



Give mediation a chance

Mediation is an excellent way of helping couples to separate fairly: it needs more publicity, says *Gillian Bishop*

LAST Friday, Margaret Hodge, the Children's Minister, and Lord Filkin, the Family Justice Minister, announced that the Government was funding family-resolution pilot schemes, in a bid to divert separating couples from arguing about their children in court. The pilots, which will operate in London, Brighton and Sunderland, will aim to inform separating parents about what is expected of them at a very early stage in the court process, and to encourage them to seek mediation in about issues concerning their children.

While it is welcome, the idea of government support for mediation is hardly new. The last Conservative Government introduced the concept in part 1 of the Family Law Act 1996. Section 13 provided for court cases about money or children to be adjourned to enable the parties to try mediation as an alternative, and cheaper, way of resolving the dispute. The Labour Government, in its first term, repealed this part of the Act, because of the failure of the "information meeting" pilots, and threw the baby out with the bathwater.

That did not mean that mediation has not been growing in the UK. Mediation has been around for more than 30 years. When it works, it works well; the trouble is that, without the help of a well-funded media and education campaign, few members of the public will hear of it.

It will be more familiar to those eligible for public funding of their divorces. These people have to be assessed for mediation before they can get funding, though that rather flies in the face of one of the main principles of mediation — that it should be a voluntary process.

MEDIATION is a way for the couple to be self-determinative about their

A typical mediation

Cathy and Peter wanted to sort out arrangements for their children, home and finances after their decision to separate. Cathy was still coming to terms with Peter's new relationship. They found that, with the help of the mediators, they were able to talk freely. The mediators helped each hear what the other had to say. Peter was able to understand that Cathy was mistrustful of his new partner. Cathy was helped to understand that the new partner would feature in the children's lives, but that Peter accepted the importance of her role as the children's mother, and would confirm this with the children. They realised that a co-operative approach and a redefini-

assets, income and children rather than finding an outcome imposed on them by a court. The key principles are:

- the process is entered into voluntarily by the parties, and they stay in the process only as long as they choose to be there;
- the mediator(s) are impartial and do not advise on the outcome;
- the mediator(s) do not adjudicate or impose an outcome;
- the process is confidential — any agreement is binding only if the couple take it away from mediation and turn into a legally binding agreement, often by way of a court order.

Mediation operates within the framework of the law. The couple are encouraged to obtain independent

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legal advice at some stage in the process, so that their negotiations can be informed. The beauty of mediation, however, is that it creates a forum in which options can be fully explored by the couple, before any decisions are made.

It is a pragmatic, future-focused process, which enables couples to understand the nitty-gritty of their circumstances and the options available. When there are children, a successful mediation will enable a couple to have confidence in their ability to communicate with each other in the future over issues involving them.

MY LEGAL practice was founded in September 1995 in anticipation of

tion of their relationship would enable them to support their children best.

Cathy and Peter each completed financial-disclosure and budget forms. Peter could see that, if the house were sold, there would not be enough money for them both to buy new homes. They worked out their outgoing requirements, which were more than was available in income, although the basics were covered. Peter could not earn any more, and neither felt that the budgets were overstated. Cathy was able to see that she would have to return to work, so that the extras could be paid for.

Both Cathy and Peter felt that they had achieved a fair outcome and a better understanding of how they could operate as parents.

the Family Law Act. It was the first niche practice in the country to combine solicitors, mediators and counsellors under the one roof. Although Section 13 of the Act fell by the wayside, the number of mediations at the practice has grown and grown.

We operate a co-mediation model, in which two mediators meet the couple. One is from a legal background and the other from a family-therapeutic background. We find that this offers the best all-round service for the clients. About 75 per cent of our mediations are successful; that is, the couple leave after having reached agreement.

There are cases that are unsuited to mediation. In those in which there has been a history of domestic abuse, the mediators have to conduct a careful intake interview to be sure that mediation could work for the couple, without putting them at further risk. Domestic abuse in itself, however, does not automatically preclude the chances of successful mediation.

Our experience shows that the cases that fail are those in which the couple mistrust each other; in which one party has not come to terms with the ending of the relationship; or in which a partner simply cannot "hear" what the other is saying. If a relationship has foundered on an inability to communicate, then mediation can be difficult, though not impossible. It is one of the tasks of the mediators to kindle that small flame.

Mediation is no soft option. The couple are in the front line of the process, and, in the mediation room, cannot hide behind lawyers to do the difficult negotiation. It is often when one of the couple finds this too hard emotionally that the mediation ends. That said, the work done in mediation is rarely wasted, even if the process does not end with a negotiated agreement.

Mediation is here to stay. It would benefit enormously from widespread, accurate information in the media about what it is. It would benefit even more from a steer from Government that the "good divorce" is something that society can expect of its separating couples; that mediation is not the poor relation, some sort of "litigation lite", foisted on those who cannot afford to pay for the real thing. The announcement last week is to be applauded, but there is still a long way to go.

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