

## **Agreement to mediate**

### **Note for commissioners**

This document is an example of agreement to mediate. The mediator should arrange for a copy of the agreement to be signed by all participants before agreeing that mediation can take place. It is important because it sets out the terms and conditions under which mediation will proceed.

Different mediators will use slightly different agreements to mediate, depending upon the requirements of their professional body.

The mediator should present the agreement to mediate to each participant during the pre-mediation meeting, at which the mediator will meet each participant individually.

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## **Agreement to mediate**

### **What is mediation?**

1. Mediation is a voluntary process that depends upon the willingness of everyone to settle their differences through discussion.

### **What is the role of the mediator?**

2. The mediator is impartial and independent. The mediator does not take sides, nor does he or she judge or express a view about who is right or wrong. There is no room for blame in mediation. Mediation helps you to focus on the future and to find your own solutions to problems.
3. The mediator is not there to advise you, but he or she is able to direct you to sources of support if you need this. The mediator can also help you to work out whether any agreement you reach is likely to work or (if there are actual or pending Court proceedings) is likely to be accepted by a Court.
4. The mediator works with everybody equally to make sure everybody can participate equally in mediation. Sometimes, a person may need additional support to present their views to the other people taking part in mediation. The mediator may offer this support to ensure equal participation but, if he or she does this, is not taking sides.
5. If you have been referred to mediation by somebody else, for example by social services, the mediator is entirely independent of the referrer.

### **What about ending mediation?**

6. As a voluntary process, you have a right to end the mediation session if you wish to. Before you do, the mediator will speak with you about your concerns and why you wish to end the mediation session. The mediator will respect the wish of any participant to end mediation.
7. The mediator also has the right to end mediation if he or she considers that it would not be in the best interests of the participants to continue.

### **What about confidentiality and privilege?**

8. The mediator has a professional duty to ensure that any information obtained through the mediation process remains confidential and is not disclosed to anybody who is not a participant. However, there are some exceptions to this:
  - i. where the mediator is under an obligation to contact the appropriate authority if anybody (including a vulnerable adult or a child) is at risk of suffering serious harm;
  - ii. where the mediator is under an obligation to disclose information to the appropriate authority under the Proceeds of Crime Act 2002 (as amended) and / or the related Money laundering Regulations 2007;
  - iii. where the mediator is under an obligation to disclose the commission of an unlawful act; and
  - iv. where you have been referred to mediation, for example by social services, the mediator will need to tell your referrer about the outcome of mediation <sup>1</sup>.
9. In some cases, mediation takes place against the backdrop of actual or pending Court proceedings. You agree not to call the mediator to give evidence in Court.
10. The discussions you have in mediation are legally privileged. Neither you, nor the mediator, can be compelled to reveal those discussions in Court.
11. You can ask the mediator to prepare a written summary of the matters you have agreed. This document is also legally privileged, unless all participants agree to waive privilege over this.

### **What about the costs of mediation?**

12. The mediator will discuss the costs of the mediation process with you. It is important to be clear about who will be meeting the mediator's costs:
  - i. if the referrer (for example, social services) agree to meet the costs of mediation, the mediator will explain this to you and confirm that you will not be charged personally for the costs of mediation; or
  - ii. if you have self-referred and the participants will meet the costs of mediation, fees are charged separately per participant and you will be given a copy of the mediator's own terms and conditions for fee-paying participants.

### **What if I want to complain?**

13. In the event that you are unhappy with the mediator's service, you have a right to complain.
14. In the first instance, you should raise your complaint with the mediator who will try to resolve it.
15. If you are unhappy with the mediator's response, you have a right to complain to the mediator's own professional body. Your mediator will tell you who this is and provide you with the address of the independent complaints handler appointed by the mediator's own professional body so that you can write to them. You agree for the mediator to release your mediation records to the independent complaints handler.
16. The mediator must ensure that the storage and disposal of records respects the confidentiality such records require and is in accordance with the law and the mediator's professional association standards.

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<sup>1</sup> Note for commissioners: it is important that the agreement to mediate explains that the mediator will need to tell the referrer about the outcome of mediation and that the participants have agreed to this before mediation takes place.

I have read and understood the above:

Signed .....

Dated .....

**Additional clause where the case has been referred to mediation**

I agree to the mediator informing the referrer of the outcome of mediation:

Identify of referrer .....

Signed .....

Dated .....

**Additional clause where mediation takes place in the context of Court proceedings**

Having been given the opportunity to take legal advice, I agree to waive privilege on a limited basis so that the Court may be informed of the outcome of mediation. I understand that this can only be done if all participants agree.

Signed .....

Dated .....