

Agreement to Mediate

Names

The following terms set out the basis for the work I undertake as a mediator recognised by the Family Mediation Council (FMC). It specifically incorporates the Code of Practice of the FMC.

Please read each point carefully, noting any questions you may have and raising these with me as appropriate, as you will be asked to sign this Agreement before your first mediation meeting starts and, by signing it, you are confirming your understanding and commitment to the process and the terms set out below.

By signing this agreement, you express your sincere intention to attempt to:

- Be fair to each other throughout mediation.
- Leave fault and blame out of the negotiations.
- Be co-operative in resolving disagreements.
- Consider the individual needs of all involved, particularly those of children.
- Seek practical solutions to the issues and make joint decisions only when you are both ready, and
- Work for the least possible emotional upheaval for all concerned.

Mediation is voluntary

1. Mediation is a voluntary process. You choose to take part because you wish to resolve issues in need of settlement without taking these issues to court if possible.
2. You have the right to end the mediation at any time, if you wish, although before doing, so I hope you would be willing to explain your concerns in case they can be addressed and resolved.
3. I also retain the right to end mediation if I consider that it would be more appropriate or helpful to do so. In some circumstances, I may involve a co-mediator.
4. I will be concerned to ensure that each of you comes into the mediation process able to negotiate without risk of threat or harm. Please tell me at any time if you have concerns about safety, intimidation, or the freedom to speak, or if you experience a level of anxiety that makes it difficult for you to think clearly.

Mediators are impartial

5. As a mediator, I am impartial, and I seek to help all participants equally. I do not make judgments or express opinions about who may be right or wrong, and I do not take sides. I can, however, in an appropriate non-judgmental way, help both of you to communicate your concerns, ideas and proposals to each other.
6. I cannot act as your mediator if I have prior knowledge of the situation through any previous involvement as lawyer, counsellor or in another capacity.
7. Mediators provide legal, financial, and other information in a neutral way to help you understand your responsibilities and the options available to you. I do not provide advice on your “best interests” and will not seek to make decisions for you. You make the decisions.
8. It follows that the choices and decisions remain yours at every stage. Whilst the mediator remains in control of the process and seeks 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

9. Where there are children of the relationship, mediators have an obligation to assist parents to focus on their parental responsibility with a view to developing arrangements that are most likely to support you to fulfil your responsibility to meet those children's needs, interests, relationships, and well-being, now and in the future.

10. The mediator has an obligation to encourage consideration of children's wishes and feelings, and to offer the opportunity to all young people aged 10 or above to have their voices heard directly in Child-Inclusive Mediation, if they so wish and if both parents agree to this.

Mediation is confidential

11. Mediation is confidential, which means that I ask that you do not share private discussions in mediation with anyone else (except your solicitor and other professional advisors). It is especially important not to share anything on any form of social media or with any children or young people, unless this has been expressly agreed. Mediators also have a professional duty of confidentiality subject to the exceptions listed in paragraphs 17-24 below.

12. It follows that any unauthorised recording of mediation on phones or other devices is not acceptable and is likely to lead to the termination of the process. In certain circumstances, some recording (for example, photographs of a flipchart or whiteboard) may be acceptable, but only if discussed and agreed with me first. By signing this document, you undertake not to record any mediation meetings, whether in person or by video conferencing, or you also undertake not to record any communications which are covered by the confidentiality of the mediation process.

13. Discussions in mediation about proposals and possible terms of settlement are 'without prejudice', which means they cannot be disclosed to the court, except as explained in paragraph 16 below.

14. By signing this document, you agree not to call me to give evidence in court, nor require me to produce in evidence any records or notes relating to mediation or assessment meetings, in any litigation or other formal or informal legal process arising from or in connection with the issues being considered in this mediation. I cannot act or agree to act as a witness, expert, or consultant in any such processes. If any party does make such an application, s/he will fully indemnify me in respect of any costs, including legal costs, incurred in resisting, or responding to such an application.

15. As part of mediation, I prepare confidential summaries of proposals regarding arrangements for your children and/or for settlement of financial and property matters. With the exception of statements of financial information (see paragraph 27 below), mediation summaries are prepared on a 'without prejudice' basis which protects their content and its outcome from disclosure to the court. However, if you reach agreement and both consent freely, you may waive the legal privilege and without prejudice nature of your mediation documents to formalise the outcome or present it to the court. You are advised to take legal advice before you give such consent.

16. If you are taking legal advice in mediation, copies of the summaries produced by the mediator may be shown to your solicitor to assist them in advising you.

Exceptions to confidentiality

17. Whenever an allegation is made within mediation that someone (particularly a child) is at risk of harm, I have a duty to contact the appropriate authorities with or without your permission.

18. In common with all other relevant professionals, I may, under the Proceeds of Crime Act 2002, be required to disclose information to the appropriate government authority regarding the any relevant, previously undisclosed, criminal offence. I may also be under an obligation to make such disclosure without informing you and may have to discontinue mediation without further notice.

19. Exceptionally, I may disclose personal data in connection with the alleged or established commission of an unlawful act.

20. I am a 'processor' of personal data for the purposes of the General Data Protection Regulation. You consent to me processing your personal data for the purposes of mediation. You understand that this includes our retaining and storing your personal data for as long as is necessary in connection with this Agreement.

21. My practice supervisor may have sight of files, but access is strictly controlled and on a similarly confidential basis.

22. Access to confidential files may also be necessary for the purpose of any complaint investigation (see para 29 below and my separate complaints procedure for more detail).

23. While it is usual to provide session records or summaries following each joint mediation session, you may not ask to see notes made during the session, which are a memory aid and belong to me.

24. Mediation requires openness between the participants and the mediator. I am unable to conduct a mediation where either participant refuses to allow me to share with the other participant factual (and especially financial) information that is relevant to the choices that you need to make in mediation. This means that the content of the Financial Disclosure pack that you may be asked to complete will always be shared by the mediator with the other participant on a reciprocal basis. This principle of openness within the process also applies to any sessions (or parts of sessions) in the mediation where the mediators meet with you separately unless everyone involved explicitly agrees otherwise. [see also paragraph 28]

Open financial Information

25. When there are financial issues needing settlement, I ask you both to provide complete and accurate disclosure of your financial circumstances, with supporting documents. I 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.

26. 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.

Communications with the mediator between sessions

27. I will only communicate with you between sessions for administrative purposes. I do not mediate through e-mails, telephone calls or other correspondence. Negotiations and discussions are undertaken in the mediation room only.

28. 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, once mediation has started.

Professional standards, concerns, and complaints

29. Mediation is conducted in accordance with the Family Mediation Council Code of Practice.

<https://www.familymediationcouncil.org.uk/us/code-practice/>

30. Please raise any concern about the conduct of mediation with me in the first instance. If you have exhausted my internal complaints policy within the last three month and are not satisfied, you can raise a complaint with the Family Mediation Standards Board. Full information about my complaints procedure is available on request.

31. In signing this Agreement to Mediate, you give your advance consent to the release of the file to any complaint handler should that become necessary.

Charges and other terms of business

32. Charges are detailed on my website: www.jillredshawmediation.com. Sessions are usually scheduled for 90 minutes. If part or all the mediation takes place in separate rooms (shuttle mediation), both participants will be charged for the full length of the session.

33. If one of you is unable to keep a scheduled appointment, please notify each other and me at least two working days in advance. If less than two working days' notice is given, you agree to pay any cancellation fees that may be incurred.

Online mediation (via videoconference)

34. Where sessions are conducted online, you agree to the following conditions:

- a. No one other than you will be present in the room being used by you during any online video mediation session unless this has been agreed in advance.
- b. You will ensure that you cannot be overheard from where you are while participating in the meeting.
- c. You will have done all that you can to ensure that you are not interrupted during the session (e.g., by children, relatives, pets, or deliveries).
- d. You will have turned off or put to silent any phones, tablets, or computers, and have disabled any alerts, announcements or notifications for texts, emails, tweets, or other social media activity, and closed all or any other open applications.
- e. You will sit in a position where the principal light source is not behind you and, if requested by the mediator, you will change your position so that your face is not in shadow or otherwise obscured.
- f. You agree to there being no live or deferred video or audio relay of the online mediation to third participants.
- g. You agree not to video- or audio-record any online session.
- h. 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.
- i. You assign all intellectual property rights in the online video mediation sessions to the mediator conducting the online session.
- j. You understand that online video family mediation is a without prejudice process to seek a negotiated settlement.

I understand and agree to the above:

Signed **date**.....

Signed **date**.....