Divorce and separation guide – there is a better way!

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Part 1: Introduction

Having spent the last 7 years working as a full-time family mediator, during which time I have assisted well over 1,000 people to navigate their way through divorce and separation, I feel that it is high time that I share some of the benefits of this experience and try to help as many people as possible to avoid the numerous pitfalls that the end of a relationship, or continued strife following a previous separation, can bring.

As a mediator, I am a great advocate of the use of mediation both as an alternative to the unnecessary conflict that trying to resolve matters without external assistance can bring and as a way to avoid lengthy and expensive legal battles whenever possible. However, I am fully aware that there are times when mediation might not be the best option and I hope that this book will help anyone who is separating to understand what the various options are and decide what the best course of action is likely to be in the circumstances.

Please note that the contents of this book are not intended to be and are not a substitute for legal advice. They relate to the experiences of a family mediator and if you have any concerns about your individual situation please seek independent legal advice or consult a local mediator.

Please also note that the information contained within this book was correct at the time of writing and that it relates to common practice in England but, as with everything in life, the relevant rules might change and you may wish to confirm the current rules by speaking to a family mediator or solicitor.

1. Is my relationship over?

The logical starting point is to consider the future of the relationship.

As a basic rule of thumb, if both parties feel that there is the prospect of the relationship continuing, the most obvious step to take is to speak to a couples counsellor and there are plenty of very good ones out there. A sensible starting point would be to contact a suitably qualified counsellor using the "Find a therapist" service that is run by the British Association of Counselling and Psychotherapy (BACP) – please see http://www.itsgoodtotalk.org.uk/therapists

However, if either one or both parties feel that the situation has reached the stage where a separation is the likely outcome, or where either party wants to discuss the implications of a future separation, then the first port of call should almost always be a family mediator.

A mediator should be able to discuss the situation with each person individually, in what is now termed a Mediation Information and Assessment Meeting (MIAM – as explained below)), in order to carefully explain the options that might be available so that each person can decide how they wish to move forwards.

This is very different from the first step that many people facing separation take, which is to consult a solicitor. Talking to a mediator avoids the risk of any initial legal advice, or letter to the other party, sparking off an unnecessary legal dispute and maximises the chances of resolutions being reach amicably and cost-effectively. Having seen the reaction of numerous people who have received letters from a lawyer, I challenge anyone to write a letter that will not at the very least provoke some upset and concern to the reader.

If the mediator then feels that you might benefit from early legal advice then the mediator will raise that during the meeting and be able to suggest some possible solicitors who have a proven track record for acting in their clients' best interests rather than creating unnecessary legal disputes.

2. "Why mediate" or "why not mediate"?

Over the years, I have come across numerous reasons given by potential clients for why mediation is not appropriate in their situation. Sometimes, these reasons have come from the client's own deliberations but often it is apparent that they have been put forward by people advising them either professionally or personally. To deal with the most common reasons for believing that mediation is not suitable:

1. **"Mediation won't work"**
   You will only find out if mediation will work by trying it. As a general rule, the most common reason for mediation not being successful is because one or both parties is not prepared to try to make it work. There are rarely legal or practical issues that are so complex that they prevent the mediation process from being effective and anyone who uses this as a reason not to mediate or to advise clients that the process won't work should be asked to carefully consider whether there is a genuine reason not to mediate or whether they are simply creating a self-fulfilling prophesy or needlessly sowing seeds of doubt.

2. **"Mediation is a waste of money"**
   It is almost certainly going to be an awful lot cheaper to mediate than to take the alternative routes, especially if these include the use of legal action. As you can no doubt appreciate when you are not living through a legal dispute there is a great sense of irony when clients who have already spent far more making little of no progress with solicitors than they could ever have spent on mediation explain that their solicitors have advised them that mediation would be too expensive. Clearly, it would be far better to avoid unnecessary legal or other costs in the first place but it is a great shame when people fall into the trap of "throwing good money after bad" by not considering other options including mediation that are likely to be far less expensive even when they are in the middle of the legal process.

3. **"There is domestic violence"**
   Sometimes, there are situations where either the level of physical or emotional abuse during a relationship has clearly led to a dynamic where it would be inappropriate to ask the parties to sit together in the same room with a mediator and this is one of the key issues that the mediator would explore during the preliminary individual meetings. However, these sorts of concerns can often be effectively addressed by agreeing the groundrules for both parties' conduct during the mediation process and, if appropriate, asking the clients to each bring someone to support them during the meetings or using the shuttle mediation model where the clients do not sit in the same room.
   Unfortunately, the approach taken, frequently based on the advice of their legal advisers, is far too often for there to be a suggestion that mediation should not even being explored as an option, therefore making it much harder for a client to take the difficult step of agreeing to start mediation and, consequently, increasing the chances that there will be a long and unpleasant battle which is not in the emotional or financial interests of the client concerned.

4. **"The distance is too great"**
   It is interesting that people are often very happy to travel long distances to meet each other at the start of a relationship or as way to maintain a relationship and yet, when they are facing a separation, there can be a sense that it would be too difficult or impractical to travel to find a way to bring the relationship to an end in a carefully managed way. Not only does this unnecessarily rule out the use of mediation, with it often being possible to tie the mediation meetings in with business or family trips or to create a more focused mediation process where both parties are aware of the need to try to reach resolutions within fewer and more intensive meetings, but it also fails to recognise that the clients will be required to travel if the courts end up being the route chosen. Sometimes, the distance will be so great, for example when one person lives in a different country, that it may be sensible to run some or all of the mediation process via the phone or using emails, with some mediators moving towards using online video mediation in these situations.

5. **"Mediation is not robust enough"**
   This is most frequently raised in finance cases and what needs to be understood is that solicitors and other advisers generally have no additional powers than mediators to force the disclosure of documentation or to make the other person comply with their own client's wishes. Yes, they can employ forensic investigators and instruct bailiffs, but this can still be done in parallel with mediation and, from experience, it is very rare that this level of action is required.
   Ultimately, if either person is not happy with the level of disclosure provided then they can seek legal advice about looking for third party assistance or about sending a warning letter to the other person and, if a resolution is not reached, then they can start court action in the knowledge that they have genuinely explored all other options fully first.
   It is very important to understand that only a court can force disclosure or compliance (and even this can be incredibly hard to implement in high-conflict and complex cases, which is what the legal system is designed to deal with) and it is generally only worth getting to that stage if there is a genuine cause for concern. It is very rare for someone to refuse to provide a specific document if they know that the court is likely to order that it be disclosed after spending a lot of money for the privilege of being told this. There is also generally no sense in forcing someone to do something that is likely to cost more to enforce than it was worth in the first place – a perfect example would be an application to receive interim maintenance when the legal costs involved look likely to be greater than the amount of maintenance that is likely to be received before the matter comes to a conclusion.
   In the vast majority of cases, co-operation with a sensible level of due diligence and legal advice in parallel, will get there a lot more quickly and cost-effectively than the adversarial route.

6. **"Mediation cannot effectively deal with high value cases"**
   Whereas the legal system seems to have a very good nose for sniffing out higher-value cases, with this magically resulting in the costs rising in line with the wealth of the clients, mediation costs tend to be relatively similar regardless of the size of the assets involved.
   As I often say, water finds its own level and, from a legal perspective, the greater the level of the finances then the more that there is for those who make a living out of conflict to get

their teeth into and the less the incentive that there is to look for a quick and cost-effective settlement.

Conversely, if run properly, the mediation process should always be managed in a way that helps both parties to find as amicable and cost-effective a solution as possible. Asking clients to attend numerous, unproductive meetings, charging for unnecessary pieces of work along the way, is going to lead to a situation where both parties are justifiably upset with the mediator. The mediator cannot then blame this on one of the parties or their solicitors, as the mediator needs to remain neutral and focused on ways to reduce not increase conflict. In contrast, within the legal setting, it is far too easy for each side to blame the other one for the fact that the issues are taking so long to resolve, potentially leading to a seemingly endless game of legal table tennis that results in the costs rising unnecessarily.

In mediation, it is almost always possible to deal with even the most complex financial issues by suggesting that clients seek financial advice, either jointly or separately, in parallel with the mediation process, with them then bringing this advice back to the table at the next meeting in order to continue the negotiations in light of the advice received.

If this process is followed, it is normally possible to reach the point where there are clear issues or differences of opinion to be mediated regardless of whether the sums involved relate to thousands of pounds or millions of pounds. The irony is that, far from being unsuitable for dealing with higher value cases, mediation can offer a huge cost benefit in these cases as the relatively fixed mediation costs will become better and better value as the size of the assets in discussion increases.

7. **"The other person will never agree to mediate"**

   The answer to this one is quite simple – let's ask them and find out. It never ceases to amaze me how often the other person does agree to mediate but, if they decline to mediate then you will know that have fully explored the options available.

8. **"The other person is not going to negotiate properly"**

   The answer to this is very similar to the previous one – let's try mediation and find out. All too often, both parties make the assumption that the other person will not engage properly in the mediation process, possibly due to the way that they feel that the other person (and their solicitor, if they have one) has acted prior to mediation, just to discover that the other person is equally willing to negotiate and just as frustrated with the lack of progress made previously.

9. **"It is too late to mediate"**

   There is often a sense that, having spent a lot of time, money and energy on alternative routes to reaching a settlement, whether these be failed attempts to work out the issues directly with the other person or via the legal process, it is too late to consider mediation. Whilst it is true that long delays in starting mediation can sometimes mean that the battle lines have been drawn, with this leading to a hardening of one or both parties' views, some of the most rewarding and effective mediations can take place when both people have reached the stage where they realise that there must be a better way to resolve the issues, possibly even to the point where the finances or other resources are close to being exhausted. This might require some swallowing of pride or having the bravery to call off the

wolves from the other person's door but, once both people take the decision to work together to find a solution in mediation, it is amazing how fast matters can be resolved. Whilst I would generally recommend avoiding reaching the point where resources have been exhausted, having lived through months or even years of very unpleasant levels of emotion, before choosing to mediate, it is really important to hold the mindset that "it is never too late to mediate" and anyone who advises differently may have an ulterior motive for doing so or, at least, may not be helping in the way that they intended.

10. **"It is too early to mediate"**
    On the other end of the timescale, there is the sense that it can be too early to mediate. I am very conscious that there can be times when one or both people need time to consider their options, potentially considering couples or individual counselling or seeking some additional legal/financial advice before thinking about starting mediation. However, as part of this process, I would suggest that it is almost always sensible to meet with a mediator for the confidential individual Mediation Information and Assessment Meeting before making a decision either way. This way, it is much more likely that the options can be carefully thought through, minimising the risk that a lack of action will either lead to a long and unhealthy period of being in limbo or the possibility that one of the parties will make the mistake of seeking legal advice from someone who, consciously or not, sets the tinder paper alight through an inappropriate letter or other unnecessarily aggressive steps.
    Sadly, I have had many clients contact me weeks, months or even years after they first considered mediation, wishing that they had taken it up sooner in order to avoid the heartache and turmoil that they have lived through during the intervening time.

I could quite easily spend several more pages dealing with other reasons for not wanting to mediate but I hope that the message is coming through loud and clear that, despite what people are often advised, mediation can work in the vast majority of situations and it is almost always worth attempting it before looking towards an adversarial route.

There will be cases involving urgency (e.g. child abduction or removal of assets), safety (either to children or one of the parties themselves), mental capacity (where either party is not able to make informed decisions) or legal complexity (where there is a genuinely complex issue that needs a court's involvement to make a landmark ruling over the case), alongside other possible reasons, where mediation is not appropriate.

Generally, in these cases, it will be apparent to everyone involved that mediation is not suitable without having to contact a mediator, in which case there will be an exception to the rule that a MIAM needs to be undertaken, or the mediator should be able to quickly assess during a MIAM that the case is not suitable. If there is any uncertainty about whether mediation is suitable then I would generally suggest that the client attends a MIAM whilst also taking the relevant legal action in parallel in order to ensure that there is no risk that the court application will be rejected at a later date and to keep open the possibility that the other party might look to reach an out of court of settlement, but this is a judgement call for the client and their lawyer to make in the individual circumstances whilst ensuring that it is in the client's genuine best interests.

My hope is that, having carefully thought through all of the above issues, everyone involved will carefully think through whether there really is a genuine reason to not even consider mediation, and

to question the motives of anyone who attempts to undermine the potential for or dismiss the use of mediation without a very good reason for doing this that is clearly in the client's interests.

Instead of questioning whether to mediate, it is perhaps more constructive to ask whether there is really a good reason not to mediate. If not, contact a local mediator and at least explore it as an option before making your decision about whether or not to mediate.

3. Should I instruct a solicitor either in parallel with mediation or instead of mediation?

Having made it clear at various times in this book that using solicitors can be very expensive and often lead to an unnecessarily adversarial process, it is time to talk through what to do when a solicitor is required.

The first step is to work out whether the intention is to use a solicitor instead of or in parallel with mediation. In reality, a good solicitor, and I have had the good fortune to work with many good ones, will be able to adjust their approach to the circumstances.

Some solicitors market themselves on being the right person for the job as they are aggressive and renowned for smashing their opponents in court. I would never refer a client or a friend to someone who markets themselves on this basis.

What I would suggest is that you want is someone who will be supportive of the mediation process if it is ongoing and who is as amicable as possible in general in the circumstances, ideally with correspondence between themselves and the other party being kept to a minimum during the mediation process, with the heat being turned up only if it becomes clear that the other party is not acting reasonably or engaging in proper negotiations. If a court process happens in the end, there will be more than enough time to write detailed letters and prepare for a long legal battle, always offering the option of returning to mediation or settling outside of court, without having to throw the kitchen sink at the other person before the initial positions have been carefully explored and tested through mediation or other negotiation.

If mediation is still on track then there may still be times during the process when one or both parties will want to seek legal advice about their situations before offering up any suggestions for settlement during the mediation process. It is likely that this advice will only really be properly informed once initial discussions have begun, and once disclosure has been undertaken for finance cases, so it is often sensible and more cost-effective to wait until later in the process before seeking specific legal advice. Ideally, both parties will instruct their solicitors not to write any letters in parallel to mediation, unless there is a very good reason to do this, with each party returning to the next meeting with the advice that they have received either clear in their mind or on paper.

If appropriate, one or both solicitors can attend a subsequent mediation meeting or, with the consent of both parties, contact the mediator if any clarification is needed about an issue that they are looking to advise their clients about.

The focus should be on keeping all communication channels open and encouraging an amicable settlement whenever possible, in the most cost-effective and proportionate way possible. As in most areas of life, there is no need to try and crack a nut with a sledgehammer.

As part of this process, both the solicitors and the mediator should be able to assist the clients to agree what steps to take after the mediation process in order to implement what has been agreed. This might simply require a voluntary change to the children's living arrangements or it might require a legal document to be drawn up by the solicitors for both clients to sign, possibly with this then being sent to the court for approval if appropriate.

If everyone involved follows this basic approach then the mediation process will have been given a proper chance to succeed and it will be successful in the vast majority of cases. However, if, for whatever reason, the mediation process is not able to assist the clients to reach agreements about all of the issues being discussed, it is important that the clients consider whether to seek legal advice for the first time or whether to continue with their current solicitors. A mediator should be able to signpost the clients to suitable, local solicitors when required and, if the client feels that their own solicitor might have been either the main cause of the breakdown in mediation, or at least a contributory factor, then they might want to consider asking the mediator for details of alternative solicitors as it is likely that the unhelpful approach would continue and lead to a long and expensive court battle, which should of course be avoided whenever possible.

4. I would rather have my day in court

One of the dynamics that comes up regularly with clients, especially when they are first considering whether to mediate but also during the process itself, is the attraction that "having your day in court" presents. Sometimes, this is a subconscious force that seems to be leading to the client looking for any reason to avoid or end the mediation process but normally it is more conscious, with the client voicing their desire to be vindicated by, or to vanquish the other person in, the courts.

There are undoubtedly occasions when this might be a well-founded desire, such as when one person is clearly not co-operating with the mediation process or is putting forward positions that are far from reasonable. In these situations, I would be the first person to question the logic in continuing with mediation unless the blockage to the process can be overcome and I would normally suggest that both parties seek sensible legal advice in order to reality test their positions individually before making a decision about whether or not to continue with the mediation process.

However, there are also often situations where the use of court action is frequently raised by one or both parties not so much as a negotiating point but as if it will offer the closure that is required. Whilst I have met a few people who have been through the family law courts and who have reached the final hearing with a sense of victory that allows them to springboard themselves into a new and positive chapter of their lives, these are far outweighed by those people who have exhausted themselves mentally and financially without obtaining the outcome that they were looking for. Frequently, both parties end up more upset and drained than when they started, leaving them an uphill challenge to rebuild themselves and move forwards positively with their lives.

Generally, it is possible to help clients to move away from the urge to have their day in court, either by talking through the implications of a court case or by trying to find common ground and make positive progress that allows the urge to be reduced over the course of the mediation process. However, it would of course be a lot easier for everyone involved if all the people surrounding the clients, ranging from solicitors to family members and friends, were able to see the benefit of avoiding court unless absolutely necessary as early as possible in the separation, ideally before mediation is even being explored. Clearly, I hope that writing this book will go some way towards to assisting many more people to achieve this.

Part 2: The Mediation Process

1. What is a "MIAM" and do I need one?

Once you have reached the stage of contacting a family mediator, the mediator will probably ask you to book a confidential individual meeting, normally referred to as a Mediation Information and Assessment Meeting (MIAM), to discuss the situation and to explore the options for moving forwards.

However, some mediators will be prepared to spend a few minutes on the phone or over email to get an initial feel for the case in order to assess whether booking a MIAM is the most sensible option. Whilst every mediator will have their own system, it might be helpful if I summarise the one that I normally follow once a new enquiry comes through:

i) Ensure that the client is aware of the costs of the MIAM and, if appropriate, assess whether they might qualify for legal aid.

ii) Check whether the client understands the difference between mediation and couples counselling, signposting them to counselling instead if that is what they are really looking for.

iii) Assess whether there are any urgent issues that might mean that it would be more appropriate for the client to seek legal advice, suggesting some possible solicitors if this is the case.

iv) Ascertain whether the other party is already looking to start the mediation process, in which case I would give the option of looking for a suitable date when both parties are able to come in for the individual MIAMs followed straight away by the first joint meeting. This option can be a very effective way to start the discussions without any unnecessary delay and I find that quite of lot of people choose this option if the other person has already agreed to mediate.

Having gone through this initial process, this means that once I meet the client I am able to tailor the MIAM to the client's individual circumstances. In order to give an insight into what might happen in a MIAM, it is probably helpful if I describe a few of the scenarios that I come across regularly:

a) We are both ready to mediate.
As explained above, I will always try my best to establish whether both parties are ready to mediate before the MIAM, in which case it is very likely that the MIAMs are being held one after the other immediately prior to the first joint meeting. This means that the focus of the MIAM is generally trying to understand your perspective on what has brought you to the current position and, if you know at that stage, what you are looking to achieve within the mediation process (even if only in general terms), as well as ensuring that you are as comfortable as possible about the mediation process itself.

b) I am considering mediation but I am not sure if it is the best route.
In this scenario, we will be meeting for a one-off MIAM, with a view to exploring the options. This means that time will be spent covering all of the points summarised route a) above but also focusing on whether mediation is the right option for you. We would normally discuss all the possible options including reconciliation, couples counselling, legal advice, mediation and the court process, with a view to trying to establish whether mediation is the best option.

If you feel that mediation is the best option, or at least worth exploring further, we would then discuss whether it would be appropriate to offer the other party a chance to meet with me for a MIAM. Depending upon the circumstances, you might either decide to spend some more time thinking over the options after the meeting, or agree to find a suitable way to ask the other person about whether they are willing to mediate or contact me (e.g. by giving them one of my business cards, sending them a text/email, speaking to them or asking a third party to make contact), or ask me to formally contact the other person (with this generally being via letter or, if appropriate, by email).

c) **My solicitor has told me that I need a MIAM in order to make a court application.**
Quite often, I meet with people who are under the impression that their solicitor has only referred them to mediation in order to ask me to sign the mediator's section of the court form to confirm that the client has attended a MIAM.
Often, once I discuss the options with the client, it generally becomes apparent that the solicitor has actually referred the client with a view to genuinely exploring the possibility of mediating and with a court application only being considered if mediation does not proceed. Sometimes, I am able to establish that the solicitor is actually advising the client to make a court application in parallel with exploring whether mediation might be an option in order to avoid the possibility that the other party might simply use mediation as a delaying tactic. Occasionally, it is apparent that an immediate court application is the intended goal and, whilst I will always try my best to check whether this is really in the client's best interests, I am obliged as a mediator to sign the mediator's section of the court form if requested to do so, regardless of whether I feel that mediation has been properly considered by the client. However, I should stress that, if I have concerns that the MIAM has simply been used as a "box-ticking" exercise then I will suggest that the client thinks very carefully about the potential consequences of this, whether this be in terms of delay if the other person explains to the court that they were never offered the option to mediate or with reference to the potential time, money and stress that the court process might entail.

As mentioned above, it is really important to be clear that, regardless of the route taken, the discussions within the MIAM are confidential and the mediator should never pass on anything that is discussed to the other party without the permission of the client.

2. What do I do if my ex-partner has already contacted the mediator?

If you have been made aware that your ex-partner has already contacted a mediation then the normal course of action would be to suggest that you contact the mediator to arrange for a suitable time to hold a confidential MIAM which would be approached in the same way that it was for your ex-partner. Therefore, if you are already clear that you would like to start the mediation process then I would offer to hold a short meeting followed by the first joint mediation meeting in line with route a) above but, if you are looking to explore your options first, I would offer to meet you for a stand-alone MIAM in the same way as took place with the original party in route b) above.

In the same was as for the original party, if you decide that you would prefer to look for an alternative route to mediation then I would ensure that the various options are explained and, if appropriate, I would sign the mediator's section of the court application to confirm that mediation has been considered – in which case, as with the initial party, I would make sure that you aware of the potential consequences of a court application and suggest that I let the other person know that I

have signed the court form in order to ensure transparency and to minimise the chances of an unnecessary delay during the court process.

3. Should I start the full mediation process?

As the previous sections help to demonstrate, the decision to start the actual mediation process can sometimes be a very quick one, with both parties already clear that mediation is the best route to follow, but it can also sometimes be the result of a lot of research and soul-searching, possibly even coming after many months or years of inconclusive legal wrangles.

However the decision has been reached to start the mediation process, the mediator should be able to tailor the process around your individual circumstances, with the MIAMs having offered the mediator the opportunity to ensure that the approach taken is appropriate and in line with both parties' wishes.

The mediator should also ask you to read carefully and sign the Agreement to Mediate before starting the joint mediation sessions. This agreement normally explains the basic principles underlying the mediation process as well outlining the terms and conditions of the contract between the client and the mediator. For example, the Agreement to Mediate that I use is based upon the one put together by the Family Mediators Association and covers the following key points:

- Mediation is voluntary.
- Mediators are impartial.
- Clients make the decisions.
- Mediation is confidential.
- Professional standards, concerns and complaints.
- Charges and other terms of business.

As with any contract, it is important to read it fully and you should feel able to ask the mediator for clarification about any aspects of the Agreement to Mediate that are unclear or that raise questions.

Depending upon the experience and approach taken by the mediator, there may be times when the Agreement to Mediate or the way that the process is being managed need to be altered, including:

The use of shuttle mediation. The decision should have been taken during the MIAMs about whether there is any reason to move away from the usual model of all the meetings being held jointly with both parties present.

Occasionally, one or both parties might feel that it would be preferable to hold shuttle mediation meetings, which is where both parties are present in the building but in different rooms. As a general rule, I would discourage the use of shuttle mediation unless it is absolutely necessary as it tends to make it more difficult to reach agreements, as well as making the process more expensive, and it makes it far less likely that the side-benefits of improved communication and co-operation (which can be particularly important when there are children to consider) will come about as part of the process.

However, if there is a clear reason to use shuttle mediation and if both parties agree to its use then it is generally worth using the shuttle mediation model rather than not mediating at all. Examples of reasons that come up include safety concerns for either party (e.g. where there is a history of domestic violence), strong reasons for one party to feel that they will be unable to express

themselves fully in a joint meeting or the presence of a court order or police condition prohibiting contact between the parties.

In extreme situations, it is possible to hold shuttle mediation with the parties on different days, without them having to be present in the building at the same time, but this tends to be much more difficult as it prevents real-time relaying of information from taking place and can therefore be a lot more time-intensive and, consequently, much more expensive.

Having other people present during the mediation process. Sometimes, one or both parties will ask if someone else can be present during the mediation. If this person is a friend or family member then this is an option that can be considered and that would need the agreement of the other party, who may then ask for someone else to be present to support them in order to maintain balance. As a general rule, I would discourage either person from bringing a third party into the process as it tends to introduce more complex dynamics into the process but, if this is the only way that mediation can proceed and both parties agree, we can move forwards on this basis.

There is also the option of having an advisor present, for example a solicitor or a financial advisor, and, once again, this would require the consent of the other party and the mediator would need to assess whether the presence of any advisors might create an imbalance or negatively affect the dynamics of the discussions. The clients would also need to consider the potential cost implications for their advisors' involvement during the meetings.

If other people are present during the mediation meetings then the mediator might suggest that another mediator assists with the case (i.e. the co-mediation model explained below) if they feel that it will be difficult for a sole mediator to manage the process and engage with all the participants effectively.

4. Should I consider co-mediation?

It is possible that you might want to consider using the co-mediation model where there are 2 mediators present during some or all of the mediation meetings and it is worth noting that some mediators only ever work using the co-mediation model.

There are a number of reasons that might lead you or the mediator to consider the use of co-mediation, including:

- **The benefits of bringing in specific expertise.** This could mean bringing in a second mediator who has additional financial training, perhaps one who is also an accountant or Independent Financial Advisor, in order to help deal with complex financial or tax issues. It might only be necessary to involve the second mediator for some of the mediation meetings in order to avoid unnecessary additional costs when their specific expertise is no longer required.
- **To balance out the room.** It may be that the dynamics during a previous meeting have been strained and that the mediator feels that having a second mediator present will help to improve the dynamics whilst also avoid the risk that the way the process being managed by the mediator might become the focal point of the discussions.
  As a general rule, I would suggest trying to ensure that the mediators are different genders, in order to avoid a situation when one person feels that they are at a disadvantage as a result of being faced with 3 people of a different gender to them. Whilst the gender of the mediator should not affect the mediator's skills or ability, it is vitally important that all the parties feel that there is balance in the room and I would suggest that having mediators with

different genders tends to be better at achieving this than having 2 male or female mediators.

- **When there are additional people involved in the mediation process.** Most mediators are quite comfortable with being a sole mediator when there are 2 parties involved, although, as mentioned above, some mediators will only ever co-mediate as they feel that the dynamic of having 2 clients to 1 mediator is not as positive as having 2 mediators present. However, it can rapidly become a case of crowd control when additional parties are involved, especially when one or more of the parties is trying to use the mediation forum as a way to air grievances rather than to resolve them. It will always be a judgement call for the mediator to make but if the mediator's instinct is that it would help to avoid a potential imbalance caused by there being additional people within the mediation process by having a co-mediator present then that instinct is probably well-founded and the mediator should make having a co-mediator involved a pre-condition to continuing.
- **The potential for a complaint.** If the mediator gets the sense that one or both of the clients might be likely to try to complain, possible because the parties have made comments about how they are not happy with how the process is being managed, then it is likely that the mediator will suggest that a co-mediator be brought in if the process is to continue. Not only will this mean that the mediator might bring in new skills or a fresh approach that might assist to move the process forwards but it will also give the mediator additional support if either of the parties chooses to make a complaint at any stage.

  Whilst rare, it may become apparent during the initial discussions with a client that either that client or the other party has a tendency to make complaints against professionals when events don't unfold in their favour. This could relate to how a lawyer or financial advisor has advised them or how a social worker or police officer has handled their situation prior to mediation. In this sort of situation, the mediator would almost certainly want to make having a co-mediator a pre-condition to starting the mediation process rather than running the risk of either a complaint coming during the process or of meaning that the mediator is spending far too much of their time and attention trying to avoid a complaint rather than trying to help the parties to resolve matters.

  As a general rule, having spoken to many mediators who have had complaints made against them, there were almost always early warning signs that the mediator wishes that they had heeded rather than putting themselves through the unpleasant situation of trying to deal with a complaint or a potential complaint.

  In extreme cases, the mediator may decide that it would be inappropriate to either start a mediation or continue with it, even with a co-mediator present, and, if this is the case, the mediator would be likely to explain that it was not appropriate to continue in the circumstances. Generally, the mediator would not be able to give specific reasons for this in order to avoid adding fuel to the fire as, if a decision has been taken to end a case, it is very likely that it would not take much of a spark to escalate the dispute between the parties themselves or between the parties and their mediator. Everyone's energy could be spent much more constructively elsewhere.

Whatever the reason for having another mediator present, it is likely that using the co-mediation model will have additional costs associated with it. Theoretically, this might require the fee to be nearly doubled in order to ensure that each mediator receives a similar fee to the fee that they would receive in a sole mediation, once factoring in any room booking or other administrative costs.

However, most mediators tend to offer the co-mediation model at a smaller uplift, with there probably being an uplift of between one third and one half. This means that all of the costs discussed below would rise by this amount for any parts of the mediation process when 2 mediators are used, including with reference to the preparation of documents as both mediators would generally be involved in preparing and checking these documents.

5. What are the costs involved?

I will try to deal with the issue of cost in the order of cheapest to most expensive processes, whilst bearing in mind that this is only a guide to the sorts of costs involved as every professional will have their own fee structure and every case will need a slightly different approach.

Cohabitation: At the simplest level, if an unmarried couple separates and there are no children to consider or financial issues to discuss then the couple can essentially just go their separate ways, with there being no costs involved other than possibly some moving fees or any other logistical costs.

Divorce: As explained below, the actual divorce process can be relatively cost-effective, with there only being the court fee of £550 to pay and with the parties doing all their own paperwork rather than paying a solicitor to do this for them.

However, if solicitors are used then most will offer a fixed fee for dealing with the divorce process, probably in the region of £1,000 to £2,000 per solicitor if the divorce is undefended and with this being a lot more expensive if the other person defends the divorce. It is important to stress that this fee will almost certainly not include any substantive advice about finances and children's arrangements.

Within the mediation process, if the clients need some assistance purely about the divorce options and how to end the marriage, then it should be possible for the parties to have a joint meeting (after the MIAM process has been conducted), probably lasting between 1 to 2 hours, to try to find a joint way to move forwards. This is likely to cost approximately £200 to £300 per person depending upon the rate charged, with most mediators charging an hourly rate per person. It is therefore likely to be a lot cheaper to see a mediator for assistance than to see a solicitor but, as explained above, the parties can run their own divorce process without any additional costs to pay other than the court if there is already an agreed way forwards.

Additional issues: It is when there are wider discussions required, as outlined in Part 3 below, that the mediation process becomes a very cost-effective option. Once again, it is perfectly possible to see a mediator for a one-off joint meeting if there are specific issues that can be covered quite easily, with this costing in the region of £200 to £300 per person.

However, as there are generally a number of steps to go through in order to ensure that all options have been covered, with the mediator making sure that both parties have all of the information that they require to make informed decisions, it is likely that additional meetings will be required.

It is difficult to give detailed guidance about how many meeting might be required without first evaluating the specific circumstances but the mediator should be able to assess the likelihood of whether just one more or several more meetings might be required once the initial joint has meeting has taken place, as it should be starting to become apparent what sort of complexities that there are with the case.

As a general rule, it is likely that between 2 to 4 joint mediation meetings of about 1.5 to 2 hours each, will be required.

It is also normally going to be necessary for the mediator to spend some time working on the mediation documents. In finance cases, this would mean the preparation of a Financial Summary which summarises all of the relevant financial information provided during the mediation process, which would generally require about 2 hours of total work over the course of the mediation. Also, it will almost always be necessary to prepare a mediation Memorandum of Understanding to summarise the mediator's understanding of what has been agreed, including outlining any steps that the parties are planning to undertake after the mediation process, and this is likely to take approximately 1 to 2 hours depending upon the complexity involved.

Overall, an all issues mediation (i.e. with divorce, children and finances to consider) is likely to require somewhere between 8 to 12 hours of work, which will probably cost somewhere in the region of £800 to £1,500 per person depending upon the mediator's charging rates.

However, there will sometimes be situations where more meetings are required, possibly with long gaps between the meetings when the parties are taking gradual steps to move forwards. This could be because they are trying to unwind a lot of interlinked finances such as a joint business or multiple properties. This could also be because the parties are moving forwards steadily with sorting out their own future living arrangements, as well as the children's living arrangements, where each meeting builds on the last one but with there potentially being several weeks or even months between each meeting, therefore meaning that there is likely to be a need to update some of the information at each meeting. Even in these situations, it is unlikely that the total mediation costs would be much greater than about £2,000 per person unless the mediator has very high hourly rates.

In comparison, it is likely that an all issues divorce with significant elements of children and financial issue to resolve, is going to cost in excess of £5,000 to £10,000 per person to resolve on a relatively amicable basis, with this cost probably reaching several times this amount, possibly in excess of £20,000 to £40,000 per person, when there are contested court applications to consider. Indeed, I quite regularly come across clients who have spent significantly more than this over years of legal wrangles and who either wish that they had known about mediation at the start or who wish that the other party had seen the sense of using mediation when it was initially offered.

Given the potential costs involved with the legal process, and given the fact that mediation is not only invariably far more cost-effective but also almost always far better at building rather than burning bridges, it never ceases to amaze me that so many people are either unaware of or unwilling to participate in mediation. Hopefully, this book will go some way to changing this and save lots of people from the jaws of a protracted, unnecessary and expensive legal dispute. If you have made it this far in the book, then you cannot say that you haven't been warned.

6. What can I expect during the mediation meetings?

Whilst the way that the meetings themselves are managed can vary significantly depending upon the circumstances, the general approach is to start the first joint meeting by:

- Identifying, in broad terms, which issues both parties are looking to discuss
- Working out an agreed order in which to approach the issues (which may require "parking" some of the issues at various points with a view to returning to them later once other discussions have taken place)

- Starting to explore the issues, with a view to making as much progress during the meeting as possible until a natural break in the discussions is reached.

As a general rule, most meetings tend to last between 1.5 and 2 hours but I work on the basis that the minimum meeting length is 1 hour, with it being possible to continue for several hours if there is a particular reason that both parties feel that it would be constructive to do so (for example, if there is an imminent event such as a court hearing that means that there is a short-term timeframe to work towards for the mediation process or if one or both parties have travelled a significant distance to attend mediation).

Often, there are some short-term, or urgent, issues that need to be focused on first (for example, the children's arrangements for an upcoming weekend or holiday, or the need to work out who is going to pay the mortgage and other bills pending a longer-term agreement), with the longer-term issues then becoming the focus afterwards.

One of the key principles of mediation is that we only discuss issues that both parties wish to discuss and this can sometimes mean that some delicate negotiation needs to take place at the start of the process or at the start of a follow-up meeting. A classic example is the situation where one parent wants to discuss the living arrangements of the children first, whilst the other parent wants to discuss the financial issues first – in reality, these issues often end up being intertwined in many ways (for example, the living arrangements often depend upon the access to sufficient finances to run a home) and there is normally a way to cover all the issues in a holistic way, possibly requiring the discussions to jump between the different issues and priorities in a very fluid way.

7. How do I choose a mediator?

Having made it this far in the book, you are hopefully now at least open to the concept of mediation and, ideally, thinking about how to find a suitable mediator.

Unless you have been able to receive a personal recommendation, in which case I would still suggest that you carry out the due diligence steps below, the most logical starting point would be to check the relevant page of the government's mediation accreditation body, the Family Mediation Council (FMC), which can be found at https://www.familymediationcouncil.org.uk/find-local-mediator/

The FMC was only properly given powers of accreditation a couple of years ago and they now keep records of all mediators who are accredited, with their database allowing searches to be undertaken for a number of variables including whether a mediator is qualified to undertake Mediation Information and Assessment Meetings (MIAMs – only qualified mediators can sign the mediator's section of a court application form if this is required), whether they offer legal aid and whether they are qualified to meet with children as part of the mediation process.

If the mediator you are considering is not registered on this list or is not fully accredited then I would think carefully before starting the process with them as this is likely to mean that they do not hold the necessary qualifications, expertise and/or government accreditation to mediate and you will have very little recourse if the mediation process causes more harm than good.

If the mediator that you are considering is registered on this list then you should consider contacting the mediator to check their fees, to ask them any questions that you might have about the mediation process and, if you are happy to instruct them, to set up the initial MIAM either as a stand-alone meeting or as part of the first set of meetings – see Part 2 above.

It is important to realise that, if you are not comfortable with the way that the mediator is running the process for any reason, then you should be able to end the process at any stage without any additional charges, subject to any cancellation terms and conditions which should have been contained in the Agreement to Mediate that you should have been asked to sign at the start of the mediation process.

If appropriate, you could then contact an alternative mediator to discuss your situation and to ensure that, whatever the issue was with the initial mediator, this will not be repeated with the new mediator. If the issue was not with the mediator but with the process itself then you might want to seek advice from you solicitor about looking for a way to resolve matters outside of the mediation process and the mediator should be able to suggest some possible solicitors to you if appropriate.

Part 3: The Main Issues for Discussion

1. The future of the relationship

i. Discussing Separation

There are generally 2 aspects to the discussion about a separation.

The first aspect is to clarify whether there is any prospect of the relationship continuing. Not all situations need this exploration, perhaps because the parties separated a lot time ago and may even have moved on to find new partners, or because they are both clear that reconciliation is definitely not an option.

However, most situations require some level of discussion about the future of the relationship. Often, this is because one person is further ahead on the separation journey which means that there needs to be a candid but delicate conversation to try to help the other person to come to terms with this situation.

At other times, this is because one or both parties are still upset about what has brought them to their current situation. For example, one party may have ended the relationship to start a relationship with a new partner and, whilst the other person may realise that there is no chance of reconciliation, there may be a need to focus on the elephant in the room and give the “wronged” party the chance to express their anger or upset about what has happened, or to allow the initial person the chance to explain what led them to the course of action that they chose.

Whilst it is important not to allow the meeting to stray into becoming a counselling session, especially when one of the parties is clear that they do not want to open up the emotional boxes, I am very aware that, if the underlying issues that frequently exist are not addressed then it may prove impossible for one or both parties to move forwards, therefore making the mediation process a lot less likely to succeed.

The same can be said when it comes to the speed of the discussions. It is frequently the case that one person is in much more of a hurry to make decisions, whether this be about formalising a separation or coming to agreements about finances and other issues, than the other person. However, it is crucial to the balance and success of the mediation process to enable the parties to come to agreement about the pace of the process and one of the great paradoxes is that if one person is determined to push forwards as fast as possible then this will almost certainly lead to the other person trying to slow the process down, therefore extending the length of time that it takes to

resolve matters either in the mediation process or, if the mediation process collapses due to the pressure that is being applied, via a long and difficult legal process.

Provided that the mediator is able to assist both parties to reach the point where they feel that they have an equal say in the timing of the process, about what is being discussed and about the decisions that are made, then there is a very high likelihood that the mediation process will work. Any attempts to shortcut these important parts of the process will almost certainly prove to be longcuts in the end!

The second aspect of the discussions about separation tends to focus around the practical implications of the decision to separate. Often, when the parties are not married then this means that the conversation can move straight onto discussions about the children and finances and these issues are covered below.

However, when the parties are married, the conversation generally first turns to the issue of whether the divorce process should be started.

ii. The "D" word – Divorce!

Most people are surprised to discover that there is still no way to run a "no fault" divorce unless there has been a period of separation of 2 years and only then when both people agree to the divorce taking place. If the other person does not agree to a divorce then the "no fault" divorce can only happen after 5 years. There is a lot of pressure to change this situation but, in the meantime, people either need to wait or use one of the fault-based reasons for divorce, namely "adultery" or "unreasonable behaviour".

As a general rule, the "adultery" route is a straightforward one provided that the person being filed against agrees to the adultery and provided that the person filing resists the temptation to name the other party involved. With adultery being possible even after a separation has taken place, and with the key anomaly being that the third party needs to be of the opposite gender, this often represents the most amicable route to divorce if both parties can agree on this, provided that there actually has been some form of adultery to rely upon in the petition. This essentially then becomes a straightforward process of one person claiming adultery against the other person who is then asked to confirm this in the Acknowledgement of Service form as part of the divorce process.

Going down the "unreasonable behaviour" route is a little more tricky, as this requires one person listing a set reasons why the other person has acted inappropriately as a spouse, which can often seem a very unfair and unbalanced outcome. However, I have yet to meet a divorcing couple where it is not possible to come up with a suitable list for either person that is likely to be sufficient to get the court's approval without straying into the territory where the other person feels that the reasons have misrepresented the facts or introduced unnecessary acrimony into the process. The key point is to ensure that the person being filed against is in agreement with the reasons given in order to ensure that the divorce process does not become defended - the second party will be asked to confirm that they are in agreement with the reasons given within the Acknowledgement of Service form.

Quite often, one or both of the parties initially says that they are happy to wait until 2 years' separation has passed. In these situation, it is important to have a detailed discussion about whether waiting for 2 years' separation is the best option of whether it might be more sensible to consider

moving forwards with one of the fault-based reasons. There are normally a number of topics that need to be covered during these discussions, including:

- Understanding that, unless there are any serious allegations involved (in which case the person being filed against would want to think very carefully before signing a court document agreeing to the reasons given), the use of the fault-based divorce route will almost certainly not have any bearing on either the financial aspects of the divorce or the children's living arrangements and will essentially just allow the divorce process to be started without unnecessary delay.
- Realising that there is a risk that, if there is a breakdown in communication over the intervening period, the other person might not agree to a divorce on the basis of 2 years' separation at that time, therefore meaning that the person who wants to file will either need to wait 5 years or be forced to try to push through a fault-based divorce at a time when there is no longer a good level of co-operation, which could therefore lead to a defended or unpleasant divorce process.
- It is very difficult to get a legally binding financial settlement, with there being limitations on some aspects such as pension sharing orders, without the divorce process being started and without a financial Consent Order being prepared as part of the process. This means that any agreement before the divorce is started could potentially be overturned once the divorce process is started, especially if there has been a significant change in either person's circumstances during the intervening period, such as ill-health, redundancy or the introduction new partners. This can mean that the period between reaching a financial agreement and finally getting divorced can become a bit of waiting game which makes it much harder for both parties to move forwards with their lives until the divorce process is formally undertaken. It can also mean that there are additional costs as the clients would need to prepare as strong as possible a separation agreement first and then pay the costs for converting this into a Consent Order at a later date during the subsequent divorce process.
- As a general rule, if there is no prospect of a reconciliation and the parties are communicating within the mediation process, it is sensible to use that opportunity to complete the divorce process rather than delaying. To put it another way, I often ask the clients whether there is any reason not to divorce and if they are unable to come up with a very good reason, whilst bearing in mind the above points, this generally leads to the conclusion that it would be sensible to get the divorce process up and running rather than delaying it.
- As a final point, it is always worth exploring how long the clients might need to wait until 2 years' separation has passed, as it is sometimes possible to argue that the separation started whilst they were still both living in the same house, provided that they can demonstrate that they were leading truly separate lives during that time. It should be noted that additional evidence of the nature of the separation may be requested by the court if some or all of the 2 year period was spent living in the same house together and this can potentially become a complex legal process if the judge feels that the divorce rules are being circumvented.

If the clients have decided that it is time to start the divorce process then this essentially becomes an administrative exercise. If either person feels that they would benefit from the assistance of a solicitor with the administration of the divorce process itself then they can instruct someone to act

for them on the basis that there would then be legal costs to pay. However, if both parties feel that they are able to complete the paperwork, which is generally quite straightforward, then they can do this themselves, just leaving the court fee which is currently £550. The mediator should be able to assist the clients to make sure that the divorce forms are completed correctly if the clients feel that they need some assistance, with this ideally taking place together during one of the mediation meetings to ensure transparency and balance.

There is also plenty of guidance around to assist with the divorce process, with the most reputable source being the gov.uk website (please see https://www.gov.uk/divorce/overview) and, if both parties are efficient and the court is not dealing with a high caseload, it normally takes between 4 to 6 months to reach the point where Decree Absolute can be applied for, therefore finalising the divorce. However, if a financial settlement has yet to be reached then the general approach is to put the application for Decree Absolute on hold until a settlement has been reached and the Consent Order has been approved by the court.

2. The finances

This leads us onto the next main theme that comes up within most mediation cases, the need to try to resolve financial issues.

i. Child maintenance

Sometimes, especially when dealing with unmarried parents who do not have any joint finances like a house or joint business to consider, the only issues might relate to the children's provisions. At a basic level, the clients can often quite easily use the government's online calculator to assess the level of child maintenance payments that should be made, with the clients then deciding whether there is any reason to vary this figure either up or down given their own circumstances. As a general rule, most people will choose to keep these payments on a voluntary basis but, if appropriate (for example if the recipient parent is concerned that the payments will not be made as agreed), these payments can be made via CMOS and, as a last resort, the payments can be deducted from the paying parent's salary which will generally incur fees of 20% for the paying parent and 4% for the receiving parent.

If the child maintenance calculation falls a long way short of what is required, or if there are some additional costs such as school fees or the need to provide a house for the children, there is the possibility of applying for a 1989 Childrens Act order but, as these applications can be very expensive and complex, most parents are able to see the sense in reaching an agreement within the mediation process, on the understanding that there is still the option to make an application at a later date if required.

Generally, if the parents are married then the additional discussions about the children's needs will form part of the wider financial discussions with a view to recording the agreements reached within the financial Consent Order if appropriate.

ii. Spousal maintenance

For married couples, regardless of whether or not there are any children to consider, the issues of spousal maintenance will need to be discussed. Essentially, the goal is to try to decide whether there should be any ongoing spousal maintenance paid by either party (over and above any child maintenance payments if there are children) and, if so, how much the payments should be, how long they should run for and whether there are any triggering events that might end or cause a review in

these payments. Some examples of possible triggering events that are frequently discussed are the cohabitation or remarriage of the receiving party, events that link to any children such as leaving school or university, a change in employment circumstances of either person and reaching retirement age.

These discussions can often be quite difficult because it may be that the paying party does not feel comfortable with the concept of having to continue to support their ex-spouse, whilst the receiving party may not be comfortable with the sense of dependency that these payments can bring. This is why, if possible, many divorcing couples try to find a way to achieve a clean break, potentially with the split of the assets being adjusted rather than having ongoing payments if possible. However, often there are not enough assets to enable this to take place and it may also not be possible to agree what level of adjustment is appropriate, therefore leading to the ongoing payments system being chosen.

iii. The house, pensions and other assets

For married couples, from an asset perspective, there are invariably many factors to consider but, in line with the law that has developed over the years, the legal starting point is an equal division of marital assets, including pensions, unless there was a pre-nuptial (before the marriage) agreement in place that was properly prepared and signed by both parties.

Frequently, there are numerous issues which are raised during the mediation process for consideration, including:

- The assertion that some of the assets were accrued before the marriage, such as pensions, proceeds of sale from a previous property or savings.
- The fact that it was a short marriage, especially when there are no children to consider.
- The view that one person was responsible for paying for most of the assets and earning the majority of the money, therefore entitling them to leave the marriage with the lion's share of the assets.
- The fact that one person has received an inheritance during the course of the marriage that they want to ringfence from the discussions.
- Any changes in the financial circumstances that have taken place since the date of the separation.
- The sense that, as the couple have generally kept their finances separate during the marriage, it should be a simple case of each party leaving the marriage with the assets remaining in their current names.
- The feeling that, as the former family home, or other assets, are in only one person's name, the other person has no right to claim on these assets.
- In a case where one person believes that the other person has acted improperly, whether this be due to having an affair or being financially or morally irresponsible, the sense that the "wronged" party should receive additional assets to compensate them for this inappropriate behaviour.
- The argument that the situation is a "needs-based" one, where the required outcome is to ensure that the other's person's reasonable needs are covered rather than there needing to be any element or equality in the division of the finances.

And so the list could go on.

Within the mediation setting, whilst it is important to clarify that the mediator is not allowed to offer either party legal advice, the mediator is able to provide both parties with as much legal information as possible, to explain the legal principles involved (including the basic principles outlined in the Matrimonial Causes Act 1973, together with the way that the courts have developed these principles since then) and to explore the range of likely outcomes if the matter was to go to court.

In the event that the mediator feels that one or both parties are a long way away from what might be expected from a legal perspective, or if there are complex legal issues to explore, then they are likely to suggest that both parties consider seeking independent legal advice, with a view to returning to the next mediation meeting with that advice rather than having a parallel discussion via solicitors that might inflame the situation and destabilise the mediation process.

However, one of the great benefits of mediation is that it is also possible to explore the issues from a moral perspective, with both parties being able to explain what they feel would be fair and why. Having said this, as it is vitally important that any decisions made during the process are informed decisions, the mediator always needs to make sure that the legal approach has been covered, even if both parties are clear that they already know what is fair.

As an example, I sometimes have clients who come to me and say that they feel that it would not be fair to make a claim on the other person's pension or that they feel that the other person should keep the house so that the children have somewhere secure to leave. From experience, these sorts of situations tend to arise when that person is feeling guilty about something that they have done or are at least feeling to blame as they are the one who has decided to end the marriage.

Whilst it is possible that this person has already thought everything through carefully, it is of course very unlikely that the other person is going to object and this only leaves the mediator as the person who can help "reality test" whether the initial person has really thought everything through carefully.

iv. Ensuring that you are able to make informed decisions

This reality testing, in this sort of example and all divorce cases in general, is likely to involve the following steps:

a) Has there been full financial disclosure? Whilst it is possible to reach a financial agreement without all the financial information being disclosed during the mediation process, it is very difficult to claim that an informed decision is being made if this has not taken place and, as a mediator, I will always try my best to encourage clients to undertake this.
It is also very likely that a solicitor will either require access to full financial disclosure, or at least ask the client to sign a disclaimer accepting that they have been advised to do this but chosen not to. Realistically, it will be extremely difficult for a solicitor to give meaningful advice without access to this information and I frequently come across situations where unhelpful or misleading advice has been given to clients prior to financial disclosure based upon incomplete or incorrect financial information and assumptions, the effect of which later becomes clear once all the information has become available and once proper negotiations start to take place.
Furthermore, it is very likely that the court will want to see that financial disclosure has taken place, with both clients at the very least having to complete a form declaring their

finances as part of the application for the financial Consent Order. The courts tends to be even stricter about this when there are any children to consider and, ultimately, it is much safer for a judge to reject or return an order due to a lack of financial disclosure than to take the risk of stamping an order that might not have been properly thought through by parties and which could only be changed in very rare circumstances.

Given all of these reasons, it is invariably sensible to undertake the financial disclosure process. This generally adds comparatively little cost to the process, enables the mediator and any solicitors involved to be much more of a helpful resource during the discussions and often saves a lot of time and money when trying to turn the mediation agreement into a legally binding order. Ultimately, if there is nothing to hide and both parties are clear of their positions then what harm can going through financial disclosure cause, especially when compared with the all the risks that deciding not to undertake disclosure can bring with it?

From experience, I know that all too often once the true nature of the finances becomes clear, one or both parties decides to change their position. For example, the other person's pension may be a lot larger than expected or the level of debt that someone is taking on might be far greater than originally realised.

b) Are both parties really aware of the legal framework involved? Frequently, when people come up with settlements based on incomplete information, they make false assumptions about the family law provisions or they feel that it would be unfair to make certain sorts of claims, such as claims for spousal maintenance or a claim over part of a pension. However, once all of the options have been explored, with the mediator able to give some guidance with reference to both the legal principles and the sorts of solutions or settlements that have taken place from their experience, one or both parties will frequently change their positions, sometimes to a dramatic extent.

It is also worth bearing in mind that, if both parties are clear that they do not need to know about the legal framework, there is a very high likelihood that one of the parties will get cold feet after the mediation process has ended, possibly as a result of getting advice from a solicitor or just from their own research, potentially leading to the whole settlement being torn up by that party. In these situations, it is likely that the mediation process will also come to an end, with one or both of the parties losing faith in the mediator for failing to address the legal framework during the mediation meetings and there is then a high likelihood that solicitors will get involved, with a long and expensive legal process being the final outcome. From experience, it is much harder to amicably renegotiate a settlement in the event that one party wants to change it as the other person is likely to be very reluctant to do this. Invariably, it is far better to have full and frank discussions, with both parties seeking legal assistance if appropriate, before starting to move towards agreed proposals for financial settlement.

c) Have both parties thought through the practical implications? There are numerous issues to consider with all but the simplest of financial settlements. A few examples include:

- **Pensions.** When there are significant pensions involved, it is very important to consider how to approach the valuing of different pensions, how to compare pensions to non-pension assets, whether there are any costs involved in sharing or transferring pensions, whether any changes to the pensions would damage them or lead to a loss of benefits and whether, given all of this, either party might benefit

from some specific pension advice. I would always refer clients to suitably qualified and experienced pension advisers when it appears that pensions advice or a pensions report would be beneficial but, more generally, a good starting point would be to contact the free and impartial Money Advice Service (https://www.moneyadviceservice.org.uk/en/articles/dividing-pensions-on-divorce-or-dissolution) for initial advice and to search for a suitable pensions adviser.

- **Housing options.** Have both parties carefully considered their housing options? It is easy to plan to buy a house or transfer a house into one person's name, but it can be much more difficult when there are either current or future mortgages to continue. Often, clients would benefit from mortgage advice, ideally resulting in a mortgage in principle being offered, before deciding whether a particular option is achievable, let alone desirable, in the circumstances.
  Alternatively, if the initial intention is to keep the property in joint names but enable one person to remain living in the property, possibly to provide a home for the children, it is very important to consider what conditions might be linked to this plan. Should there be any triggering factors that would lead to this arrangement being ended, such as the person living in the house living with a new partner? What would be the final date for the house to be sold? Does the person living in the house need an order to prevent the other person from entering the property whenever they wish? What happens if one person wants to sell the house? How will any mortgage or other bills, including house insurance be paid, and what happens if the person paying the mortgage fails to pay it? How will any decoration or repairs be paid? Where will the other person live and have they carefully thought through the implications of having their equity tied up in a property, potentially with a mortgage that prevents that person from raising a second mortgage? Would there be any tax implications, for example capital gains tax, when the house is sold, especially for the non-resident owner? Do both parties really want to take on the complexity and potential difficulties that joint ownership of a house can entail with anyone, let alone with an ex-spouse?
- **Future events.** Are there any future events that might affect the approach being taken? Whilst it is never possible to foresee all possible events, it is important to cover as many of the likely ones as possible, as well as to explore the legal and moral approach that might be required if any foreseen or unforeseen events occur. What would the effect of new partners be, especially when the new relationship involves children? What happens if a future argument turns an unenforceable, or difficult to enforce, "gentlemen's agreement" into a legal dispute? What happens if there is a significant event in either person's life, such as a change of health, loss of employment or a sizeable inheritance?
- **Other assets or debts.** Are there any other joint assets or debts that need to be considered? This could be as straightforward as a joint account, which it is likely to prove sensible to close or transfer into one person's name. Equally, this could be as complex as a family business which is likely to require some detailed discussion, perhaps leading to a new legal agreement being prepared to deal with the ownership and running of the business.
- **A legal agreement?** Is there is a need for a legal agreement? It is tempting to try to avoid the final step of turning a voluntary agreement into a legally binding one in an

effort to save time and money. However, it is important to understand that, with divorce cases, unless a financial order is made, there is always the potential for one of the parties to apply to the court at a later stage to make a claim against the other person. Even when there is a signed agreement this can potentially be overturned or varied by the court if the agreement was never converted into a court order.
People are often surprised to discover that, even when there are no significant assets to divide, it is theoretically possible for someone to go to court many years later in an attempt to claim assets that might have accrued since the divorce. This could possibly be due to a new or existing business performing well, an inheritance or a lottery win.
As a general rule, the more time that has elapsed since the divorce and the less strongly that the asset is linked to the time of the marriage (for example a completely new business that has no link to any venture during the marriage) then the weaker that the claim is likely to be but the court has a lot of power in these situations and it is invariably far better to convert an agreement into a court order as soon as possible if both parties want to achieve certainly and minimise the risk of future court action.
In these situations, a simple clean break Consent Order can be prepared for approval by the courts which, provided that the issues relating to financial disclosure and making informed decisions have been considered, can provide the solution that is required.

3. The Children

i. Working out the children's arrangements

The third main area of discussion that is covered in the mediation process is the issue of children's arrangements.

In many cases, the parents also have financial issues to discuss and whilst, from a legal perspective, there is a basic principle that children and finances should be discussed separately (often resulting in solicitors sending 2 separate letters to the other party about these different issues), they are in reality often very difficult or impossible to separate out in this way.

This could be because there are practical issues like the choice of school, including the need to discuss any school fees or other educational costs, that will then impact on where each parent chooses to live.

Often, the way that finances are resolved will affect the amount of money, either from an asset or income perspective, that each has left to purchase and run a house.

Furthermore, the amount of time that the children are likely to spend living with each person might lead to the parent making different decisions about locality, the number of bedrooms and the sorts of children-friendly spaces that they want to organise in their homes.

Decisions about what sort of job to do, including whether to change jobs or relocate to elsewhere in the UK or overseas, will not only affect finances but also the ability to have any kind of feasible shared parenting pattern.

Add in the presence of new partners, especially where there are new children of the relationship, and the whole discussion about the children's living arrangements can soon become very complex and far from easy to approach issue by issue.

As mentioned above, when there are numerous, often competing, priorities and concerns to discuss, it often requires a backwards and forwards approach to the discussions, on the basis that the various issues may need to be returned to on several occasions once progress has been made on other issues.

It may be the case that there are specific issues, such as the decision to keep the children in their current schools or the need to keep them close to friends and family, that allow some markers to be placed in the sand that allow the other discussions to work around these decisions.

Equally, it may be the case that nothing can definitively be resolved until all the pieces fall into place. For example, one parent may say that, if there is not a sufficient amount of assets and income available to them, then they may need to take the decision to move further away with the children, perhaps to seek a better paid job, or to reduce commuting time and costs, or to reduce housing costs or to be closer to a support network.

These sorts of discussions can sometimes be seen as a threat, leading to accusations that the person is trying to use the children as a weapon to increase the financial settlement but, regardless of the motivation behind the approach taken, all the progress made in discussing finances can easily fall down like a house of cards if the situation is not handled correctly.

I generally suggest that the parties should see the whole situation as a jigsaw puzzle, with there invariably being a way to put all the pieces together that both parties feel is as fair as possible in the circumstances. However, putting the jigsaw pieces together will require both co-operation and a willingness to be flexible from both people. Indeed, it may well be that by enabling one person to feel that they have kept ahold of or been responsible for putting in place a particular piece of the jigsaw, perhaps by agreeing that they can keep an initial house deposit or by agreeing that the children can stay with that other parent for longer during the school holidays, this will lead to that person being far more willing to allow the other person to take control of a different piece of the jigsaw.

By iteratively working through all of these issues, going backwards and forwards as often as required, moving around the jigsaw pieces and trying different solutions when required, there is a very good chance that everything will fall into place. Often, this will happen quite suddenly, once both people realise that this is essentially a zero-sum game, in that there are rarely ways to add in additional resources or pieces to the jigsaw. In other words, once both people realise that fighting to get as much time with the children, or as much of the money, as possible is likely to result in the other person doing exactly the same thing, leading the parties further and further away from the middle, which is precisely what the legal process encourages on far too many occasions, there can be a moment of clarity when both people realise that they need to start working together and to start to concede ground.

Interestingly, I find that, far from trying to rigidly separate children's issues from finances, there is a very high likelihood of success when there are a mixture of different issues to resolve. The most likely mediations to be successful are when there is a married couple that is looking to divorce, sort

out finances and agree the children's arrangements. In these "all issues" cases, the vast majority of mediations will result in agreed proposals being reached about all of the issues.

It is actually when there are only children's issues to be resolved when it can be extremely difficult to come to agreements. At one level, this is because it is not possible to divide up children in the same way that finances be approached. At another level, this is because there are often binary, black and white, issues to discuss, such as both parties wanting to choose a different school for the children.

Equally, there may be strong opposing views which are very difficult to find middle ground on, such as one parent refusing to allow the children to stay overnight with the other parent.

Then there is the fact that the vast majority of parents who contact a mediator about just children's issues have already reached the point where a stalemate has been reached. This is a very different dynamic to couples who are coming into mediation quite early in a separation and, whilst emotions might still be very raw, they have yet to escalate the dispute to the point where battle lines have been drawn.

In many ways, the same can be said for when the parties are discussing just a financial issue and only coming to a mediator once they have reached loggerheads, either expecting that the mediator will somehow be able to find the magic bullet or simply going through the motions of attempting mediation with a view to moving straight on with the court process.

Indeed, this is exactly the sort of dynamic that frequently presents itself when solicitors refer clients to mediation only once the negotiations have failed and when they are advising their clients to consider a court application. If the clients were referred to the mediator far earlier in the negotiations then there would be a far greater chance of success, as it would be likely that both parties would be far more open-minded about solutions at that time. Add in the fact that, psychologically, it is very difficult for someone to walk away from something that they have already heavily invested in, in this case the legal process, then it can be far too little too late to refer to mediation at that stage.

Whatever the approach taken, once agreements have been reached about the children's arrangements, the next step is to consider what to do with this agreement and this is an issue that can be discussed as part of the mediation process.

The general principle is that, as all discussions that take place are legally privileged, any agreement reached within mediation is not legally binding and, if it is written up by the mediator as part of the mediation memorandum of Understanding (MOU), this would be a record of the outcomes of the process that would need to be approved but not signed by the parties.

In some cases, both parents decide that they want to convert the MOU into some kind of separation agreement. This might simply involve them cutting and pasting the relevant parts of the MOU into another document that they both sign or this might entail asking solicitors to prepare a more formal agreement for both parties to sign.

The key point here is that, whilst the mediation MOU cannot generally be used as evidence in a later court process in the event that either parent decides to move away from the agreed proposals, a signed separation agreement could be used as evidence.

There is no guarantee that a judge would give much weight to the contents of the agreement, especially if there has been a significant change in the circumstances, with the children's best interests always being the overriding consideration, but it should be considered as part of the wider discussions during the proceedings.

As a general rule, very few parents choose to prepare a separation agreement after the end of the mediation process on the basis that they have reached the point where they are able to move forwards as parents without the need for any formal agreements, in the knowledge that they can always return to mediation or apply to the court at a later date if required.

The most robust approach would be to apply to the court for a Child Arrangements Order on the basis that both parties have agreed and signed this, for the court's approval. Beyond the costs involved, which would include the cost of any legal assistance and the £215 court fee, there is also the issue of flexibility to consider as having a court order tends to make it more likely that one or both parties will be reluctant to be flexible with future plans, either when a change of specific dates might be sought, perhaps for a wedding or holiday, or when there is a need to rethink the structure, perhaps due to a change of schools or jobs. Add in the issue of needing to consider applying to the court to vary the order in the event of any significant changes then it is easy to see why obtaining a court order can lead to an unnecessary cycle of court applications when compared to having a voluntary arrangement.

It should be noted that this is a very different approach to financial proposals which, as explained above, would almost always be converted into a legally binding agreement, especially as part of a divorce process when a Consent Order would be prepared for the approval of the court.

Having said this, there are occasions when a court order might be appropriate, for example if there are concerns that either parent might attempt to leave the country with the children or where one party has a history of failing to stick to agreements.

However, it needs to be appreciated that the order may not in itself be sufficient to achieve the legal certainty that is being sought as, if either parent fails to adhere to it, it is unlikely that any organisation, such as the police or social services, will be able to take any steps to enforce it, unless there are any serious child safety concerns to consider, with the person who wants it enforced having to go back to court to seek enforcement. Sadly, there are far too many people who have spent years, and substantial sums of money, going backwards and forwards to the courts trying to vary and enforce orders because the other person has failed to stick to the original order and, whenever possible, this is a dynamic that is best to avoid, leading back to the benefits of trying to work together as parents on a voluntary basis.

ii. Do the children take part in the mediation process?

One of the options that can be discussed when exploring children's arrangements is the possibility of the children meeting with the mediator at some stage in the process. Sometimes, this is referred to as Direct Child Consultation or Direct Consultation with Children (DCC), and the basic idea is that this gives the children an opportunity to express their wishes and feelings during a separation and for them to feel that their voices are being heard.

Whilst there is general agreement about some of the key principles of the DCC process, including only offering this when the children are at least 10 years old (or possibly slightly younger if all parties feel that the children have the maturity to benefit from the process) and ensuring that this does not

put pressure on the children to make a decision on behalf of the parents, this is one area of mediation where practice can vary greatly.

Some mediators believe that it is important for the children to be involved in all mediations that involve children, on the basis that it would be unprofessional not to listen to their voices and to ensure that they have had an opportunity to ask questions.

Other mediators are very reluctant to involve children in the process, on the basis that it is the adults role to make the decisions on behalf of the children, especially younger children, whilst ensuring that the children's best interests are always the main focus for making decisions.

It is therefore important that parents try to clarify how the mediator normally approaches this issue, and to ask them why they choose their approach, in order to make sure that everyone is comfortable with the approach to be taken.

Personally, I am of the view that parents should always be aware of the possibility of the DCC process when there is a disagreement about how to move forwards with the children's arrangements but that, if agreed proposals can be reached without too much disagreement, then there is no need to dwell on the possibility of meeting with the children.

There are a number of reasons for this approach, including:

- The fact that raising the DCC process without a good reason tends to lead to a defensive reaction from one or both parents, with them being very wary about the children being asked to meet a professional unless absolutely necessary, with this dynamic rarely being constructive, especially when both parties are keen to move forwards with their agreed proposals.
- The observation that, whilst the vast majority of parents clearly see their children as the number one consideration, they are generally far more reluctant to want to spend their money on agreeing children's arrangement than on discussing possible financial settlements. For a mediator to then try to "sell" what is seen as an unnecessary additional service at such a difficult time can lead to the parties wondering whether the mediator is simply trying to increase their own revenues.
- There is a risk that it might prove to be destabilising for children to meet with a mediator unless there is are clear reasons for this, with clear potential benefits for doing this.

For me, the key issue here is that the mediator will tend to only meet a child once, in a combination of a fact-finding and welfare-checking process, and the general principle is that, if it becomes apparent that the child is struggling to cope with the situation, then the mediator can suggest that the child considers looking for external assistance whilst also asking the parents to consider facilitating this where appropriate.

If it is already apparent during the initial mediation discussions that both parents have good reason to believe that the children are as well-adjusted as possible in the circumstances, with them agreeing to take sensible steps to monitor this situation and to ensure that the children feel that there is someone who they can talk to if they have any issues to discuss, then it may be far better for the children to keep the mediation box closed rather than opening it without a very good reason.

On the other hand, if it is already apparent that the children are struggling then the most sensible course of action might well be for both parties to reach the conclusions that the children would

benefit from meeting with a suitably qualified professional who can offer ongoing assistance rather than for them to meet with a mediator once and then simply be referred to another professional afterwards.

Having said this, I am very aware that there are some mediators who are either counsellors or therapists by background and who may be able to offer to meet the children under the umbrella of their other profession, therefore removing the concern about the children being passed unnecessarily from one professional to another.

Whatever the view that each person, including the mediator, takes about this difficult and complex subject, sharing some of the issues that would benefit from further thought when the possibility of a child meeting with a mediator within the mediation process is raised will hopefully assist the parents to make an informed decision or at least to ask the right questions to the mediator to enable them to make one.

As part of this process, the parties should check that the mediator is actually qualified to undertake meetings with children. As a first step, they can check the Family Mediation Council (FMC) website, where the register should confirm the mediator's status as being able to see children as part of the mediation process – please see https://www.familymediationcouncil.org.uk/find-local-mediator/

Whilst the FMC process should have covered all the ongoing necessary checks, the parties can also, if required, ask the mediator to provide evidence that they are qualified to undertake DCC work and to show that they have a valid Disclosure and Barring Service (DBS) check – this was formerly known as a Criminal Records Bureau (CRB) check.

As a final step, if the parties have any concerns about the accuracy of the information that they have been provided then they can contact the relevant membership organisation of the mediator. All FMC-accredited mediators need to be a member of at least one of the six membership organisations (see https://www.familymediationcouncil.org.uk/family-mediation/ which contains more information) and to adhere to all of the ongoing membership requirements. For example, I am a member of the Family Mediators Association (FMA – please see http://thefma.co.uk/ for further details).

Ultimately, if either person is not clear that it would be appropriate for the mediator to meet with the children then the parties have the right to not consent to this taking place or, if appropriate, to ask for an alternative mediator to come in to conduct the DCC process.

If the DCC process does proceed then it is important to understand that, apart from considering taking further action if there are concerns about the welfare or safety of the child, the mediator will only be allowed to pass back information to the parents that the child has agreed can be shared. Whilst rare, this means that there is the potential for the child to share lots of information with the mediator but ask that little or none of this is shared with the parents, and the parents need to be prepared for this possibility.

All of this information should be explained to both parties before the DCC process is started, with both parents being asked to sign a consent form agreeing that the DCC process can be started, and the parties should feel that they are able to ask for any further information that they feel might be relevant before giving their consent.

If the mediator feels that it would be beneficial to meet with the children, and there is a clear disagreement amongst the parents about key children's arrangements, then it would be sensible for both parties to consider carefully the implications of deciding whether to proceed with the DCC or not.

On the one hand, it is very important to understand that the outcome of the DCC process would not be admissible as evidence in the event that either person decides that they need to make a court application about the children's arrangements, so it should not be used purely as a fishing expedition to gain information. This is even more clear when it is remembered that the process is designed not to ask children to make decisions but to enable them to have a chance to share their wishes and feelings so that the parents can then make the appropriate decisions.

However, on the other hand, it is important to understand that, if a way cannot be agreed to navigate through the children's arrangements, with the DCC process then being rejected as one of the tools for achieving this, then there is a real possibility that one of the parties will feel that they have no choice but to make a court application about the children's arrangements.

This then has the potential to create a long and expensive court process that might involve the children directly, either with them being asked to meet a court-appointed social worker (CAFCASS worker) or other expert and possibly even being asked to attend a court hearing if appropriate. It needs to be understood that it is incredibly difficult to protect children from the stresses and strains of the court process when both parents are living through this on a daily basis for a considerable length of time.

In the circumstances, it may well be that holding the DCC process will offer a way either to directly reach resolutions without the need for a legal battle or to lead to both parties agreeing that additional assistance is required (e.g. a family therapist or counsellor) to work on the issues together outside of the legal process.

4. The Importance of Communication

Having explored the 3 major areas of discussion that are discussed within the mediation process (the future of the relationship, finances and children), it is important to recognise that there is a fourth potential area of discussion that often underpins all of these other issues, namely "communication".

At a basic level, if there are no children or future joint finances to consider, then the communication only really needs to be at a level where agreements can be reached about unwinding the relationship, potentially including divorcing, and separating out any financial issues that need to be resolved in a clean manner, on the basis that both parties can then go their separate ways and move forwards with their own lives without the need to ever talk again.

However, it is rare that separating out all the aspects of 2 lives from a relationship is ever as simple as this and, even if it is, it is generally far more positive for both parties moving forwards if they are able to mend the bridges to the extent that they are able to hold civil conversation if they meet in the future, perhaps even managing to be friends at a certain level.

It is very likely that, either over the course of the relationship or before starting it, many joint friendships will have been formed, often at work or with the other person's family members, and it is going to be very awkward for everyone involved, including the parties themselves, if it is not possible to repair the levels of communication to the point where they can both be in the same

room together. Everything from weddings to funerals can become extremely difficult if there is ongoing upset between the parties long after the separation has taken place and the use of social media makes it harder than ever to cut ties and easier than ever to wage an unhealthy war with the other person in an indirect way.

There is also the issue that it is going to be far more difficult and painful for someone to move forwards with their life in a positive way if there is big hole left by the ending of a previous relationship. Putting months or even years of one's life into the bin is not only practically impossible to do but it risks losing many positive memories that are likely to have far outweighed the negative ones, whilst also preventing the person from being at peace within themselves as they look to build new relationships.

Then there are those people who are going to have some kind of joint financial arrangement, but no children to consider, going forwards. Over and above all the previous points, if there is going to be some kind of financial link then it is likely to be a far more positive experience if each person is able to view the other person in as pleasant a way as possible rather than seething with hatred each time that they think of them.

For example, there will be people who have to deal with ongoing spousal maintenance provisions and this will be far easier to manage if the paying person has come to terms with the need to make the payments and the receiving person is comfortable with receiving the payments. Any attempts by either person to punish the other person or vilify them in any way are not only unlikely to create positive energy for that person but also likely to provoke a negative reaction from the other person, creating a vicious cycle that will be very hard to stop. This will invariably make it vary hard to agree any variations to the maintenance arrangements without having to return to the courts.

Matters can get even more complicated and unpleasant when there is a joint business to run or when both people work for the same company.

However, the time when good communication levels become crucial is when there are children to consider. This is still the case when there are adult children to consider, as not only will this make family occasions very awkward but it will put intense pressure on the adult children as they find themselves trapped in the middle of the ongoing dispute between the parents.

When it comes to younger children, it is tempting to say that the need for effective communication is so blindingly obvious that I do not need to use up space in this book talking about it. However, having mediated through numerous cases where parents of non-adult children have managed to reach the point where there is little or no communication, with whatever communication that there is often being hostile at best and highly destructive at worst, I am clear that this issue needs to be covered carefully.

One of the classic scenarios is where there are 2 clearly loving parents who both believe that the other person is to blame for the situation that they are facing, with the obvious solution being to punish that parent in some way. This could be by trying to minimise the time that the other person gets to spend with the children, or by trying to ensure that they have as little financial stability as possible, potentially leading to a position where they decide that the only way for the children to understand how bad that the other person is by coming to the decision to tell the children what has happened in a no holds barred conversation. Over time, this dynamic can become so toxic that the children decide to stop all contact with one of the parents, sometimes with the parent who has been

portrayed as the perpetrator but also sometimes with the parent who has created the narrative as the children get older and start to blame that parent for feeding the flames rather than burying the hatchet.

Whatever the practical outcomes to this sort of poisonous dynamic, it does not take a psychologist's report to realise that, all too often, it is the children who end up suffering the most. It may not be until the children leave home to go to university or move into their own house, perhaps when they have their own children, or perhaps much later in life when they start reading self-help books, that they look back and realise just how much damage that these 2 "loving" parents have caused them in their often misguided attempt to protect them from the other parent.

Clearly, there are times when one parent will present a genuine risk, either physically or emotionally to a child but these are not the sorts of relationships that would tend to be catered for in the mediation process and it is much more likely that the courts, the police or social services would be required to find a way forwards that is in the child's best interests.

For the vast majority of parents, it is going to be far better to agree to put their adult difference aside and to work together as closely as possible going forwards, putting serious time and commitment into improving the levels of communication as much as possible in the circumstances.

Part 4: Conclusion – Mediate first not last!

As a mediator and non-practising solicitor who has observed how often an already difficult life event that a breakdown represents can be made far worse by the traditional legal approach to matters, I hope that there will eventually be a change of culture within the legal system and society in general, with it becoming the norm to start by considering mediation in all family law disputes and only then moving towards other options if there is a genuine reason not to mediate or if the mediation process has come to an end without leading to resolution of all the issues being discussed.

As we await this change of culture, I hope that, on an individual level, this book will help you to navigate your way through the murky world of family law with a view to considering all the options carefully, ensuring that you give mediation the due consideration that it merits.

Whether you are reading this book as someone who is currently going through a separation or divorce, as someone who still has issues to resolve from a previous separation, or as a friend or family member of someone who is facing these sorts of issues, I wish you all the best with your next steps and please contact me if you have any further questions about the options moving forwards. In the meantime, thank you for taking the time to read this book.

By way of a reminder and to assist you if you jumped straight to the end of this guide, let me leave the last word to a flowchart that shows my suggested approach to the steps to be considered when facing a separation.

GODALMING FAMILY MEDIATION

Flowchart showing the options when considering a separation or divorce