

Mediation for Older People and Their Families

Family disputes can be very stressful. Conflict, especially with those closest to us, leads to anger, frustration and disappointment. It can be difficult to communicate constructively and find a resolution. Older people are likely to be particularly affected, especially as they generally want the best for the whole family.

Family mediation is designed to help. Mediators work through family difficulties carefully and respectfully, giving everyone a chance to speak, until their clients reach solutions that are constructive and acceptable. Mediators work closely with solicitors to ensure that any agreements are legally binding and effective.

The Family Mediation Practice is Alison Ebbitt and Charlie Irvine, two of Scotland's most experienced family mediators. We specialise in supporting families through conflict or difficulty.

One client recently told us:

'The mediation process far exceeded my expectations. I was very impressed that you were able to achieve a safe and supportive approach for both participants, while bringing in useful, objective information from your past experience.'

What is mediation?

In mediation a neutral third party (the mediator) helps people in conflict or dispute to reach a mutually acceptable solution. The mediator ensures that the conversation is calm, constructive and systematic: decisions are made by the parties themselves. The subject matter can include disputes over wills and succession and other difficult decisions affecting older people i.e. care choices, fallings out between generations and dementia and capacity issues.

Mediation produces a clear, workable agreement which can be made legally binding without the cost and acrimony that is often associated with court proceedings.

What can we offer?

Succession Planning

Planning for succession is a taboo subject for many families. This means that difficult decisions are often taken by a parent without the input or support of their children. Mediation can provide a calm, safe place in which the whole family can discuss the available options so that parent(s) can make a will free from the fear that it may cause a rift.

Inheritance

The loss of a parent or other close relative is also a difficult time for families. As well as dealing with grief and loss, people are sometimes unhappy with the way things are being handled. It is not uncommon for family members to fall out and lose contact during this period. Mediation allows people to discuss these issues in a constructive way, focusing on finding practical solutions and avoiding family disputes.

Decisions about care, dementia and capacity

Families often need to make difficult decisions about the care of a family member. Mediation supports all parties through this, including the person him or herself. We work to ensure that all participants' views are taken into account and that mediation is tailored to their level of capacity.

Family businesses

This support can also be useful for family businesses. We draw on our own business experience to provide a framework for problem-solving. It can also be helpful to involve other advisors, such as solicitors or accountants: our facilitative approach works well here, enabling family members to work together to find a resolution.

The involvement of solicitors

Getting good legal advice is crucial, and we encourage our clients to find a solicitor with experience of dealing with older people. Mediation generally takes place without lawyers present, but in some circumstances it can be constructive to have legal representatives involved in the discussion, particularly where significant assets are being discussed. Even where lawyers are not physically present, it is important to have access to legal advice.

Finances

Where financial matters are being discussed, our clear, open process enables people to gather the appropriate financial information and consider different options in reaching a solution. Rather than having this imposed by a court, mediation supports people in choosing the option that is best for them. The resulting written agreement can then be acted on by solicitors without further negotiation or cost. Mediators work hard to ensure that financial negotiations are fair, reasonable and informed.

Benefits to your clients

- Speed – mediation can usually be arranged within two weeks
- Personal service – our one-to-one, pre-mediation meetings provide clients with an opportunity to discuss their situation in detail
- Respect – mediation is based on respect for all parties
- Self-determination – mediation works because it empowers people make their own decisions, based on the best possible advice

Benefits to solicitors

- Clarity – mediation helps to clarify and narrow the issues in dispute. Even an unsuccessful mediation creates a momentum towards settlement
- Bespoke service – we will tailor mediation to the requirements of individual clients. This can be particularly helpful for disputes involving more than two people, e.g. groups of siblings
- Experience – we have many years experience in dealing with mental health and capacity issues. One of us is a qualified social worker with experience of mental health; the other is a solicitor

How does mediation work?

Because mediation is relatively new to most people we have set out below how it works in practice:

Pre-mediation - we meet all the individuals involved one-to-one (sometimes we mediate with more than two people, for example where a group of siblings are making plans for the care of an elderly parent). This allows us to understand the situation from both points of view and explore options for dealing with it. We find these meetings very useful in preparing for mediation and reassuring our clients that it is going to be constructive.

Joint session - We meet together. We treat everyone with courtesy and respect, assuming that people know their own situation best. We begin by asking everyone to say what needs to be dealt with and what they would like out of mediation. This helps to set the agenda for the meeting.

Explore the issues - We then discuss things in detail. It is important that each party hears what the other has to say and that disagreements are not swept under the carpet. We need to understand the sources of conflict before looking for solutions. At the same time the mediator helps to maintain a positive focus and ensure that the conversation doesn't become bogged down in recrimination.

Consider options - As we talk, possibilities for the future will emerge. We call these 'options' and we make sure they are considered in detail. If one option is not acceptable, we look for another, and so on, until we have genuine consensus. We will not impose a decision on any of our clients: mediation works because people understand the choices they have made and are prepared to act on them.

Record agreement - When a solution is agreed, we put this in writing to make sure that all the details are clear. We send this to both parties and their advisors.

It will be clear from this brief summary that mediation is a not an 'easy option'. Nonetheless it is particularly suitable for older people faced with difficult decisions because of its relaxed setting and flexible timeframe. Mediators work hard to ensure that everyone gets the chance to hear and be heard, and that mediation goes at a pace that is fair to all parties.

Because people need time to reflect on what they have heard we typically meet clients more than once. Between sessions they may obtain legal or financial advice to ensure informed decision-making. Some matters can be dealt with in a single session. Either way it is the clients who are in control of how long and how often we meet. In our experience mediation can produce lasting agreements in disputes that may have existed for years.

A client said: *"I wanted to write and thank you for all your help in the mediation process... It was certainly not easy for anyone and at times extremely painful, but your kind, calm and friendly manner helped to ease the strain on many occasions. Mediation really does provide a 'safe space' to attempt negotiation when all other routes seem hostile."*

What does it cost?

We try to keep our rates as competitive as possible. Our charges for non-legally aided clients are £60 per person per hour. For those on Legal Aid a lower rate can be negotiated with SLAB.

What can you expect from us?

Our mediators are Registered Mediators with the Scottish Mediation Register. As such we adhere to the Scottish Mediation Network's Practice Standards for Mediators -

<http://www.scribd.com/doc/56381210/Practice-Standards>

We offer a prompt and courteous response to all enquiries. We understand that conflict can be stressful for all involved and do everything in our power to ensure that clients' experience of mediation is a positive one.

If you have any questions about our services or would like to discuss a potential referral please call us on 07779 577019 or 07762 028752; or email admin@familymediationpractice.com

Our mediators

Charlie Irvine

A former solicitor and professional musician, Charlie has been a family mediator since 1993. His practice now includes workplace and education disputes as well as professional complaints. Charlie is a Visiting Professor at University of Strathclyde where he teaches a Masters course in Mediation and Conflict Resolution www.strath.ac.uk/humanities/courses/law/courses/mediation/ He is also past Chair of the Scottish Mediation Network and a regular contributor to the Kluwer Mediation blog www.kluwermediationblog.com

Alison Ebbitt

A qualified nurse, social worker and counselor, Alison has been providing family mediation since 1999. Her practice includes family mediation, supervised contact and support work with children. Alison has extensive experience of dealing with mental health and capacity issues and has worked for many years in the elderly care field. She is qualified to deliver Scottish Mental Health First Aid and ASIST training.

Some common questions and concerns about mediation

Q *How long does it take?*

A The pre-mediation meeting lasts an hour. Each mediation session lasts 1 ½ to 2 hours. The time taken to reach full resolution can vary from one to five meetings, depending on how complex things are and how cooperative people are able to be

Q *Will one person be able to dominate the discussions?*

A Mediators make sure that both people have an opportunity to hear and be heard. We are not passive observers: we work constantly to ensure that the conversation is respectful and constructive

Q *Do I need a lawyer present?*

A It is not essential to have lawyers present during mediation sessions. The mediator will ensure that the process is fair and respectful and that people have an opportunity to make informed decisions. When it comes to finances, legal input is essential and we encourage our clients to consult solicitors throughout the process. For complex, high-value matters it may be useful for legal advisors to participate in the mediation.

Q *What if the other person doesn't want to go to mediation?*

A Mediation is always voluntary, and works best when people enter into it with the desire to achieve a resolution. Sometimes people have good reasons for not wanting to meet the other party. We also provide conflict coaching: a way of thinking through the best way to handle the situation with the help of an impartial person, even where the other person is not prepared to use mediation.

Q *Do I have to sit in the same room as the other person?*

A Many years of experience have convinced us that mediation works best when people can see and hear each other. However, there are circumstances where this is not possible. We can offer mediation in separate rooms, although this tends to take considerably longer. We also offer mediation by telephone or Skype where geography makes it difficult for people to be in the same location.

Q *Is mediation binding?*

B At the end of a mediation we produce a document called a 'Memorandum of Understanding'. This contains all the terms and information that solicitors require to produce a binding legal agreement. In general there are high levels of compliance with mediated outcomes, probably because people have had a hand in shaping them.