



Blenheim Gardens RMO Guidance Leaflet

Family mediation service

in partnership with



Splitting up with your partner can be really traumatic. Not only do you have to cope with the pain and upset of separating but, suddenly, you're faced with lots of uncertainty about the future. Who will look after the children? What will you live on? What will happen to the family home?

Family mediation can be a very useful way for some couples to sort out these practical things. We explain what family mediation is, how it can help, and if it could work for you and your ex.

Introduction

Splitting up with your partner can be a very difficult time. Even if you manage to part on good terms, it can still be hard to cope with all the changes that will be happening in your life. You and your ex will have to make some difficult decisions about the future; at some stage this is likely to draw you into the legal process.

If it's all too stressful at the moment, don't panic. Our guidance leaflet sets out the issues you need to think about and explains your rights. It takes you step-by-step through the different processes you can use to make arrangements for the future.

You can use this guide whether you're married, in a civil partnership, or splitting up with a partner you've been living with.

What you need to sort out

These are the main issues you need to think about after a split:

Your children

You'll have to try and decide who your children are going to live with ('residence'). It might be very clear to both of you who this should be. But if you both want to look after the children, it can be very difficult to reach an agreement. Both of you will probably be worried about what will happen to your relationship with your children if they don't live with you. But that relationship will be better off in the long-

run if you can put your own concerns to one side and focus on what's best for your children.

If you're an unmarried father, check whether you have parental responsibility for your children.

You'll also need to figure out how you're going to divide the costs of bringing up your children between you. All parents (either by birth or adoption) are financially responsible for their children. The parent the children live with will obviously pay for their day-to-day living expenses so, if you don't live with your children, you should contribute by paying 'child maintenance'.

Your home

Your living arrangements and finances can be a real problem after a separation. Your joint income, which might have been just about enough to pay the rent or mortgage on your home, now miraculously has to stretch between two households. It doesn't take a genius to work out that it's going to be pretty stressful sorting this out.

Housing law is very complicated. Whether you rent or own your home, you must get legal advice from the estate housing office, the Citizens Advice Bureau or a solicitor.

The first thing you need to decide is where you're both going to live. Often couples who own their own home agree that the parent looking after the children should stay there to keep disruption of their children's lives to a minimum, while the other moves out. This doesn't necessarily mean that the parent moving out will give up any share they have in the home - just that they won't be living there or trying to sell it for the time being. Sorting out ownership of the home is a separate issue for you to think about.

You may not have this luxury. You might be forced to sell your existing home to be able to afford accommodation for each of you.

If you rent your home, check out the terms of your lease - does the landlord have a right to terminate the tenancy if one of you moves

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out? How quickly can you act? Can you end your tenancy now or are you locked in for a few more months?

If you're married or in a civil partnership, the law will treat your home and each of your savings and possessions as 'family assets', belonging to both of you rather than one or the other. When you separate, you'll each be entitled to a 'fair share' of these 'family assets'. The law decides what is 'fair' according to a number of different issues.

If you have been cohabiting, you may have very limited rights. The law does not think of your home, savings and possessions as family assets so, on separation, they'll be kept by whichever of you owns them.

Your finances

If you're struggling for money after a separation, don't panic. You might be entitled to benefits or other financial help, particularly if you have children.

If you're married or a civil partner, you may be able to claim maintenance payments from your partner. But be aware: these days, courts often only make maintenance orders for a fixed number of years, to help partners who have given up work to get back into the job market.

Cohabiting couples have no rights to maintenance payments for their own benefit unless they have made an agreement about this. But they will, of course, have a duty to financially support their children.

If you can't repay debts, get some urgent advice - you don't want to end up with legal action over these as well. The National Debtline offers confidential advice on the phone on 0800 731 7973.

How you can sort things out

You could decide what to do about your children, home and finances between you and put the arrangements in place

yourselves. It is even possible to do your own divorce/dissolution, although it's a good idea to have some legal advice first.

But sitting down and discussing things with your partner at such a stressful time is easier said than done. If you're too angry or upset to face your partner, particularly over issues on which you might not see eye to eye, you'll probably need a helping hand.

Some couples find they're able to talk to each other about practical arrangements with the help of a mediator. Some will not want to face each other like this and will get solicitors to negotiate the arrangements for them. Others will never manage to reach an agreement and will have to let the courts decide for them.

Mediation

Mediation brings you and your partner together for a series of face-to-face discussions to help you agree on arrangements for the future. The discussions will take place with a mediator, who is trained to help you start communicating again - to help you put your feelings aside and focus on the practical issues that need to be sorted out.

Mediators are neutral - they will not take sides. They can give you information about how the law works when couples separate, but can't give you any legal advice about how the law applies in your case. You should get some legal advice from a solicitor at some stage during the mediation process - certainly before you reach a final agreement.

At your first meeting, the mediator will ask for details about your situation and discuss with you whether mediation might be suitable in the circumstances. You can choose whether to have this initial meeting together or separately. If you both decide to go ahead with the mediation, you will usually have between one and six sessions with the mediator, each lasting between one and two hours. During these sessions, the mediator will help you to:

- list the issues you can't agree on
- look at the different options you have for resolving each issue

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- think about which options are most likely to work for you in practice
- reach a final agreement

At the end of the mediation sessions, the mediator will put together a document setting out your agreement in writing. Different mediation services give it different names but it will usually be called either a 'memorandum of understanding' or a 'statement of outcome'. This can go into a lot more detail about the practical side of the arrangements than solicitors or the court. Agreeing who's going to pick who up from where at what time can sometimes make the difference between what works and what doesn't.

If you are not on legal aid, a mediator will usually charge you per hour or per session, plus extra for preparing the written agreement. Expect to pay for each meeting as it takes place.

If you are on a low income and only have limited savings, you may be able to get legal aid to cover both: your mediation costs, and the legal advice you get alongside it. You will not have to pay this back. This could save you a lot of money.

Solicitors

Unlike mediators, solicitors are not neutral. Your solicitor will take your side, so you and your partner will need to find separate solicitors.

A solicitor can help you in a number of different ways. You can get advice from a solicitor on what rights the law gives you and your partner on separation and what options you have for enforcing those rights. If you have been to mediation, you should see a solicitor for some legal advice before getting your mediator to put your final agreement in writing.

If you want to make sure that your partner will be required by law to stick to the terms of your written agreement, you can get your solicitor to turn it into an order and ask the court to approve it. You will both have to agree to this.

If you don't think you and your partner can agree on arrangements through mediation, your solicitor can negotiate with your partner's solicitor to reach an agreement for you.

If this doesn't work, your solicitor can ask a judge to make the decisions by making an 'application to court'. If you are divorcing/dissolving a civil partnership, you'll have to make an application to court for the divorce/dissolution whether or not you can agree on the practical arrangements.

You can still reach your own agreement after you have made an application to court. In fact, the court will encourage you to keep trying. If your case ends up in court, your solicitor will be able to explain your circumstances to the judge and argue for what you want. Or they might arrange for a barrister to do this for you. A barrister is simply a solicitor who specialises in presenting cases to a judge. This is usually called 'legal representation'.

Solicitors charge by the hour for all the time they spend on your case, including talking things through with you on the phone, so bear this in mind if there is a lot you want to discuss. If you are not on legal aid, they should send you regular bills for their work and you will probably have to pay a large sum of money at the start to cover a proportion of these costs. This is called 'money on account of costs'.

You may be able to get legal aid to cover your solicitor's costs if you are on a low income and only have limited savings. Be aware that this will need to be paid back if you end up with money or a house as a result of the separation. Speak to your solicitor about it.

Find your nearest family law solicitor by calling 0845 608 1122.

Court

If you're divorcing/dissolving a civil partnership, this will be dealt with by the court. If you and your partner agree to the divorce/dissolution and have reached an agreement about arrangements for the

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children and your finances, you won't need to appear in court. The whole thing will take place on paper, with details of the arrangements you have made for your children and finances being sent to court for the judge to approve. Most people will use solicitors to make the applications to court but, where you are both in agreement like this, it is possible to do it yourselves. You should still get some legal advice before you do this.

If you can't reach an agreement over your children and finances (either through mediation or your solicitors), you'll have to ask the court to make a decision for you. The judge will encourage you to keep trying to reach your own agreement.

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