

## Getting Ready for Mediation

Mediation plays a big part in family law. It provides an alternative to going to Court and in so doing usually comes with the added benefit of reducing costs, providing the opportunity for spouses to tell their side of the story and take ownership of an agreed outcome and providing a quicker resolution. Sadly, however it is often a lost opportunity.

The lost opportunity in mediations usually comes when mediations are held too early and without adequate preparation. Opinions may differ as to why this is the case, perhaps it is that the spouses do not have sufficient information or they have not suffered enough “pain” both in terms of cost and time spent to know the true value of a settled outcome?

What is clear however is that most mediators say that people (self-represented) are often not properly prepared for the mediation. The result is that mediations will often fail where they might otherwise have settled or one of the spouses will end up with a worse settlement than might otherwise have been achieved if they had done their homework beforehand.

So what can clients do to better prepare for mediation? Here are some key points to consider:

- Know the facts, the case and the costs: Spouses attending a mediation need to understand what the issues are. For a mediation to proceed there should be an understanding of the background facts, the issues in dispute, the legal issues, the commercial and financial considerations and the personalities of the people involved in the dispute. Know what the costs to date are and what they are likely to be if the matter does not settle.
- Procedure: Know where the mediation will be held and who will attend. Consider what documents the mediator should read to understand the key issues in dispute. It is also important to prepare a draft settlement agreement or any other documents that may need to be signed on the day to resolve the dispute.
- Prepare to negotiate: The mediation will involve each spouse being asked to compromise on their starting position. Parties should therefore prepare themselves for negotiation. Many people who are represented will want to say

something and they will be encouraged by the mediator to do so. In that case, their solicitor should help them prepare what they intend to say. Each spouse should also consider the possible options for settlement including amounts and terms of payment. Spouses should consider their “bottom line” – at what point they will walk away from the mediation without a settlement. Parties should also consider the question “what might happen if we do not settle?” and “what might be the cost of not settling”?

- Contact with the mediator beforehand: It is useful for parties to contact the mediator before the mediation and discuss the legal and personal issues. The mediator may have permission to tell you something about the other side’s motivations and key issues although this is very much determined on a case by case basis.

By taking the time before the mediation each spouse is likely to find that they are better prepared, more able to negotiate and therefore able to get better results from the mediation.

Having said all of that, there is always the preliminary question as to whether particular spouses are suited to mediation – this should be carefully considered in each case.