

# Family Mediation alongside Court Applications

Occasionally, we are asked whether it is possible to try Family Mediation whilst there is a court case already running.

Sometimes, if progress in Family Mediation appears to be slow, a mediation participant will ask whether it is possible to start a Court application but continue with Family Mediation.

The simple answer is: 'Yes.'

But why would anyone want to run parallel processes?

The advantages of Family Mediation are well known – principally, that the mediation participants are the ones that make the decision (not a third party who is a stranger to them and their family), but also that the process can be faster, less expensive, and more private.

A disadvantage of Family Mediation is that it depends upon both mediation participants to keep the process moving forward and, sometimes, one participant will feel that the other is dragging their feet. Frustration can then build up which undermines the process.

There may also be a concern, if one mediation participant starts to believe that the other is not fully committed to the process, that there is a greater risk of the process not leading to an agreement.

## Finance and Property cases

An advantage of Court is that a detailed timetable is set and must be met by the parties. Here is a table showing the stages of the Court process and the timings:

### Financial Relief Process

Stage/Main Actions		Notes
File Form A Application	Total weeks	Any stage after petition filed
Court sets timetable	1	
File and serve Form E	11	34 page Financial Statement
File and Serve hearing documents	14	Statement of Issues, Chronology, Questionnaire
First Appointment	16-17	Judge gives directions/timetable
Various actions before FDRA		May include valuations/reports
Financial Dispute Resolution Appt.	24-30	Serious attempt at negotiation with a Judge to guide and assist – if agree then final order made
Final Hearing	32-40	A different Judge hears evidence and arguments and makes decision

An other advantage of the Court process is that parties know that, sooner or later, there will be a decision, even if it is not necessarily the one that they hope for.

The disadvantages of the Court process are the loss of control over the outcomes, the loss of privacy, greater cost and potentially slower process.

So, each process has advantages and disadvantages.

## Combining the processes

By combining the processes, the disadvantages can be, to an extent, discounted.

The first major stage in the court timetable is the filing and exchange of detailed Financial Statements – these mirror the Financial Disclosure Booklets that we use in Family Mediation, so work undertaken in the Family Mediation process or the Court process can also be used within the other. This task must be undertaken within 11 weeks of the Court application being lodged.

During that 11 weeks, it may have been possible to make significant progress in the Family Mediation process – sometimes even to conclude the process.

The work then required to be undertaken for the first Court hearing may again be informed by some of the work undertaken in Family Mediation – identifying issues, establishing a chronology, identifying investigations that are needed.

The first hearing is 16 to 17 weeks after the application is lodged, allowing further time for Family Mediation to progress and, hopefully, for a set of proposals to emerge, so that the hearing can be dispensed with.

Otherwise, by the first hearing, the direction of travel in any negotiations should be fairly clear, as should be the potential for continued Family Mediation to produce a set of proposals with which both mediation participants would be content. This would be the time to decide whether to persist with the Family Mediation if a consensus has not yet been arrived at.

## Child Arrangement Cases

Similar factors arise when a parent is seeking to agree a scheme for parenting of children. The pressure is greatest when a child is not seeing one parent at all and that parent is anxious to avoid too great a delay before a decision is made. Often it is felt that a long gap without visits would fracture a child's relationship with a parent.

The courts now have a target to deal with applications for 'Child Arrangement Orders' within 18 weeks. The procedure requires an early 'First Hearing Dispute Resolution Appointment' (FHDRA) before which checks will have been undertaken to find out whether there are any safeguarding issues known to the authorities. At the FHDRA, there may be a conversation with someone from the Children and Family Court Advisory and Support

Service (CAFCASS) who will look to see whether there are any straightforward solutions to the dispute between the parents.

Parents may be directed to take part in the Separated Parents' Information Programme – separately attending group meetings to learn how children are affected by parents' separation and how best to meet their needs.

In some cases, the CAFCASS Officer may see the children and undertake a 'wishes and feelings' enquiry. In more complex cases, a detailed report might be required.

When the application comes back to court, a final order is likely to be made. The timetabling targets make it unlikely that a court will be willing to make interim orders to 'try out' a plan.

Since Legal Aid was removed for most parents in court proceedings, many parents have attended court without lawyers. This can be a daunting prospect - but see 'Applying to Court for a Children Order' in the Participant Resources.

## Advantages of Family Mediation

The Family Mediation process has advantages over the court process in that:

- You will retain control (together) over the decisions that you make
- The process can be more flexible, with opportunity to try out options before coming to a long-term plan
- The process is usually faster
- Legal Aid is available, if you qualify

## Disadvantage of Family Mediation

If the Family Mediation process breaks down, the time that you have spent trying to reach agreement is 'lost time' in that you have to start again from the beginning with the Court process.

## Why not combine the processes?

Well, of course, running the two processes in parallel may be more expensive, and it becomes a matter of judgment whether the prospect of success (and therefore saving larger sums) is worth the 'investment'.

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