VAT. We are always ready to provide him/her with costs estimates wherever possible and practicable in order to assist your costs budgeting.

**NAME** has been assessed as qualifying and eligible for public funding (formerly Legal Aid) for Family Mediation. That means that **NAME** will not be liable for his/her/their share of the costs of mediation which will be paid by the Legal Aid Agency.

### Cancellations

33. The cancellation of appointments at short notice usually results in inconvenience and disappointment. It also involves us in expense since we are often unable to fill your appointment. We therefore reserve the right to charge you the full cost of your appointment when you fail to attend an appointment or cancel an appointment with less than two clear working days notice.

### A Shared Commitment

34. We shall do our very best to help you both. We ask you to show your integrity and commitment to the mediation process and to co-operate as fully as possible in looking for workable solutions. We ask you to bear the following in mind throughout the process:

- commit yourselves to mutual co-operation in resolving the conflicts in mediation.
- consider your individual needs, the needs of each other, the needs of the children and the needs of the family as a whole.
- strive for the least possible emotional and financial upheaval for all concerned
- be respectful and understanding throughout and avoid abuse and intimidation.
- leave blame out of the discussions

We understand and agree to the above:

Dated:

Signed: .....  
**[Type client name]**

Signed: .....  
**[Type client name]**

Signed: .....  
**Nicholas von Benzon**  
FMC Accredited Mediator

Signed: .....  
**Lucy King**  
FMC Accredited Mediator