

Mediation and legal advice

The roles of the mediator and the solicitor are very different. It is important to understand the difference.

The mediator, who runs the sessions, is impartial and cannot give either of the spouses any advice about:

- what might be best for you as a parent, moving forward;
- what financial outcome you should be considering;
- whether the proposals being made by your spouse are fair or realistic; and
- what the best way of formalising the agreement is – whether it should be in a separation agreement or in a court order.

Mediators are there to make sure that each of you has a fair say in what is going on, so that each of you can put forward your point of view. The mediator is in charge of the process. It is your agenda.

Generally mediators will recommend to the couple that they each seek independent advice. It helps the mediation process for each to know what they are trying to achieve and what the benefits are of any proposal or outcome.

Preliminary advice

It is helpful to have a preliminary meeting with a solicitor early on, perhaps before going into mediation at all. This can help you to think through what you are trying to achieve.

The preliminary advice from a solicitor can help you to work out where the problem areas are by looking at what is normal. For example, what is a typical pattern of contact for parents? Are capital assets usually divided equally between the couple? What is a sensible level of maintenance?

All of these issues require detailed discussion. Legal advice can help set the parameters and provide focus.

Intermediate advice

During the mediation process, it is usually helpful to take further legal advice. This can sometimes be done over the telephone.

If the financial disclosure has been dealt with in mediation, it is sensible to run this past your solicitor to see if there are any gaps. Solicitors also have a lot of experience in putting deals together, working out what is going to be realistic in practice as well as what is fair.

The mediation process is assisted by people bringing in ideas from their solicitors about what a sensible financial settlement might be or with views about particular aspects.

For example, the couple may wish to understand more about pensions or about arrangements for the home. The legal options can be discussed with a solicitor and then those ideas can be fed back into the mediation sessions.

Making the agreement secure

At the end of the mediation process, the couple hopefully end up with an understanding that they are both happy with.

Each of them should then take legal advice upon that outcome. This is to double-check that it is fair and practical.

Taking independent legal advice also helps to make the agreement binding. If a court is ever asked to look at the agreement reached, a judge is more likely to say it is binding if each party has taken legal advice. It stops either party saying that they did not understand what they were committing to.

It is usual to ask independent solicitors to draw up either a separation agreement, or a court order setting out the terms that have been agreed. These have to be written in detail and in strict legal language.

Again, the solicitors need to advise on the precise terms being committed to.

Both clients and their solicitors would normally sign the document to show:

- that everybody understands it;
- that full financial disclosure has been given; and
- that it is intended to be binding.