

“Mediation – the alternative solution for dispute and divorce resolution

Following the Woolf Reforms initiated by the Government and introduced in April 1999, Mediation has become the alternative to costly litigation. The purpose of Lord Woolf’s review was to create a system and culture which would lead to less litigation and lower costs. The adversarial nature of the Legal System did not meet these goals and vested interests often failed to appreciate sufficiently early in the process that there are always at least two sides to an argument, especially one which leads to a drawn out dispute!

Seven years on, Mediation is often recommended, spoken of and indeed used by lawyers for and on behalf of their clients. Unfortunately for many of those clients the process does not begin soon enough to keep their costs at a realistic level. Indeed it may also involve the use of a further lawyer to act as mediator, surely not what Lord Woolf envisaged?

There is another way! If the parties to the dispute agree, they themselves can appoint a Mediator, who does not need to be a lawyer, but who should have an appropriate background knowledge and expertise. This person can hear both sides, advise as appropriate, utilising appropriate knowledge, and help the parties negotiate within principled guidelines, established at the outset, so they are able to reach agreement together. This can then lead to a legally binding document, if required. A “win-win” for both sides. Often disputes are unfortunate, why make them worse with additional cost and further exacerbate the problem?

Mediation is essentially assisted negotiation, with the objective of a solution which meets the individual needs and interests of the parties. The parties to the dispute having appointed the mediator disclose all applicable information which is then used to consider the options and interests, rather than positions, of the parties. They are then helped, usually in separate meetings with the Mediator, to negotiate, in a controlled and principled way. The process is private and until settlement is reached non-binding.

The process is applicable to many, if not all, forms of dispute or difference of opinion, unless either party is unable to negotiate or wants to have time in Court.

Mediation and principled negotiation is particularly helpful where divorce and separation are the issue, more especially if business interests are also involved. The process helps couples to take control of their situation and sort out the many practical matters in an open and co-operative way. Many lasting legally binding settlements have

been reached without excessive legal costs or the need to attend Court. Whilst the process is not designed to discuss the breakdown of the partnership itself, if the parties accept that it has irretrievably broken down, it can help couples resolve the issues and give priority to any children or the ongoing business or other asset issues. Formal divorce proceedings can follow.

For some people, divorce for reason of faith or belief for example, may not be an option. They may well wish to live separate lives. In such cases, a Separation Agreement may be all that is required to cover such issues as children, maintenance, and the family home.”

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For an impartial, free and confidential discussion on any aspect of mediation, please contact David Elliott FCA on: 01675 446018