



Agreement to Mediate

Good Practice Guidelines

The Agreement to Mediate

An Agreement to Mediate is a statement signed by parties to a mediation to indicate that they have made an informed decision to go ahead with the process and engage in it willingly. It covers the legal status of any agreements reached in mediation and the function and limits of the mediator role.

It is the responsibility of individual mediators and service providers to draw up their own Agreement to Mediate for use with their specific client group(s) and taking into account the context in which they are working. These are suggested guidelines for the points that an Agreement to Mediate should cover.

Suggested Guidelines

1. The Agreement to Mediate should be a short, simple document written in plain English, preferably no more than one page long.
2. It should summarise the main principles of mediation and the role of the mediator. This is information that potential parties will already be familiar with from initial meetings with a mediator and from information available through other media, such as a leaflet or a website. It is helpful to refer to these other sources in the Agreement and to insert a clause that states that by signing people are agreeing that they have read and understood them.
3. The document should make clear that mediation is an informal process and that agreements and proposals reached in mediation are not legally binding.
4. It should make it clear that attempting mediation does not restrict access to formal proceedings in the event that no resolution is reached.

5. The Agreement should distinguish between confidentiality and legal privilege (see the notes below).
6. It can also be useful to distinguish between legal aspects such as confidentiality and legal privilege, and expectations about behaviour in mediation, such as treating each other with respect and be willing to listen to one another.
7. It should also refer to the service provider's complaints procedure. The Agreement should state that in the event that complaints are not resolved locally and the College (and ultimately the Family Mediation Council for family mediation) becomes involved, the parties consent to their file being released, if necessary, in order that their complaint can be investigated.

Notes on Confidentiality and Legal Privilege

Confidentiality applies to discussions held in mediation and is between everyone. It can be waived by the parties if they both agree. It may be breached by mediators in exceptional circumstances. These would include concerns about safety, particularly of children, and about behaviour under the Proceeds of Crime Act.

It may be useful to state that confidentiality applies to the use of social media to broadcast the content of discussions in mediation, and to the recording of mediation sessions.

Legal Privilege applies to discussions about proposals which are protected in mediation. It applies between parties, who cannot use records of discussions between them as evidence in court against one another. It can also be waived by consent of both parties. Mediators, however, remain bound by the confidentiality of the process and therefore cannot be called upon to bear witness to the discussions held in mediation.

It is particularly important to consider these clauses about confidentiality and legal privilege in civil and family disputes where the alternative to a mediated outcome is to take the case to court. Mediators working in settings where other formal procedures such as tribunals operate as alternative dispute resolution processes may wish to consider how confidentiality and privilege apply in that context and alter the terminology accordingly.