



Solicitor Assisted Mediation with Arbitration

AGREEMENT TO MEDIATE

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THANK YOU for instructing me in my capacity as a family mediator.

This document sets out in detail how our Solicitor Assisted Mediation with Arbitration scheme works and what the charges are. Once signed, it is also the contract through which the process will proceed.

To take your case forward, we will need you to sign this form in the *Mutual Commitment* section and Form ARB1 and return them to me. Your solicitor will also need to sign.

We look forward to working with you.

Ian Walker **Mediator/Solicitor/Arbitrator**

INTRODUCTION

Introduction

I have been a specialist Family Law Solicitor since I qualified as a solicitor in 1992. I have also been a family mediator since 1996. At different times I have represented family law solicitors as a member of the Law Society Family Law Committee and Chair of Devon Resolution and mediators as a trustee of the Family Mediators Association.

I qualified as an Arbitrator with the Institute of Family Law Arbitrators (IFLA) in 2016 and I am one of the founding arbitrators on the IFLA Children Law Arbitration Scheme.

A DEFINITE OUTCOME/DEFINITE FEES/SHORTER TIMESCALES

What is on offer here is a scheme which combines the strengths and benefits of legal representation, family mediation and arbitration. This is one of the very first schemes of this nature.

This scheme is designed to provide definite outcomes. For these to be achieved for definite fees (unless things go majorly wrong), and for this all to be done within a much shorter timescale than can often be the case.

Mediation can be an excellent process but does not guarantee a definite outcome. Couples can also struggle to provide all relevant financial information.

Negotiations through solicitors can be lengthy, unfocused and expensive. Again no definite outcome is guaranteed. This is even the case with Collaborative Family Law.

Court Proceedings will provide a definite outcome but at significant expense and over the best part of a year.

Often couples will attempt all of solicitor led negotiation, mediation and then end up with a court process.

Arbitration can be combined with solicitor led negotiation – but this is very unusual – and perhaps more likely to be in the form of a more expensive arbitration hearing. The benefits of mediation would be lost. Those benefits are a couple essentially working together to resolve what is ultimately the joint problem – how to end their marriage and resolve financial issues sensibly and with dignity.

Having a “good divorce” helps couples to move forward with their lives and is particularly important when they have children. It is much easier to achieve a bad divorce than is a good divorce.

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With this scheme we are combining the advantages of mediation with the benefits of legal advice and representation and where necessary the certainty provided by arbitration.

It should be possible to get from start to finish in less than 6 months. The costs should also be under half or maybe a third of a court process. The costs in most cases should be £5000 plus VAT each (plus any disbursements – e.g. court fee) to achieve a financial settlement. Participating Solicitors will also offer a fixed fee for sorting out the divorce itself.

If a case ends up in Court each party's costs can easily amount to between £10,000 – £20,000 +VAT before the Judge decides what is a fair outcome. Court proceedings can easily take 12 months.

WHY A FIXED FEE SCHEME IS POSSIBLE?

Fixed fee schemes can be difficult to devise because of the different ways in which cases can develop. In order to offer a fixed fee there needs to be a clear process. Dispute resolution can be unpredictable.

We have devised a scheme in which most cases will settle at a mediation meeting which also involves solicitors which we have called the *Case Resolution Mediation Meeting*. There is a clear process to get to this meeting. This includes both parties providing financial disclosure and receiving legal advice. The process also includes a means to resolve immediate difficulties and our assistance in preparing clients for the *Case Resolution Mediation Meeting*.

Most cases that do not settle at the *Case Resolution Mediation Meeting* should be able to be resolved by an arbitrator simply looking at the relevant papers. Again our process ensures that the arbitrator has sufficient information to be able to make a good decision. A straightforward paper arbitration should be possible in most cases because, even if a case is not settled at the *Case Resolution Mediation Meeting*, the points in disagreement should be reduced – so that the arbitrator is making their award by deciding upon a limited range of fair outcomes.

We have fixed fees to cover both of these types of case. There are fixed fees up to and including the *Case Resolution Mediation Meeting* and fixed fees up to and including a *Paper-Based Arbitration*. These fixed fees include the preparation of a formal financial consent order. The only extras would be disbursements which include things like the Court Fee, room hire (if the meetings are not at our mediation centre or one of the solicitors' offices), the cost of any experts reports (pension valuations are most likely) et cetera. These additional extras will be relatively modest.

Unfortunately, it cannot offer a fixed fee for all eventualities. This is because sometimes cases will go seriously wrong.

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Firstly, we have however incorporated a *Break Clause* to deal with situations where one party refuses to provide satisfactory financial disclosure. In those cases it will be impossible to proceed to a *Case Resolution Mediation Meeting* because the other party will not be able to make informed decisions and their solicitor will be unable to advise. It is a requirement that all parties provide full and frank financial disclosure. These cases will have to go to court. If the Court is satisfied that one party has acted unreasonably there may be cost penalties.

We have also provided for the possibility that a case might not settle at the *Case Resolution Mediation Meeting* and there is still a big distance between the parties. Sometimes the matters in dispute would still be such that a *Paper-Based Arbitration* would not be appropriate. The scheme provides that these cases will be decided through an arbitration hearing. It is hoped that such cases will be very unusual. It is more difficult to predict the costs of an arbitration hearing. These will depend upon how complicated the remaining dispute is. We cannot offer a fixed fee for this situation. However, the overall costs will still be less than a comparable court process. The case will also be resolved much more quickly.

Most, if not virtually all cases should be able to be resolved by the conclusion of the *Case Resolution Mediation Meeting*.

MEDIATION

Mediation is assisted negotiation. The fundamental principles are:

- Mediation is voluntary.
- The Mediator is neutral
- The substance of the discussions within mediation is confidential. This allows more freedom in discussing all of the options.

FAMILY MEDIATION

Once mediation has started a Family Mediator will not keep separate confidences of either party. All communication is shared. The mediator will not have separate meetings or communications with either party unless they share with the other party what has been discussed.

This does not cover the Mediation Information and Assessment Meeting. That meeting is private within itself. It is not mediation – but an assessment meeting. If there is anything relevant to the issues to be discussed in mediation that is discussed at the Mediation Information and Assessment Meeting – then this will need to be raised within the mediation.

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CIVIL-FAMILY HYBRID MEDIATION

When mediation is used in civil cases – e.g. neighbour disputes, employment cases, damages claims, breach of contract – different rules apply.

The substance mediation is still confidential. However, the mediator will have separate discussions with each party.

When separate meetings take place – what is discussed in those separate meetings is confidential – the mediator will only share with the other party what they are authorised to share.

With the Civil-Family Hybrid Mediation model of mediation – these civil mediation rules apply to separate meetings.

ARBITRATION

Arbitration is another form of dispute resolution. The parties enter into an agreement under which they appoint a suitably qualified person (an “arbitrator”) to adjudicate a dispute and make an award.

Arbitration awards are intended to be legally binding. Some arbitral awards will need to be “reflected” into court orders as a court order is required as a matter of law e.g for a pension sharing order, a clean break or for the purposes of enforcement. The Arbitrator is essentially a private judge and the courts have indicated that they will endorse arbitral awards in this context.

If cases are not resolved at the Case Resolution Mediation Meeting, then the parties agree to an Arbitrator deciding what the financial settlement will be. The arbitrator’s decision is called a Financial Award.

If the case is not settled at the *Case Resolution Mediation Meeting* a lot of time and cost and effort will have been lost if the parties are then committed to an expensive court process. The use of arbitration for cases which have not settled means that existing information and documentation can be used and the arbitrator can make a speedy decision – avoiding delay and excess additional costs.

It is anticipated that when required, most arbitration will be undertaken by reference to the papers and on the basis of an agreed fee. If the unresolved issues are more complicated, then there may be (at the discretion of the arbitrator) an arbitration hearing. If that is necessary, then there will be additional charges. All costs in relation to an arbitration hearing will be charged at hourly rates (see below). We anticipate however that the overall costs will still be

INTRODUCTION

significantly less than an equivalent court process and a final outcome achieved much quicker.

OUR ARBITRATION PANEL

All of our arbitrators are experienced practitioners and are members of Institute of the Family Law Arbitrators (IFLA).

The arbitrators on our panel have agreed to work with this with this scheme and to undertake work on the basis of the charges set out below.

- Barbara Corbett | Partner, **Benest Corbett Renouf**, Jersey.
- Ian Taylor | Partner **Coodes**, St Austell. Deputy District Judge
- Rhys Taylor | Barrister, **36 Bedford Row Chambers**, London
- Karin Walker | Partner **KGW Family Law**, Woking

If a case proceeds to arbitration the solicitors will be asked to agree upon the name of an arbitrator. If they cannot agree then the case will be referred to the next arbitrator on our list on an alphabetical basis.

If you both agree to instruct an arbitrator who is not on this list – that is also fine – but you will be responsible for any additional charges.

CHOOSING A SOLICITOR

The following solicitors are familiar with our scheme and have agreed to represent clients who wish to make use of this scheme – on the basis of the Fixed Fees/charges below.

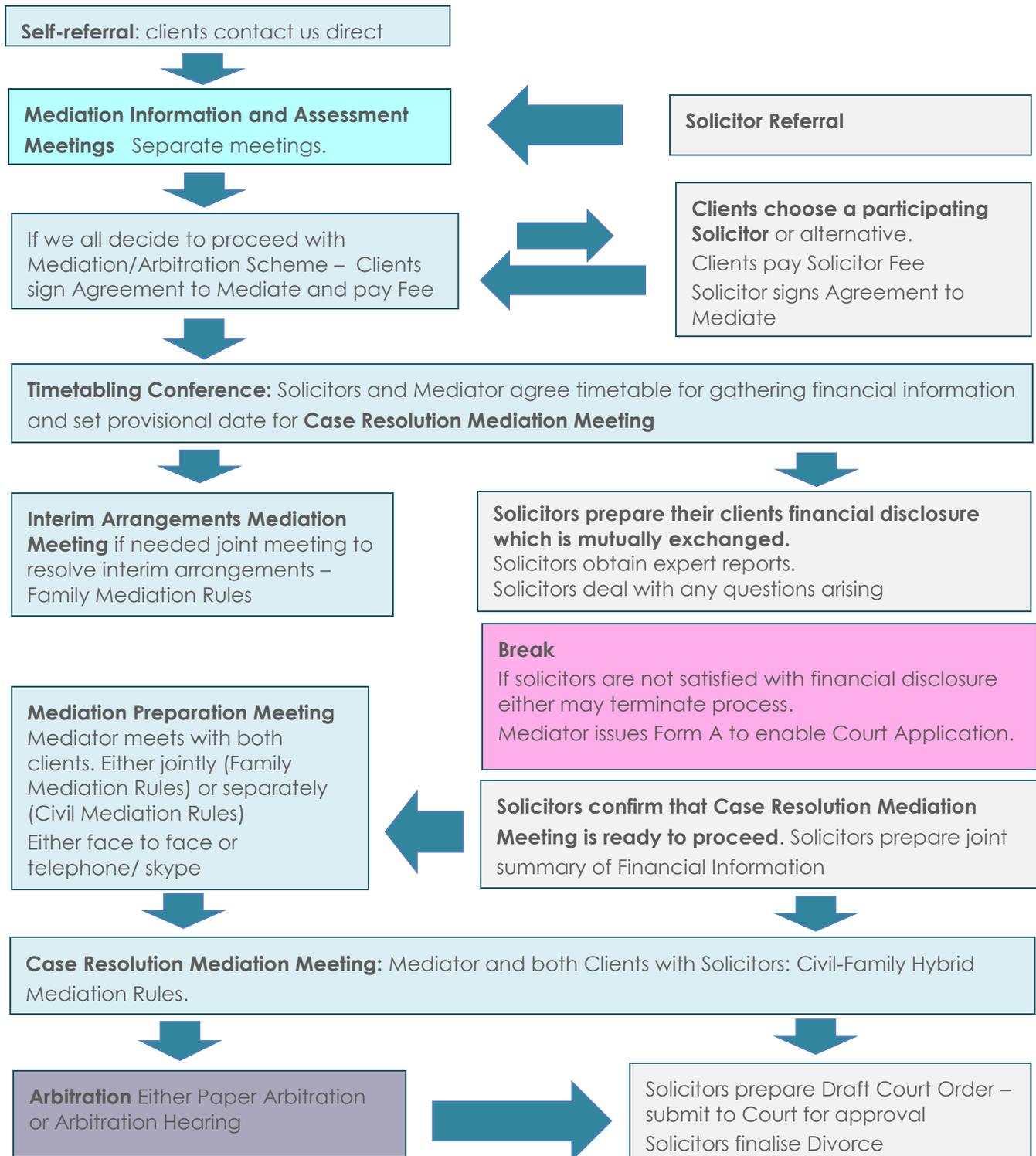
- Zoe Gaitskell | Partner **Beviss & Beckingsale** 01404 548055
- Fin O'Leary | Solicitor **Scott Rowe** 01297 32345
- Kim Stradling | Partner **Everyys** 01395 264384
- Terry Bastyan | Partner **Gilbert Stephens** 01392 424242
- Fiona Yellowlees | Partner **WBW** 01626 202415
- Victoria Oerton and Graham Simm | Partners **Oerton Simm** 01823 259449

All the above solicitors are experienced practitioners. All the participating solicitors are members of Resolution and are committed to the Resolution Code of Practice.

You are welcome to instruct any solicitor of your choice. If your solicitor has not specifically agreed to undertake work in connection with this scheme on a fixed fee basis, then you will be responsible for any additional charges.

HOW IT WORKS

How it Works



HOW MUCH DOES IT COST?

How much does it cost?

If a case ends up in Court the overall costs can easily amount to between £10,000 – £20,000 +VAT each before the Judge decides what is a fair outcome.

The cost of a traditional mediation process could total £1500 each plus additional legal work, such that total costs can often exceed £3000 +VAT each, but without any guarantee of an agreement.

The costs with our scheme are much nearer to the overall costs of dealing with a case through traditional mediation – but with a **guarantee of certainty**. This is because we have designed the process so that the Arbitrator has the information evidence that they will need to decide and then worked backwards so that the prospects of settlement are maximised.

Many financial cases which commence with the traditional family mediation process do not settle, so ultimately the mediation costs are wasted. In our process, if the mediation fails, we move seamlessly on to Arbitration and to a decision.

The following fees apply:

FIXED FEES

Professional	What Is Included	What Is Not Included
Mediator – £1500 plus VAT per person	<ul style="list-style-type: none"> • Timetabling Conference • Interim Arrangements Mediation Meeting (one only) • Mediation Preparation Meeting (either one each or jointly) • Case Resolution Mediation Meeting • liaising with solicitors over timetabling issues. • Forwarding Arbitration Form ARB1 to IFLA and to the Arbitrator • preparation for the Case Resolution Mediation Meeting 	<ul style="list-style-type: none"> • Mediation Information and Assessment Meeting • any additional <i>Interim Arrangements Mediation Meetings</i> • any consultation with children meetings (if parties are also wishing to consider children arrangements) • any room hire charges for meetings not at our mediation centre in Honiton or solicitor offices
Solicitor – £3500 plus VAT per person	<ul style="list-style-type: none"> • Advice upon and signing this Mediation Agreement and arbitration form ARB1 • All steps up to and including attendance at the Case 	<ul style="list-style-type: none"> • Preparation of divorce petition and progression of divorce to Decree Absolute or advising Divorce Respondent

HOW MUCH DOES IT COST?

	<p>Resolution Mediation Meeting including – but not limited to: timetabling conference; preparing, exchanging and advising on financial disclosure and raising any queries arising; preparing joint schedule of assets; preparing/finalising/submitting to the court the financial consent order and associated paperwork ongoing advice and assistance prior to the approval of the financial consent order by the court.</p>	<ul style="list-style-type: none"> • Attendance at any meetings unless otherwise specified • any steps taken following the exercise of the break clause by either solicitor • representation and advice in connection with arbitration process • instructing independent experts • any disbursements including share of consent order fee and costs of any agreed expert
<p>Solicitor - £500 plus VAT per person per expert report</p>	<ul style="list-style-type: none"> • Selecting expert and agreeing letter of instruction. • Advising on content of report 	<ul style="list-style-type: none"> • The agreed experts own charges
<p>Solicitor – Divorce; £600 plus VAT</p>	<ul style="list-style-type: none"> • Preparation and progress of divorce petition to decree absolute on agreed basis. 	<ul style="list-style-type: none"> • Court Fee – currently £550 • Whilst not specifically included – the parties may agree that the respondent will make an agreed contribution towards the Petitioner's divorce costs.
<p>Solicitor – Paper Based Arbitration; £1000 plus VAT</p>	<ul style="list-style-type: none"> • Attending arbitration case management meeting by telephone • preparing such documentation as may be required in support of a Paper-Based Arbitration process. To include taking instructions from client and advising • preparing and processing to court approval financial consent order deriving from arbitration award 	<ul style="list-style-type: none"> • if the arbitrator determines that the arbitration will proceed to an arbitration hearing – then all post mediation work will be undertaken on the basis of the solicitors hourly rate (unless otherwise agreed) any steps required for the implementation of the arbitration award after it has been approved by the Court

HOW MUCH DOES IT COST?

Arbitrator – Paper-Based Arbitration £750 plus VAT per person	<ul style="list-style-type: none"> • consideration of documents arising following mediation • arbitration case management meeting by telephone • considering any further documents directed to be provided • preparation of Arbitration Award and forwarding this to parties and to their solicitors 	<ul style="list-style-type: none"> • If after submissions from the parties solicitors or by the arbitrator's own motion, it is determined that the issues are such that they are not suitable for resolution by a paper-based arbitration – then the costs of the arbitrator will be paid by each party in accordance with the arbitrator's hourly rate.
Arbitration Hearing	To be agreed in Advance – Fixed Fee	

HOURLY RATES

Unless otherwise agreed the professionals undertaking work within the scheme – but which are outside of the fixed fees will charge for their time on the following basis:

Professional	Hourly Rate
Mediator	£80 plus VAT per person per hour
Solicitor	£200 plus VAT per hour
Arbitrator	Fixed Fee – to be agreed

Mileage: 45p per mile

INITIAL STEPS

Initial steps

The first step with all mediation is a Mediation Information and Assessment Meeting. We meet with each party separately.

A MEDIATION INFORMATION AND ASSESSMENT MEETING or MIAM is a short meeting that provides information about mediation as a way of resolving disputes.

Mediation is a voluntary process. In order for mediation to take place, both parties have to want to negotiate through mediation. The mediator also need to be satisfied that mediation is a process which is suitable for the couple.

These meetings are face-to-face. Exceptionally, we will hold such meetings by telephone or by using Skype or FaceTime.

The purpose is for clients to find out about mediation and to decide whether mediation is the right process for them.

From our point of view, the MIAM allows us to undertake a risk assessment. This allows us to either screen out cases where mediation is not suitable.

Mediation may not be suitable in cases where:

- one of the couple has no wish to negotiate
- there has been domestic abuse
- the situation is just too fraught/emotional

We will discuss the different ways in which mediation could take place. This format of mediation is not suitable in every case. It is designed for cases where the primary issues are financial.

Sometimes clients will also prefer to deal with financial cases using the normal family model of mediation.

The combination of mediation with solicitor involvement and then arbitration if necessary provides a clear process where it is more possible to offer a fixed fee. But note that there are circumstances which are not covered by the fixed fee scheme.

Once both parties have decided that they wish to proceed with mediation under this scheme they will choose a solicitor (if they do not already have one).

The scheme will get underway when:

INITIAL STEPS

1. both clients and both solicitors have signed the Mutual Commitment Section of this Agreement to Mediate
2. Both clients and their solicitors have signed the Arbitration Agreement Form ARB1FS
3. Both clients have paid the mediation fee

The Arbitration Form ARB1FS is held by us until the Case Resolution Mediation Meeting.

If the case settles at the Case Resolution Mediation Meeting, the ARB1FS is destroyed. If the case does not settle, we will then forward the ARB1 onto the chosen or selected Arbitrator and to IFLA. The mediation will have then completed. The case will proceed as an arbitration under the rules of the IFLA Family Law (Finance) Arbitration Scheme.

TIMETABLING CONFERENCE

Timetabling Conference

After both clients have decided to proceed with our Solicitor Assisted Mediation with Arbitration scheme and have paid their fee and chosen their solicitors and after everyone has signed the Mutual Commitment section at the bottom of this Agreement to Mediate, the next step is to agree a timetable.

The Timetabling Conference is a meeting between the mediator and the solicitors. This can either be face-to-face or by telephone/Skype.

At the Timetabling Conference we will agree a realistic timetable to prepare the case for the Case Resolution Mediation Meeting.

The timetable will take into account:

- The solicitors assisting their clients to complete the financial disclosure booklet – Form E and the gathering together of supporting financial documentation.
- Obtaining relevant information regarding all pensions using the pension information request form – Form P
- the exchange of this financial information
- an opportunity to ask questions of the other about any of the financial information
- if the values of any pensions are likely to be significant, then obtaining an independent pension valuation by instructing an independent pensions expert – actuary.
- The solicitors preparing and Agreed Schedule of Assets
- A date will provisionally be agreed for the Case Resolution Mediation Meeting

The solicitors will then work with their clients to obtain and exchange all relevant financial information so that both solicitors are content that both clients have provided a true picture of their financial situation.

If one or both of the solicitors take the view that one or more of the parties has not provided full and frank financial disclosure, then – subject to receiving instructions from the client – they may exercise the break clause. There are potential cost implications in doing so. (See below)

When the solicitors are satisfied with the financial information provided they will prepare an Agreed Schedule of Assets. This is a summary of all of the financial information. The mediator does not usually need to see the Form E or the supporting financial documentation.

The solicitors will keep the mediator updated as to how they're getting on with the gathering together of financial information. They will together agree any amendments to the date for the Case Resolution Mediation Meeting.

TIMETABLING CONFERENCE

If there are any significant financial issues that need to be dealt with straightaway – for example:

- paying the mortgages on any properties
- interim maintenance/child support
- ground rules for sharing a property or
- one party moving out of the family home

then we will hold a joint mediation meeting using the Family Mediation Rules (unless otherwise agreed) with both parties – without solicitors – to assist both clients to work out interim arrangements which will successfully get them through to the Case Resolution Mediation Meeting. We call this an *Interim Arrangements Mediation Meeting*

The fixed fee scheme includes one joint meeting. If there need to be more than one joint meeting, then additional charges apply.

The purpose of this joint meeting at this time is not to solve the overall case. That should be done at the Case Resolution Mediation Meeting. The purpose of this preliminary joint meeting is to establish a reasonable holding position, so that everyone can do their best to make their situation as bearable as possible whilst we prepare for the Case Resolution Mediation Meeting.

GETTING READY FOR CASE RESOLUTION

Getting ready for Case Resolution

Once the solicitors have been able to prepare an Agreed Schedule of Assets Document – summarising their financial situation, we can then finalise the arrangements for the case Resolution Mediation Meeting.

In the run-up to the Case Resolution Mediation Meeting the following steps will take place:

- The date of the Case Resolution Mediation Meeting will be confirmed.
- The mediator will have a **Mediation Preparation Meeting** with both clients. This will either be:
 - **A Joint Meeting** – the mediator and both clients will all meet together (face-to-face).
 - **Separate Meetings** – the mediator will meet with each client separately (either face-to-face or by telephone/Skype).

The preference is for this to be a face-to-face joint meeting. We will consult with each party before these meetings are arranged. Sometimes, a joint meeting may not be possible because of issues of distance/time or because of issues of tension between the couple/past domestic abuse. In those cases we will hold the meetings separately.

The purpose of the **Mediation Preparation Meeting** is not to attempt to resolve the case at that meeting.

At the Mediation Preparatory Meeting we will ask each client to share their thoughts as to what a mutually agreed outcome might look like. We will assist each to reflect upon what their needs are within a mutually agreed outcome as well as what the needs of the other are. We will talk about what the needs of their minor children are within a settlement.

The mediator will remind each client of the principles of mediation and the principles of negotiation.

If the meeting is joint – both will be able to better able to prepare for the Case Resolution Mediation Meeting with a better understanding of what the priorities of the other are.

GETTING READY FOR CASE RESOLUTION

If the meetings are separate, then the meetings will be private within themselves and the mediator will not share information given by each client to the other unless authorised to do so.

The advantage of a joint meeting is that there is an opportunity for both clients to hear what each other have to say and to better understand what the priorities of the other are.

In any event the idea of the **Mediation Preparation Meeting** is to assist both clients to get into a problem-solving frame of mind and to best prepare themselves so that they can maximise the likelihood of achieving a settlement at the **Case Resolution Mediation Meeting**.

- No later than 7 days before the **Case Resolution Mediation Meeting** each solicitor will send the other solicitor a position statement (Needs Statement) setting out what their client's needs are together with copies of any documentation that they consider to be relevant to the discussions that will take place at the **Case Resolution Mediation Meeting**. Examples of documents that would be relevant might include:
 - Evidence of borrowing capacity.
 - Sample house details
 - Details of outgoings/projected outgoings
 - Costings for any proposed retraining

These summaries and supporting documents are not proposals. The idea is that all information relevant to the discussions at the **Case Resolution Mediation Meeting** will have been shared in advance – so that each client and their solicitor can consider this and will be able to best prepare for the **Case Resolution Mediation Meeting**

- If either client is possibly thinking of asking for financial assistance from members of their family – it will be helpful for the extent of this to be clarified in advance of the **Case Resolution Mediation Meeting**. It would also be helpful for the family member to be available by phone (if required) on the day of the Case Resolution Mediation Meeting. Types of family assistance can sometimes include a loan or gift (to help fund a lump sum or clean break or transfer/retention of a property) or acting as a guarantor on a mortgage. We are not suggesting that the extent to which family may be able to help should be disclosed – simply that a client who may ultimately seek family assistance to meet their needs in a way which they would prefer – has had the necessary conversations in advance of the Case Resolution Mediation Meeting.

BREAK CLAUSE

Break Clause

Mediation is assisted negotiation. It is about both clients making informed decisions and achieving a negotiated settlement which is mutually acceptable.

Within this scheme the solicitors will assist their clients to provide full and frank financial disclosure.

That each client provides full and frank financial disclosure is fundamental to this process. Clients cannot make informed choices if they do not have full information. Their solicitors cannot advise them if full information is not been provided.

Within this scheme the solicitors will assist their clients provide full financial information to the other. There is an opportunity to query the other's financial information.

If, after financial information has been clarified, either solicitor takes the view that the other client has not provided full and frank financial disclosure – then (subject to receiving instructions from their client) they may exercise a break clause and this will bring the mediation process under the scheme to an end.

It is anticipated that the client/solicitor exercising the break clause will then make an application to the court which will ultimately end up with the court deciding upon what the financial settlement should be. The court has the power to order the disclosure of financial information. The provision of missing financial information can therefore be required. With mediation the financial information provided by the clients is ultimately done on a voluntary basis.

If the break clause is exercised, then both clients will forfeit the mediator's fee and they will also forfeit any fixed fee that they have paid to their solicitor.

At the end of the court case, a Court has the power to make costs orders. when deciding whether to order that one party pays the costs of the other the Court will consider the conduct of the parties.

Therefore, if one client withholds financial information which causes the mediation to breakdown – the other party may be able to recover their lost costs through court proceedings. This would be subject to legal argument and at the time.

Any decision to exercise the break clause will be made upon legal advice. The costs of the mediation will however not be refunded from the mediator.

We would hope this situation would not arise because this process is designed for couples who want to resolve their case and will use our process to do so.

CASE RESOLUTION MEDIATION MEETING

Case Resolution Mediation Meeting

The intention of the previous steps is to prepare the case for the Case Resolution Mediation Meeting.

This is a mediation meeting that takes place using the Civil-family hybrid Mediation Rules.

The meeting will take place at an agreed venue. This will either be our office, or the offices of one of the solicitors or some other neutral venue.

Each client and their solicitor will have their own private room.

The mediator will have a 3rd room.

The mediation itself will usually be scheduled to run from between 10 AM and 4 PM, although if there is an agreement, at least the last hour will be needed for the solicitors to either prepare a *Draft Court Order* or a less formal *Heads of Agreement* document.

If there is no mutually acceptable agreement by 3 PM the mediator and solicitors will bring the meeting to a close after discussing the choice of arbitrator. The solicitors will together prepare a *Schedule of What Is Agreed/What Is Not Agreed/Issues*

The mediation will proceed by a series of meetings. There is flexibility as to how these will take place.

Mostly the mediator will move between the rooms of each client on a shuttle basis.

The mediator will only share such information with each team as they are authorised to do by the other.

Where considered helpful, there may also be joint meetings involving everyone or meetings between the mediator and solicitors only, or mediator and clients only. There might also be meetings simply involving the two solicitors.

Everyone will arrive at the meeting fully prepared with the intention of negotiating a mutually acceptable settlement.

The mediator will assist the parties and their solicitors in achieving a mutually acceptable outcome.

At the end of the Case Resolution Mediation Meeting – the mediation will have been completed. Either the case will have settled – and the solicitors will deal with the legal formalities of obtaining a Court Order, or the case will proceed to Arbitration.

Arbitration

If the case does not settle at the Case Resolution Mediation Meeting the case will proceed into Arbitration.

The name of the arbitrator will be agreed by the parties' solicitors at the conclusion of the Case Resolution Mediation Meeting. If this cannot be agreed, then the arbitrator will be the next arbitrator named in our arbitration panel in alphabetical order (first names) from the arbitrator to whom we last referred in default of agreement.

The mediator will send the Arbitration Agreement Form ARB1FS to the arbitrator and to IFLA.

The solicitors will send to the arbitrator the documents that were made available to the mediator in advance of the Case Resolution Mediation Meeting. I.e.:

1. Agreed schedule of assets
2. Needs Statement and supporting documentation.

As well as

3. Schedule of What Is Agreed/What Is Not Agreed/Issues (prepared at the end of the Case Resolution Mediation Meeting)
4. Any Expert Reports – including Actuarial Pension Valuations.

The Arbitrator will then arrange a telephone conference with both solicitors – Arbitration Case Management Conference

ARBITRATION CASE MANAGEMENT CONFERENCE

The default position is that the arbitrator will make a legally binding financial award based upon the documentation that they will have received as well as any additional documentation which is to be sent to them following the Arbitration Case Management Conference.

If the arbitration award is made on the basis of paper submissions, then the arbitration fixed fee will apply.

If either of the solicitors are of the view that a paper-based arbitration is not appropriate and that there should instead be an Arbitration Hearing, then they will make submissions to this effect to the Arbitrator

ARBITRATION

After both solicitors have made submissions to the arbitrator about the format of the arbitration and upon any other issue including in relation to evidence and procedure, the arbitrator will then issue an Arbitration Case Management Order.

At the very least, there will be provision for both parties to file statements setting out more fully what their proposals are for a Final Settlement/Award and why.

If the case is proceeding as a paper-based arbitration, then because each side will already be familiar with the others case and there should not be the need for any additional documentation to be filed. However, this will be a matter for the arbitrator to decide.

If the case proceeds to an arbitration hearing, the arbitrator will timetable the case to the hearing as they consider to be appropriate. Directions are likely to include:

1. Place and venue of arbitration hearing
2. Filing of additional evidence
3. The obtaining of any additional expert evidence
4. Deciding who will give evidence at the arbitration hearing
5. Interim costs issues

the arbitrator will usually send to the parties and their solicitors their written Final Award and Reasons within 21 days from the Arbitration Hearing, or if the arbitration continues as a Paper-Based Arbitration – then within 21 days of the filing of the last item of evidence.

Under the rules of arbitration the arbitrator may vary the procedure in any way they consider to be appropriate.

ARBITRATION COSTS

If the arbitration proceeds as a Paper-Based Arbitration then the arbitrator's fees will be the fixed fee below. (Unless the solicitors decide to proceed with an arbitrator who is not agreed to this fee scheme). Each client will be responsible for their solicitors costs.

If arbitration proceeds to an Arbitration Hearing, then the arbitrator will agree a fixed fee in advance. The level of the fee will be specific to the case and work required at that stage.

The Arbitrator will at the Arbitration Hearing will consider any arguments about costs and under the rules of the IFLA Family Law (Financial) Arbitration Scheme entitled to make awards as to costs.

OUR AGREEMENT TO MEDIATE

Our Agreement to Mediate

This document sets out how our Solicitor Assisted Mediation with Arbitration scheme works.

What follows is my agreement with you as your mediator. This is the basis upon which I undertake mediation within the **Solicitor Assisted Mediation with Arbitration Scheme**. It is the contractual basis upon which we will work together.

The Arbitration Form ARB1 is the contractual basis upon which you will work with the Arbitrator.

Your solicitor will ask you to sign their own Retainer Letter – which will be the contractual basis with which you will work with them.

Thank you for considering mediation. The attached document sets out the terms for your mediation. At the first joint mediation meeting you will be asked to sign this document as an indication of your commitment and of your Agreement to the arrangements set out in the Agreement.

THE CONTRACTUAL BASIS THROUGH WHICH WE WILL WORK TOGETHER

The Agreement sets out important information for you about the way that I will conduct your mediation and the principles of mediation which include that:

- **you come to mediation by choice** (no-one can make you take part in a mediation),
- **mediation is confidential** (except for certain conditions that are set out in the Agreement),
- **it is for you to make decisions about your situation**
- **I will do my best to act in an even-handed way between you.**

I will be happy to answer any questions you may have about the Agreement.

As set out above, I will commence work under the scheme once both parties and their solicitors have signed and returned this form to me together with their arbitration agreement Form ARB1 and both have paid the mediation fee.

MEDIATION ORGANISATION AND CODE OF PRACTICE

I undertake this mediation as a member of Resolution. In doing so I am guided and bound by the Family Mediation Council Code of Practice. You can access a copy of the Code at the website of the Family Mediation Council: www.familymediationcouncil.org.uk

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HOW I WORK AND WILL CONDUCT YOUR MEDIATION

- 1. My role is to assist you both** to consider the ways of resolving any issues that you may have for making future arrangements for yourselves and any children. I will help you both to explore the options you may have, with a view to your reaching an outcome that you both consider will work for you all. That might not be the same as a solution arrived at by a court. I will tell you if I think that your proposals might fall outside of what a court might approve or order and can give you information about what courses of action are open to you to seek individual advice.
- 2. The choices and decisions are yours.** I will not tell you what you should do or comment about what your individual 'best interests' are or might be. It is possible and often very helpful for you to have advice from a (or your own) solicitor during the course of your mediation so that you are able to make informed decisions and so that each of your solicitors (if you have them) is aware of how the mediation is progressing. I will help you to consider when legal advice would be helpful. With this scheme, your solicitors will be present for some of the mediation meetings (see also 16).
- 3. When working as a mediator, I will provide you with legal and other information,** on an even-handed and general basis to assist you both in working towards your own decisions and particularly to assist you in how the general principles of the law may affect anything you are planning or proposing to do as a result of your discussions together, including how the courts consider what would be within a reasonable range for any outcome/settlement. This is different from providing legal advice (or representation), which I cannot provide to you and I will talk with each and both of you about when it would or might be helpful to have legal (or other) advice to help you.
- 4. Mediation is a voluntary choice** and it is important that each of you enters the mediation process able to discuss matters freely and without risk of threat or harm. Please let me know me if there are any concerns for you about your ability to discuss matters in front of the other person.

CONFLICT OF INTERESTS

- 5.** It is very important that I ensure that I do not have any prior knowledge of either of you or your situation through a previous professional involvement of any kind. This is to ensure that you can be confident that I am working independently and impartially. If there is any other conflict, potential conflict or perceived conflict of interest or a conflict emerges, I will not continue to act as mediator and will discuss with you what your alternative or next steps might be.

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CONFIDENTIALITY AND PRIVILEGE

6. I will treat all matters in the mediation as confidential, except as otherwise agreed, and subject to the terms of this Agreement, (in particular Paragraphs 11 and 12).
7. **Information provided by either of you will be shared in the mediation except as otherwise agreed**, and subject to the terms of this Agreement, (in particular Paragraphs 11 and 12). However, if you wish to keep an address or contact details confidential you may do so – please let me know if this is the case.
 - a. You agree that separate discussions will take place and separate confidences will be kept in at the Case Resolution Mediation Meeting and the Mediation Preparation Meeting (if held separately).
 - b. You agree that the *Case Resolution Mediation Meeting* and the *Mediation Preparation Meeting* (if held separately), will be conducted under the Civil-Family Hybrid Mediation Model. In other words, I will not share any information or proposals given to me or of which I become aware from one party, with the other party unless I am authorised to disclose that information. This additional confidentiality does not apply to purely factual information which is otherwise provided on an open basis in any event. (See paragraph 8 below).
8. It is important to know that all your financial information is provided on an "open" basis, which means that it can be used in court. This may be in support of a consent application made by either of you or in contested proceedings. Completing your financial disclosure will assist you and your individual legal adviser and will avoid information having to be provided twice over. The information can be 'portable' for you and you will be able to use it with your solicitor, independent financial adviser or any other professional who you may choose to assist you with your finances. This is important as your individual legal or financial adviser will need to see your disclosed finances before they can advise you on any proposals you have reached or are considering.
9. Conversations, any communication and information about possible options, proposals and the terms of any financial settlement are on a "without prejudice" basis, which means they cannot be referred to in court (except by order of the court or where the law imposes an over-riding obligation of disclosure on a mediator). Also, an 'evidential privilege' will ordinarily apply for all attempts to resolve issues in the mediation.

This allows you both to be able to share ideas and proposals that you may have thought about as possible options for resolving things without having to be concerned that that information might latterly be used against you in any way. It also means that it is only if both of you agree to waive that privilege that you might do so and allow a

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court to know any details of your possible options, proposals and terms of financial settlement discussed in the mediation.

However, the actual discussions in mediation remain confidential between us and I ask that you both agree not to call me (and/or any co-mediator) to give evidence in court, or ask to have any of my notes brought into evidence (excepting as above, where there may be an order of the Court or where the law imposes an over-riding obligation of disclosure on a mediator).

10. If you choose to have advice or support from other professionals either as part of your mediation or alongside it, I will ordinarily discuss with you how and if any information might be shared between us. I will not contact other professional/s working with you without having your joint Agreement first.
 - a. You agree to me liaising with your respective solicitors in order to progress The Solicitor Assisted Mediation process outlined above.
 - b. You agree to the participation in the mediation process and to the attendance at meetings which form part of the mediation process, of your lawyers and any additional third parties who will assist us in resolving any of the issues under consideration within mediation.
 - c. You understand and agree that all those who are to attend and participate in the mediation process are required to sign a copy of this agreement in confirmation that they agree to be bound by it.
 - d. You understand and agree that if any third parties other than lawyers are to attend any meetings, then this is subject to the agreement of the mediator and of the other party
 - e. You agree that as part of our mediation process, that in addition to any joint or other meetings, the mediator may have separate meetings or discussions with each of you and your lawyers.
11. These arrangements for confidentiality and privilege **will not apply** if it appears that a child or other person is suffering or likely to suffer significant or serious harm. In this event, I would normally, as far as practicable and appropriate, discuss with you what will happen before taking any action to contact an appropriate agency or authority. I have a responsibility to do so under the FMC Code of Practice and in order to ensure the safety and protection from harm of children and vulnerable adults.
12. Generally, I am required to have regard to and comply with relevant law/s and regulations that relate to any obligation to make a disclosure to the relevant authority/ies. Therefore, arrangements for confidentiality and privilege **will also not apply** if information is shared with me about any intention to commit an unlawful or

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criminal act or where I suspect that I may be required to make disclosure to the appropriate authority under the Proceeds of Crime Act.

FINANCIAL AND OTHER INFORMATION

13. You both agree to provide complete and accurate disclosure of all your financial circumstances, with supporting documents.
14. I do not check or confirm the completeness and accuracy of the information you provide. I am proceeding on the basis that you are both providing full and frank financial disclosure through and with the assistance of your solicitors. It is important for you to know that you each have a duty to make full and accurate disclosure of your finances if you are going to be able to make decisions that can be endorsed by the court by way of a Consent Order. It is important that you know that if it should emerge later that full disclosure has not been made, any decisions or Agreements flowing from the proposals reached in mediation could in some cases be set aside and the issues re-opened.

CONSULTATION WITH CHILDREN TO ASSIST THE MEDIATION PROCESS

15. We will not undertake any consultation with children as part of this mediation process unless you have signed a separate mediation agreement. It is not envisaged that any consultation with children will take place as part of the mediation scheme outlined above and such consultation is outside of the fixed fee.

PROFESSIONAL ADVICE AND OUTCOMES

16. Any significant decisions arrived at in mediation (including any proposals you make together) will not usually be turned into a binding Agreement (usually a Consent Order) until you have each had the opportunity to seek advice on them from your solicitors which I will encourage you to do. If during the course of the mediation it would be helpful for me to draw up an Interim Summary or Outcome Statement on a 'without prejudice' and confidential basis to record interim decisions on minor matters or options/proposals discussed, I will do so. Such a document would be privileged and could not be produced in evidence to a court (excepting as stated in 9. above, should the court order and/or the law impose an over-riding obligation of disclosure).

It is possible that I may draw up an Interim Summary after an *Interim Arrangements Mediation Meeting* (if one is required) or the *Mediation Preparation Meeting* (if jointly attended). It is however expected that if a settlement results from the *Case Resolution Mediation Meeting* – that the terms of the settlement will be recorded by the solicitors.

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17. Usually, mediation takes place without your solicitors attending. However, they may by Agreement with them and between you both and me, participate in the mediation process in any useful and appropriate way.
- a. Under the provisions of this scheme it is expected that you will have legal representation and that your solicitor will accompany you to the Case Resolution Mediation Meeting.
 - b. It is also agreed that the *Timetabling Conference* is a meeting which takes place between the solicitors and mediator only.
 - c. You agree to the participation of each of your solicitors.
18. I will also assist you to consider whether it would be helpful to have assistance from other professionals such as accountants, financial advisers, expert valuers or others, or from family consultants, counsellors or therapists either in or alongside the mediation process.

SUMMARIES AND RECORDING OF YOUR OUTCOME PROPOSALS

19. Prior to Case Resolution Mediation Meeting I will prepare the following documents:
- a. a note of the timetable agreed at the Timetabling Conference
 - b. an Interim Summary after an Interim Arrangements Mediation Meeting (if one is required) and/or the Mediation Preparation Meeting (if jointly attended) provided that any matters are discussed which result in joint proposals being made and it is helpful to you and/or your solicitors me to prepare an interim summary.
 - c. At the end of the mediation (or earlier if appropriate), – if the mediation is successful – the terms of the settlement will be drawn up by your solicitors

If the mediation is unsuccessful then your solicitors will draw up a Schedule of What Is Agreed/What Is Not Agreed/Issues for the assistance of the Arbitrator.

Either way, at the end of the mediation I will not draw up any documentation myself.

Any interim summary documents (usually after the *Interim Arrangements Mediation Meeting*) are generally provided to enable you both to obtain separate and independent legal and/or other advice before entering into a legally binding Agreement. It is important to have independent advice to assess how your joint proposals may affect your own individual position.

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20. Your Solicitors will at the end of this process prepare a Draft Court Consent Order or any other document as may be required, and take any other steps as may be required to ensure that any agreements reached between you or any determination made by the Arbitrator is legally binding.

CONCERNS AND COMPLAINTS

21. I hope that I will work with you as a mediator in a manner that is satisfactory to you both and that assists you in reaching decisions for the future. I ask that any concern you may have as to my practice or the service provided by me is referred to me in the first instance. If I am unable to resolve this with you directly or otherwise, my firm/practice/service has a complaints procedure and I will provide a copy of that to you and if it does not prove possible to settle things having used that procedure, you may then refer your complaint to Resolution for consideration in accordance with their complaints procedure. You can see the Resolution complaints policy on their website www.resolution.org.uk. It is also possible to make a complaint to the Legal Ombudsman in certain circumstances, full information is available on their website www.legalombudsman.org.uk.

DATA PROTECTION – IMPORTANT INFORMATION FOR YOU

22. **Data protection protects the privacy of information about you and how it might be used, shared or stored.**

For the purpose of your mediation, I will keep any information that you provide to me securely and will not share it without your individual permission. However, I ask that, in the event of any complaint that is referred to my membership organisation or to The Legal Ombudsman, that you agree (inclusive of your signatures to this Agreement) that I may release any information or your file to either or both for the purposes of resolving any complaint.

My practice's quality assurance standards also require monitoring of my mediation files. From time to time, my practice consultant may have sight of files, but access is strictly controlled and on a similar confidential basis. I also ask you to agree that the mediation and any summaries may be reviewed on a strictly confidential basis by my Professional Practice Consultant/Supervisor **and that anonymized details about your case may be used for training purposes.**

I ask that you also accept that this includes me retaining and storing information for as long as is necessary in connection with this Agreement and your mediation. I may also keep data for research and statistical purposes but on the understanding that if used

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any information or details about you have been removed so that you cannot be personally identified.

PROFESSIONAL DEVELOPMENT

- 23.** I operate a learning and professional development practice. From time to time colleagues may work with me for the purposes of their own professional development and/or my own (this would be at no extra cost to you). If you would prefer that your mediation does not involve my colleague/s, then please let me know. I will not involve another person without your joint Agreement.

ENDING A MEDIATION PROCESS

- 24.** Under the Code of Practice to which I am guided, I will be concerned to ensure that each of you enter into the mediation process able to discuss and plan freely together and without risk of threat or harm. I ask that you inform me if there are concerns for you about your ability to negotiate freely.
- 25.** Either of you may end the mediation at any stage. I may also end the mediation if I do not think it appropriate or helpful to continue. In either such event, I will provide information as to other options available to you.
- 26.** The Mediation will end at the end of the *Case Resolution Mediation Meeting*.

Fees

FEES

- 27.** This agreement is in respect of my fees as mediator. You will need to enter into a separate contract with your solicitor in respect of their fees. Your contract with the arbitrator derives from you signing the arbitration agreement ARB1. The solicitors and arbitrators who are named in this document have however agreed to honour the fixed fees and charging rates quoted in the section titled *How Much Does It Cost?*
- 28.** My fees will be charged on the basis set out in the section of this document titled *How Much Does It Cost?*
- 29.** Under this scheme my fixed fees will be paid by both parties at the outset of the case and upon signing this Agreement to Mediate or as shortly thereafter as possible. I will not undertake any work until both parties have paid my Fee.
- 30.** The Fixed Fee payable to me is only refundable in the event that the other party does not sign the Agreement to Mediate and does not pay their fixed Fee.
- 31.** Any work not covered by the fixed fee will be charged at a rate of £160 plus VAT – which equates to £80 plus VAT per person per hour. If work is undertaken that is not covered by a fixed fee – for example additional mediation meetings – I will normally request a payment on account of costs from each party. I will not confirm any mediation meetings until these payments on account of costs have been received.
- 32.** Any work is undertaken by our paralegal in support of the mediation work not covered by the fixed fee process/arrangements then this will be charged at the rate of £50 plus VAT per person per hour.
- 33.** I will bill any fees and disbursements not included in the fixed fee from time to time. I am entitled to postpone meetings if any invoices to either party are outstanding until such a time as my fees have been paid.
- 34.** If any substantive work is to be undertaken outside of the fixed fee (not including travel time) then I will normally write to you to provide an estimate of what any additional charges will be. I will endeavour to do this before the work is undertaken.
- 35.** We will normally only provide documentation in an electronic format. If we are asked to provide copies of documentation disclosed in mediation to you or to your solicitor or financial adviser or other in paper format we will provide these at a charge of 5p per sheet if it is appropriate for such documentation to be provided.

