



## Holistic Family Mediation

*with Sushma Kotecha*

# Agreement to Mediate Remotely

Thank you for considering mediation. This Agreement sets out the terms for your mediation. Please read it through carefully and if you have any questions on the terms of this agreement, please [contact me](#) prior to accepting the terms and signing the agreement.

The Agreement sets out important information for you about the way that I will conduct your mediation and the principles of mediation which include that:

- **you come to mediation by choice** (no-one can make you take part in mediation),
- **mediation is confidential** (except for certain conditions that are set out in the Agreement),
- **it is for you to make decisions about your situation**
- **I will do my best to act in an even-handed way** between you and to help you both reach an outcome that works for all those involved.

It is important that your mediation is tailored to suit your particular circumstances and set out in the Agreement will be any arrangements we have agreed together which may include arrangements to link with

another family resolution service (such as getting an early evaluation of your legal or financial circumstances, support as you plan together for the future or getting a binding decision). Information about the range of other professionals and services that you can choose are set out in the document [Helping You Get The Best Solutions – Mediation](#).

It is very important that you are clear about arrangements and agree (by signing this document) that I have explained and that you have fully understood the arrangements in this Agreement.

I am looking forward to working with you both.

### **Data Protection**

Please be aware that you have rights in respect to your personal data and how it is managed by me/us. This is set out in my [Privacy Policy](#). Specific arrangements which apply to the mediation are set out in para. 10, 14, 15 and 25 of this agreement. When we sign this agreement, it means that we are all agreeing to those arrangements (and will separately sign to consent to the arrangements set out in our Privacy Policy). You may withdraw your consent at any time on notice to me/your mediator.

### **Mediation organisation and Code of Practice**

I undertake this mediation as a member of Resolution. In doing so I am guided and bound by the Family Mediation Council Code of Practice. You can also access a copy of the Code at the website of the [Family Mediation Council](#).

### **How I work and will conduct your mediation**

- 1. My role is to assist you both** to consider the ways of resolving any issues that you may have for making future arrangements for yourselves and any children. I will help you both to explore the options you may have, with a view to reaching an outcome that you both consider will work. That might not be the same as a solution arrived at by a court. I will tell you if I think that your proposals might fall outside of what a court might approve or order and can give you information about what courses of action are open to you to seek individual advice.

2. **The choices and decisions are yours.** I appreciate that you would prefer to be able to resolve matters together, I will always look to help you both to find ways of reaching an outcome without having to use court proceedings, other than to finalise your Agreement as a Consent Order. There are a number of ways in which we can work together with other professionals or services to help you reach decisions as part of your mediation. Whatever your needs, I will do my best to help you reach an outcome.
3. **I will not tell you what you should do** or comment about what your individual 'best interests' are or might be. It is possible and often very helpful for you to have advice from a (or your own) lawyer during the course of your mediation so that you are able to make informed decisions and so that each of your lawyers (if you have them) are aware of how the mediation is progressing.
4. **When working as a mediator, I will provide you with legal and other information**, on an even-handed and general basis to assist you both in working towards your own decisions and particularly to assist you in how the general principles of the law may affect anything you are planning or proposing to do as a result of your discussions together, including how the courts consider what would be within a reasonable range for any outcome/settlement.

This is different from providing individualised legal advice (or representation), which I cannot provide to you, and I will talk with each and both of you about when it would or might be helpful to have legal (or other) advice to help you.

5. **Mediation is a voluntary choice**, and it is important that each of you enters the mediation process able to discuss matters freely and without risk of threat or harm. Please let me know me if there are any concerns for you about your ability to discuss matters in front of the other person.

### **Conflict of interests**

6. It is very important that I ensure I can work independently and in an even-handed way with each and both of you. If I identify that there

may be a potential conflict of interest because of some prior contact either of you may have had with a practice or service with which I am associated, I will discuss with you the nature of that potential conflict.

7. If we decide together that the mediation can go ahead, you will sign and return this Agreement to provide me with your consent that you agree to my acting as your mediator.
8. It is also important that I do not have any direct prior knowledge of either of you or your situation through a previous professional involvement of any kind. This is to ensure that you can be confident that I am working independently and impartially. If there is an actual conflict, or one emerges during the mediation, I will not continue to act as mediator and will discuss with you what your alternative or next steps might be.

### **Confidentiality and privilege**

9. I will treat all matters in the mediation as confidential, except as otherwise agreed, and subject to the terms of this Agreement, (in particular Paragraphs 14 and 15). If you wish to keep an address or contact details confidential, you may do so – please let me know if this is the case.
10. Where I consider it appropriate and beneficial to the mediation process, I may suggest holding separate private meetings and/or communications with each of you and/or your legal representatives (if any). If you both agree, such meetings or communications will proceed on the understanding that any information shared with me in that context will be treated as confidential and will not be disclosed to the other party, unless I have the express permission of the person who shared it subject to the following exceptions:
  - Any circumstances outlined in Paragraphs 14 and 15 below.
  - Where financial information must be provided on a full and accurate basis (e.g., in divorce proceedings), such information including any facts relevant to financial resolution cannot be treated as confidential and will need to be shared openly between you, as set out in Paragraph 12 below.

- Where I become aware of any matter that may cause, or risk causing, harm to a child, or any action taken or intended to be taken without discussion or agreement with the child/ren's other parent or carer, and which may significantly affect existing parenting arrangements.
- Where, in my professional judgment, withholding certain information would result in an inherent unfairness or inequality of outcome in your joint discussions.
- Where I become aware of any error, ambiguity, or misunderstanding in any agreement or record being drafted or prepared by either or both of you and/or your legal representatives.

- 11.** It is important to know that all your financial information is provided on an "open" basis, which means that it can be used in court. This may be in support of a consent application made by either of you or in contested proceedings. Completing your financial disclosure will assist you and your individual legal adviser and will avoid information having to be provided twice over.

The information can be 'portable' for you, and you will be able to use it with your lawyer, independent financial adviser or any other professional who you may choose to assist you with your finances. This is important as your individual legal or financial adviser will need to see your disclosed finances before they can advise you on any proposals you have reached or are considering.

- 12.** Conversations, any communication and information about possible options, proposals and the terms of any financial settlement are on a "without prejudice" basis, which means they cannot be referred to in court (except by order of the court or where the law imposes an over-riding obligation of disclosure on a mediator). Also, an 'evidential privilege' will ordinarily apply for all attempts to resolve issues in the mediation.

This allows you both to be able to share ideas and proposals that you may have thought about as possible options for resolving things without having to be concerned that the information might latterly be used against you in any way. It also means that it is only if

both of you agree to waive that privilege that you might do so and allow a court to know any details of your possible options, proposals and terms of financial settlement discussed in the mediation.

However, the actual discussions in mediation remain confidential between us and courts will normally uphold the confidentiality of the mediation process unless there is an over-riding right or obligation of disclosure in law.

As this is generally the case, I ask that you both agree not to call me (and/or any co-mediator, or any other professional working as part of your mediation) to give evidence in court or ask to have any of my notes brought into evidence (excepting as above, where there may be an order of the court or where the law imposes an over-riding obligation of disclosure on a mediator). This does not affect your rights in relation to data protection.

13. If you choose to have advice or support from other professionals either as part of your mediation or alongside it, I can discuss with you how and if any information might be shared between us. I will not contact other professional/s working with you without having your joint agreement first.
14. These arrangements for confidentiality and privilege **will not apply** if it appears that a child or other person is suffering or likely to suffer significant or serious harm. In this event, I would normally, as far as practicable and appropriate, discuss with you what will happen before taking any action to contact an appropriate agency or authority. I have a responsibility to do so under the FMC Code of Practice and in order to ensure the safety and protection from harm of children and vulnerable adults.
15. Generally, I am required to have regard to and comply with relevant laws and regulations that relate to any obligation to make a disclosure to the relevant authorities. Therefore, arrangements for confidentiality and privilege **will also not apply** if information is shared with me about any intention to commit an unlawful or criminal act or where I suspect that I may be required to make

disclosure to the appropriate authority under the Proceeds of Crime Act.

### **Financial and other information**

**16.** Where and when appropriate, you both agree to provide appropriate and accurate disclosure of all your financial circumstances, with supporting documents where necessary. I will try to help you to identify what information and documents will help you to be clear about your financial situation, and to consider how best these may be obtained.

**17.** I do not check or confirm the completeness and accuracy of the information you provide but I can help you to consider the ways in which you may do so. I will ask you to sign and date a statement in an Open Financial Summary/Statement (if asked to prepare the same) confirming that you have made a full disclosure.

It is important for you to know that you each have a duty to make full and accurate disclosure of your finances, if you are going to be able to make decisions that can be endorsed by the court by way of a Consent Order. It is important that you know that if it should emerge later that full disclosure has not been made, any decisions or Agreements flowing from the proposals reached in mediation could in some cases be set aside and the issues re-opened.

### **Professional advice and outcomes**

**18.** Any significant decisions arrived at in mediation (including any proposals you make together) will not usually be turned into a binding Agreement (generally a Consent Order) until you have each had the opportunity to seek advice on them from your lawyers, which I will encourage you to do. If during the course of the mediation it would be helpful for me to draw up an Interim Summary or Outcome Statement on a 'without prejudice' and confidential basis to record interim decisions on minor matters or options/proposals discussed, I will do so. Such a document would be privileged and could not be produced in evidence to a court (excepting as stated in 12. above, should the court order and/or the law impose an over-riding obligation of disclosure).

### **Links with other services to help you in reaching a binding outcome**

- 19.** It is important to me that you can reach an outcome that will work for you both for the future. I work with other professionals who can provide a range of services designed to assist you to do so, either as part of your mediation or following it. Details of the range of professionals and services are available in '[Helping You Get The Best Solutions](#)', which is attached to this Agreement.
- 20.** As an example, mediation usually takes place without your lawyers attending. However, they may by agreement between you both and me, participate in the mediation process in any useful and appropriate way.
- 21.** I will also assist you to consider whether it would be helpful to have assistance from other professionals such as accountants, financial advisers, expert valuers or others, by discussing with you whether it would be helpful to have an early neutral evaluation (usually by a trained and experienced barrister), providing you with an indication of the range of possible or likely outcomes in respect of one or more issues, or assistance from family consultants, counsellors or therapists and parenting coordinators, either in, alongside or following your mediation process.

We have agreed together that we will keep arbitration under review, and you wish to use it alongside your mediation especially if it proves to be a helpful means of resolving any outstanding discrete issues. As I have explained, unlike any decisions reached by you in your mediation together, any decision made by an Arbitrator would be binding on you both. Should you decide to appoint an Arbitrator, I will agree with you both the information to be prepared and provided to your Arbitrator of choice including any statement regarding the discrete issues. Preparation costs for this additional service will be applicable in line with my hourly rate as set out below in clause 30. If you have lawyers engaged, you may decide to seek their assistance with appointing and instructing an Arbitrator.

I can also remain available to you after you have received any decision/s from your Arbitrator to assist you to put into place any arrangements as a result of a binding decision.



## **Summaries and recording of your outcome proposals**

**22.** If you are discussing future financial arrangements between you as part of your mediation, during the course of the mediation and once financial disclosure is complete, I will draw up IF asked to provide (additional costs will apply):

- **An Open Financial Statement/Summary** (OFS) of your financial circumstances which will be on record (and could be used in evidence in a court if need be).

**23.** At the end of the mediation (or earlier if appropriate), I will also draw up:

- A privileged summary called a **Memorandum of Understanding** (MOU) of your proposals discussed and decided in the mediation, outlining the context in which those proposals have been reached. This is a 'without prejudice' document.

**24.** These documents are generally provided to enable you both to obtain separate and individual legal and/or other advice before entering into a legally binding agreement. It is important to have independent advice to assess how your joint proposals may affect your own individual position.

Often the OFS and MOU are not needed as interim without prejudice summaries and draft financial summary/spreadsheet prepared in support of your mediation (if requested) suffice for the purpose.

Your lawyers (if you have them), will usually undertake the formal procedures for any binding agreement that may be reached after you have each been able to seek their advice, including for example, dealing with any draft Consent Order. If you do not have a lawyer, I can provide information about specialist family lawyers in the area who will be able to help you.

## **Concerns and complaints**

**25.** I hope I will work with you as a mediator in a manner that is satisfactory to you both and that assists you in reaching decisions for the future. I ask that any concern you may have as to my practice, or the service provided by me is referred to me in the first instance. Please see my [complaints policy](#). If I am unable to resolve your concerns with the support of my professional practice consultant, you may then refer your complaint to Family Mediation Standards Board (FMSB) via the [Family Mediation Council](#) for consideration in accordance with their complaints' procedure. You can see complaints policy on their [website](#).

## **Data protection – important information for you**

**26. Data protection protects the privacy of information about you and how it might be used, shared or stored.**

Our [Privacy Policy](#) sets out our commitment and the arrangements for the collection, use, storage and destruction of any information provided by you. For the purpose of your mediation, I will keep any information that you provide to me securely and will not share it without your individual permission except as set out in clause 10 above i.e. correspondence (of any kind including emails etc.) sent by either of you to me will be sent/provided to the other.

Please also see paras. 14 and 15 which details my duties and responsibilities in respect of what will happen regarding concerns about safeguarding from harm and/or unlawful activity.

However, I ask that in the event of any complaint that is referred to the FMSB or to any other regulator or relevant complaints handling organisation, that you agree that I may release any information or your electronic file to either or both for the purposes of resolving any complaint. Having signed this Agreement, you provide your consent to this.

My practice's quality assurance standards also require monitoring of my mediation files. From time to time, my practice consultant may

have sight of files, but access is strictly controlled and on a similar confidential basis. I also ask you to agree that the mediation and any summaries may be reviewed on a strictly confidential basis by my Professional Practice Consultant/Supervisor.

I will only retain information about you for as long as is necessary in relation to your mediation. This means that any notes or personal information will be securely destroyed after 12 months. I will, however, retain copies of any Memorandum of Understanding and Open Financial Summary for 2 years, after which time, they will be securely destroyed. I may also keep data for research and statistical purposes but on the understanding that if used any information or details about you have been removed so that you cannot be personally identified.

Ensuring that your personal data is managed professionally and lawfully is important. If you have any concerns about any aspect of Data Protection and your own personal data, I ask that you raise it with me so that I can provide you with the information you need.

### **Professional development**

**27.** Currently I do not operate a learning and professional development practice. If in the future I do, from time-to-time colleagues may work with me for the purposes of their own professional development (this would be at no extra cost to you). If you would prefer that your mediation does not involve my colleague/s, then please let me know. I will not involve another person without your joint agreement.

### **Ending a mediation process**

**28.** Under the Code of Practice to which I am guided, I will be concerned to ensure that each of you enter into the mediation process able to discuss and plan freely together and without risk of threat or harm. I ask that you inform me if there are concerns for you about your ability to negotiate freely.

- 29.** Either of you may end the mediation at any stage. I may also end the mediation if I do not think it appropriate or helpful to continue. In either such event, I will provide information as to other options and approaches available to you.

### **Mediation fees**

- 30.** My fees must be paid at least 3 working days before each session (or as otherwise agreed). The cost of mediation is £125.00 per person per hour. My hourly rate for mediation is £250.00 (no VAT is currently applicable). Fees are usually shared equally between both parties or as agreed between you and your ex-partner. Meetings can be arranged flexibly to suit your needs, depending on how you choose and agree to mediate.

The hourly rate also applies for any work that may be required between sessions, for example in drafting documents or in reviewing financial disclosure, I do not normally charge separately for routine telephone calls or letters. Depending on the degree of complexity, it usually takes around 3-4 hours to prepare mediation outcome documents and if I think that it may require more time to do so, I will discuss this with you first.

If your issues are particularly complicated or you require interim documentation for consultation with your personal adviser/s or for any service or professional, you are working with (or for your Arbitrator) I will always discuss with you beforehand any likely additional cost. I will provide you with cost estimates wherever practicable to assist your planning ahead for likely costs.

Where it is the case that your mediation involves another supporting professional or co-mediator, I will have discussed with you the likely costs for such an arrangement and payment can be made online or directly to the co-mediator as agreed.

- 31.** I will ensure that I have given you an estimate of how much the costs of your mediation will be for each of you. Usually, for an all-issues case three to five sessions of up to 90 minutes each are required (it may be more or less, depending on how many issues

need to be resolved). If It Is a child only case, often no more than one or two sessions are needed.

The 90 minutes sessions will cost £187.50 per person. It is also possible to arrange your mediation to take place over a half or full day or in any way that is agreed between us as most appropriate to your needs and situation. Once you have arranged dates for your mediation sessions, if these are cancelled, a cancellation charge will be payable in line with the cancellation and refund policy outlined below.

### **Cancellation and Refund Policy**

**32.** We are unable to honour refund requests made within 3 working days of any booked mediation session.

If cancellations are requested within 3 working days of the pre-arranged appointment, we will refund 50% of the fees paid. If we hold funds on account, any balance funds (less platform processing fees incurred) will be returned to you within 7 days upon the case concluding and preparation of your final bill. We will request confirmation of your bank details for the refund or balance funds on account to be transferred to you. If there is an outstanding balance payable to Holistic Family Mediation & Coaching, this must be paid within 14 days of receipt of the bill/account due.

### **Means of working with you**

**33.** As this is an online remote mediation service, in signing this Agreement, you have also agreed to the arrangements set out below:

### **Terms for Mediators**

- a. I will not audio or video record or use assistive technology (AI) recording/transcription systems in any mediation session, and nor will you. I will check with you that neither you, nor anyone on your behalf, will do so.
- b. I may end any online mediation meeting if there is inadequate quality of connection, or a breach of this agreement may have occurred.
- c. I may suspend the mediation if there is any remote interruption and will restart the online session once satisfied that any interruption

has been resolved and that it remains appropriate to continue following such interruption.

- d. I will discuss and agree with you all arrangements for the conduct of any online meeting including the use of e.g., separate waiting spaces/use of any AI technologies by me or you etc.
- e. I will discuss with you the involvement of any other professional who may be of assistance in helping you to resolve things between you as part of your mediation and how they might join any online meeting between us.
- f. I will explain arrangements for the use of any file/document sharing arrangements online and will ensure that any transfer of documents/files/information is organised via secure file synchronisation. We will also check that you will have access to any documents that you may need for any meeting between us.

### **Terms for You**

- a. Only the people who have signed this agreement to mediate online may be present in the same room used by the participants during any online mediation meeting. I ask that you confirm that you are not able to be overheard from your location.
- b. You agree to do all you can to ensure that you are not interrupted during any online mediation meeting by anyone else such as children, relatives, pets, deliveries.
- c. I ask that you agree to turn off or put to silent any phones, tablets or computers, and disable any alerts announcements or notifications of texts, emails, tweets or other social media activity, and close all or any other open application.
- d. You agree to there being no live or deferred or AI based, video or audio relay of the online mediation to third or other participants.
- e. You agree not to video or audio record or to use any AI based recording system of any online meeting unless specifically agreed between us all in writing ahead of that meeting.

- f. You assign all intellectual property rights in the online video mediation meetings to the mediator.
- g. Should you create any video or audio recording of the online mediation, inadvertently or otherwise, you agree that you will not share or post it/to with any other person or agency and that you undertake to destroy any such recording as soon as you become aware of its existence. Failure or refusal to do so will mean that I will have to end the mediation.
- h. Online family mediation is a confidential and without prejudice means to seek a negotiated settlement and all conditions set out in your Agreement to Mediate will apply in the same way.
- i. I will only communicate with each and both of you during pre-arranged remote/ online meetings to ensure that I am able to remain independent, even-handed and transparent in my approach.
- j. I ask that you do not attempt to contact me directly utilising remote/online video methods without a prearranged meeting.

### **Mutual commitment**

**34.** It is important to me that you receive a service which you can value. I will do my best to help you both. I ask you both to give your commitment to the mediation process and to co-operate as fully as possible in looking for workable solutions.

**In signing this document, we all agree to the terms as are set out. This includes that we have understood and give consent to the arrangements set out here in respect of the sharing of information in particular, paragraphs 10, 14, 15 and 26.**

**We further confirm that we have been provided with information in respect of how data protection and processing of personal data is managed by the Holistic Family Mediation & Coaching and have given additional consent to those arrangements.**

**We are aware that we may withdraw our consent at any time on notification to our mediator.**

FULL NAME:

SIGNATURE:

DATE:

**This agreement is signed upon the understanding that it is a multi-party agreement between the participants and the mediator.**



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