



Evaluation with Mediation

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What is Evaluation with Mediation?

Family lawyers have developed a multitude of techniques to help parties reach settlement in their financial claims arising from divorce or relationship breakdown. They include settlement meetings (also known as round table meetings), mediation (with or without lawyers involved) and neutral evaluation through private Financial Dispute Appointments ('pFDRs'). Each has proven to be successful in many cases.

Evaluation With Mediation ('EWM') seeks to bring together the best parts of these different approaches into a single meeting designed to bring about a fair and binding compromise and settlement. An EWM meeting involves the following elements:

- A neutral evaluation of the case from a neutral barrister expert in the area.
- Immediately after the neutral evaluation, a settlement meeting between the parties (and their lawyers if instructed) mediated by an expert mediator using the hybrid/civil mediation model.
- Once agreement is reached, a binding final settlement agreement between the parties.

How does it work?

Step (1):

Once the parties agree they wish to use EWM to resolve their dispute, they contact us and either select their neutral evaluator and mediator themselves, or ask us to recommend a suitable evaluator and mediator for their case.

Step (2):

Having agreed the identity of their neutral evaluator and their mediator, and the date for the EWM, the parties sign the EWM agreement which sets out the ground rules for the process, including the fact that the process is confidential and without prejudice. The parties will also indicate by their agreement whether they wish to use the "Streamlined" or "Full" process (see below).

Step (3):

If they have not already done so, the parties prepare their financial disclosure by completing Forms E with the necessary documents. And if necessary, they can ask the neutral evaluator to provide directions as to what disclosure is required for the EWM to be effective.

Step (4):

The parties attend the EWM appointment at the venue which has been agreed (and the NCDR suite at 36 Family can usually be made available for this purpose if required – subject to availability on the given date).

Step (5):

The EWM day begins with the "Evaluation Session" at which, after following either the "Streamlined" or "Full" process, the evaluator will provide the parties with his/her neutral evaluation of the case and the likely or fair outcome. The mediator will be present as an observer during the Evaluation Session. The evaluation session will be conducted on an entirely without prejudice basis.

Step (6):

The parties will leave their Evaluation Session and return to their separate rooms. The mediator will thereafter work with the parties (individually or in joint session, with or without their lawyers, as the case demands) to assist with negotiations and discussions, working towards a settlement. The mediator will most commonly adopt the hybrid/civil mediation model, whereby the parties' discussions with the mediator are entirely confidential and disclosed to the other party only as agreed by each party.

All these negotiations will also be without prejudice and, additionally, on the basis that they remain confidential from the Neutral Evaluator, so that she or he will not know about concessions made or discussions within the negotiation phase unless the parties agree that the Evaluator should know about them for the purposes of any further evaluation on any issue.

Once the parties agree they have reached a settlement

Step (7):

If fresh issues arise during the negotiations which were not covered by the evaluation, or if new facts emerge which may have a bearing on the evaluation, the parties may have a further Evaluation Session with the Evaluator to receive guidance on those issues.

Step (8):

The parties reach an agreement and record it in writing as binding settlement or they agree, with the mediator's input, that no further progress can be made with the EWM on that day.

What is the difference between the “Streamlined” and “Full” processes

Although both processes follow the same basic approach of (1) Neutral Evaluation followed by (2) Mediated Settlement Meeting, they differ in the process by which the neutral evaluation is initially obtained.

In a “Full” EWM the parties approach the Neutral Evaluation phase in the same way they would approach a private FDR, in the sense that they would prior to the MWE exchange proposals and detailed position statements from counsel/solicitors followed by oral submissions to the evaluator. The Neutral Evaluation part of the EWM day takes several hours and a detailed evaluation is delivered. This Full approach is likely to suit cases where the parties are already involved in court proceedings in advance of the EWM and/or cases which are more complex or more heavily contested.

The “Streamlined” approach assumes the parties have not yet settled on clear positions in the proceedings and they are seeking some good quality, neutral guidance as to what a fair settlement of their case would look like (similar to the parties receiving an early counsel’s opinion on their case). In a Streamlined EWM the parties would present their Neutral Evaluator with their financial disclosure but not necessarily with detailed proposals for settlement nor with detailed written or oral submissions. The Neutral Evaluation hearing would be relatively short and its purpose would be for the Evaluator to ask the parties to clarify any details which were not apparent from their disclosure. The Evaluator would provide his or her neutral evaluation relatively quickly, usually well within the first hour of the EWM day, allowing the negotiation/mediation stage to commence quite early in the day compared to what happens at most private FDRs or at a Full EWM. This approach is likely to be particularly suitable in cases which are at an early stage and which have not yet seen proceedings commence.

What does the Mediator add?

Many practitioners with experience of settlement meetings and private FDRs will know that the negotiation phase, even with experienced lawyers on both side, can be difficult and stressful for the parties, as they each ‘feel out’ the other’s position. Hybrid or lawyer assisted mediation has been shown to help cut through such difficulties and to focus settlement discussions more effectively and quickly than when the parties are left to manage the process themselves.

By being present at the neutral evaluation, the mediator gains a good understanding of the issues in the case and is then able to assist the parties in reaching a settlement. Likewise, by having the benefit of the neutral evaluation, the parties and the mediator have the benefit of a starting point for discussions which allows for a most focussed negotiation

How much does the EWM cost

The fees of the evaluator are likely to be the same as that evaluator would charge for a private FDR, or slightly less in the case of a Streamlined EWM. The parties will bear the costs of the mediator in addition to the costs of the evaluator, but in many cases the parties will try mediation in any event and the costs of a mediator for a single EWM day are likely to be less than they would be for a series of mediation days.

Ultimately, although the costs of an EWM may on paper look to be larger than the costs of a single mediation of a private FDR, the effectiveness of the process as a means of having focussed and successful negotiations means that it is likely in most cases to prove to be highly cost-effective, generating great savings in the costs which would otherwise be incurred in resolving a case.

How do I find out more?

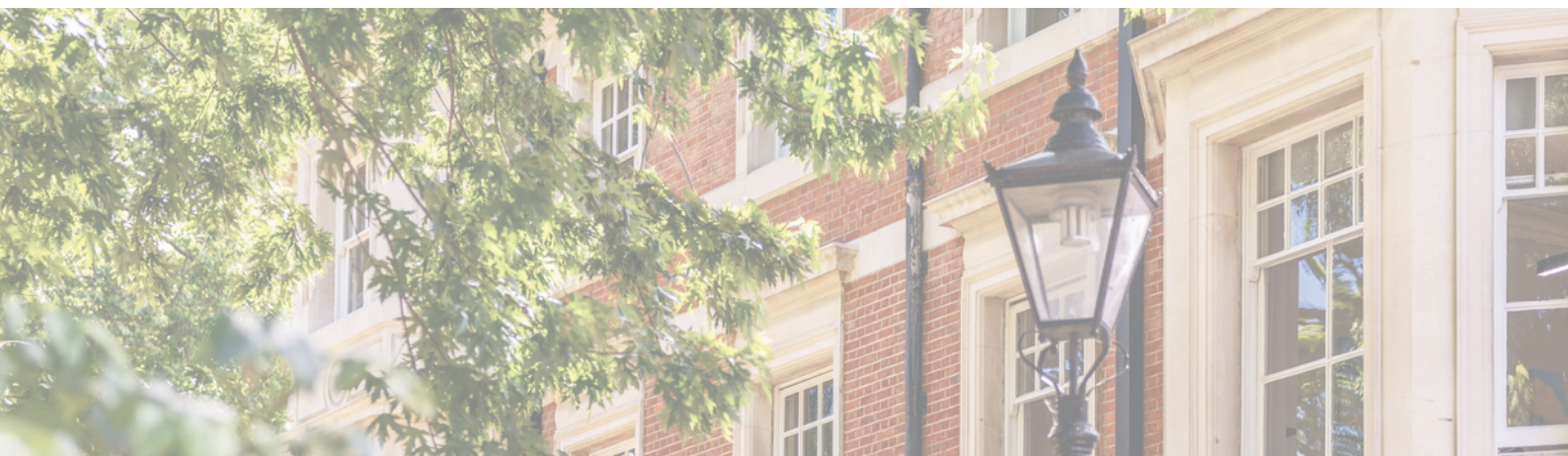
For more information please contact [Danny Chapman](#) or [George Scanlan](#), or one of our team of [EWM evaluators and mediators](#).

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36 FAMILY

The 36 Group | 4 Field Court | Gray's Inn | London | WC1R 5EF

London +44 (0)20 7421 8000
Singapore +65 6808 6161
Clerks@36family.co.uk

DX: 360 LDE

'A great set with fabulous advocates ranging from junior right up to KC'
Legal 500