

Mediation – what is it and how should it work?

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Agenda

- What is mediation?
- The process
 - How to prepare
- Advantages
- Disadvantages
- Concluding remarks

Judicial encouragement towards mediation

GOSH v Yates and Ors EWHC 972 (Fam)

- 130 I end with this procedural note: I have already expressed the opinion that I believe that it would, in all cases like this, be helpful for there to be some form of Issues Resolution Hearing or other form of mediation where the parties can have confidential conversations to see what common ground can be reached between them. I believe that that type of hearing, be it Judge led or some other form of private mediation, would have led to a greater understanding between the parents and the clinical team in this case. I am not saying that it would necessarily have led to a resolution, but I think in many such cases it would and I would like to think that in future cases like this such attempts can be made.

What is mediation?

- Method of dispute resolution
- Confidential in nature
- Neutral environment
- Voluntary
- Independent mediator
- Aim is effective communication and agreement

The mediation process

- Preliminary meeting
 - To discuss objectives and concerns
- Private meeting on the day
 - Before the mediation gets going
- Opening meeting
 - All in one room
- Private meetings
 - Reflections
- Practical Issues

The logistics

- Who?
- When?
- Where?
- How many rooms – 3?
- Who pays?

Preparing for mediation

- General Preparation
 - Know your case
 - Roles and levels of participation
- Position Statement
 - General
 - Summary
 - Documents
 - Attendees

Advantages of mediation

- Quicker and cheaper
- More flexible
- Less likely to be harmful to relationships
- Conducted in less stressful environment
- Confidential
- More likely that both parties will emerge as winners

Potential disadvantages of mediation

- Overall proceedings may cost more
- More overall damage to relationship between parties
- Some people feel mediation is not credible
- No separate representation of child
- No enforceability of agreement

Cautionary words

- Careful consideration
- It is not a cure all
- A substitute to litigation?
- Not suitable in all cases
- Should not be undertaken prematurely

A hand is shown drawing a horizontal line under the word "Conclusion". The word is written in a black, serif font. The hand is holding a white marker and is in the process of drawing the line. The background is white.

Conclusion

Any
questions?