

Barriers into Mediation

1. There is a natural tendency for separation and divorce, generally fed by a sense of fear and vulnerability and fueled by misunderstanding, misinformation, and misperception, to seek the services of a lawyer, as a first resort.

This has become the cultural norm and poses in my view, the biggest barrier to the development of mediation.

One could argue that much of the 'legal advice' received from lawyers, at the very early stages of separation, when there is often insufficient information upon which to base specific advice, is in fact legal information and general opinion which can quickly polarize thinking and expectations.

2. Over many years of practicing as a family solicitor and Family Mediator I have experienced the following perceptive barriers and heard the following things said about family mediation, by one or both of the separating couples, as well as a worrying number of family solicitors;

- Mediation is like counseling or therapy
- We have already tried to sort things out ourselves so how can mediation help us "It is too late to mediate"
- The other person has told me that they will not mediate so that is that, no need to try
- The mediator has been 'chosen' by my former partner so how can they be neutral or impartial
- My former partner is unlikely to change their behavior or position whatever the mediator does ie not listen, not trust, talk over, bully, etc.
- There has been abuse so mediation will not be possible
- I cannot be in the same room as my former partner
- I feel vulnerable because of my lack of knowledge (finances), self-confidence, and confidence in having to deal and negotiate with my former partner (this is commonly cited by the person's solicitor who may be unaware of the many ways a mediator can address these imbalances of power)
- The lack of support they perceive they will receive from the mediator to help them deal with the other person given that the mediator is neutral (which does not of course take into account the extensive range of mediation skills and strategies used by the mediator because, of course, they have never experienced it)
- I cannot afford mediation (although it is interesting how many of the people who say this are willing to spend three times as much per hour on their solicitor are more than 10x in the longer term !)
- Mediation is not binding, so what is the point (misunderstanding why the collaborative dialogue involved in trying to reach a negotiated settlement needs to be confidential)
- The children's views will not be taken into account (misunderstanding the option of the children being seen, if needs be, by a Direct Child Consultant/therapist for their views)

There are of course many others which I am sure my practicing family mediator colleagues can add to.

In summary, many individuals and couples going through separation feel that the mediation process will not provide them with sufficient practical, emotional and psychological support during their separation, due to their feelings of anxiety, vulnerability, fear, lack of trust and that they would be better served by having someone 'on their side'

Professor Elizabeth Stokoe, Loughborough University produced a paper for the Negotiation Journal in July 2013 – Overcoming Barriers to Mediation in Intake Calls to Services-research based strategies for Mediators: in which she focuses on the Intake call process in community mediation but her research equally applies to mediation generally.

She followed this up in 2016 with; Dealing with Resistance in initial intake and inquiry calls to mediation: the power of ‘Willing’

Ann Weatherall and Maria Stubbe wrote an interesting article in 2014; Emotions in action: Telephone-mediated dispute resolution.

These are well worth a read.

3. Separating couples vary considerably in the level of support they want and need in order to be able to work together to reach their own private children and financial agreements, often creating power imbalances that need to be addressed at an early stage.
4. Most couples want to spend as little money as possible on getting divorced and separated and this motivation of keeping costs to a minimum plays a large part in their perception of ‘value’ when measuring the support service they are offered and receive.
5. The wish to save costs motivates many separating couples to try and sort out their own private agreements, which are frustrated by a lack of knowledge and resources to support themselves.
6. Many separating couples find some of the principles and concepts (such as pension offsetting, business liquidity, etc) difficult to understand and need help and guidance. This can be achieved with a cohesive, integrated mediation approach.
7. Couples are often badly prepared when they come into mediation both in practical and emotional terms. This priming and preparation need to be the focus of the mediation intake process.
8. Many separating couples find the choice of so many process options (presented or in many cases, not presented to them by professionals) and sources of information too confusing and chaotic, at a time that they need clear help, support, and direction.
9. Separating couples are unaware of many sources of support, from charitable and government organizations, where to go for this, and how to make the most of this support
10. Much of the information available to couples online takes time to find and then read. The couple often find it hard to discern what information is relevant to them, at the time and then how to use and apply it
11. During the separation journey, separating couples are likely to want and need a variety of different family professionals to meet their practical (financial and children), emotional and intellectual needs (adults and children).
12. Where professional support and help (and sometimes advice) is required from a range of family professionals, the couple would be best served by these professionals working in a collaborative and cohesive way, ensuring that the separating couple receives support from the right professional at the right time in the most efficient and cost-effective way, on their journey. **See the integrated mediation approach.**
13. The mediation process can leave many couples exposed and having to cope for themselves between mediation sessions which, too often leads to a breakdown of the process.
14. Many clients are not clear about what is fair financially and how to take account of things like pensions, businesses, inherited properties, contributions to the marriage, trust, etc. The mediator needs to have a detailed understanding of the law in order to be able to provide timely and accurate information or, at least, signpost to the right source of information, at the right time.
15. Many couples are fearful about having to disclose their motivations and intentions to each other in mediation i.e. feeling of vulnerability.

There are, of course, more challenges to mediation than the ones mentioned but these and others are challenges we, as mediators need to meet on a daily basis.

We, therefore, need to be examining and learning from research, constantly reflecting on our skills, and identifying training needs and the need for support resources for ourselves and our clients.

Family mediation is the right process for many more clients than actually end up using it, who subsequently find themselves in court without having set out with this in mind.

We simply need to get better at ensuring that clients receive the right messages about mediation in a way that they can relate to and which address their underlying fears, assumptions, misunderstanding, and misperceptions.

We need to give them the best opportunity to truly understand the benefits of mediation and how it can work for them.

What about giving each of them a separate consultation and one mediation session at a reduced fixed rate for both, until they have experienced mediation for themselves, how on earth can they truly make an informed decision about whether it can work for them.