

It is possible to mediate where there is domestic abuse

Is it possible to mediate where there has been DOMESTIC ABUSE and even violence?

Introduction

You may have heard that family mediation is not suitable for separating couples where there has been domestic abuse. This is not true in every case. It all depends.

As a Mediator, the question I ask myself in every such mediation and at regular intervals during these types of mediation is:

Is it possible to use the mediation process (in some form) to help and support the separating couple to reach a 'successful outcome' where there has been domestic abuse and violence?

Unfortunately, there is only enough space and time in this article to touch on this very important subject, making some points and asking ourselves some questions to think about.

If you are a family mediator I can strongly recommend the Mediation Handbook guide from Resolution on this subject which provides important guidance noting: *'It is essential that you do not 'play down' (for yourself or with either individual) anything shared by either prospective or actual clients in relation to abusive behavior. You must always ensure that you have properly assessed with individuals ahead of any mediation process whether they have any concerns about abusive behavior or safeguarding issues of any kind and that you ensure you remain alert to any signs of any abusive behavior throughout the mediation processes.*

If you are a couple separating I could do worse than recommend our own Divorce Manual which provides important information about the initial pre-mediation meeting with the mediator and how to prepare for it, as well as a significant amount of information and guidance on how to increase the chances of having a successful mediation in the most difficult and conflictual situations including information and guides about how to identify unhelpful power and control tactics.

Begin with the end in mind, a 'successful outcome'

The purpose of mediation is to help and support the separating couple to achieve a 'successful outcome'.

So, let's begin with the end or successful/desired outcome in mind.

What is a 'successful outcome' in this context?

For a mediated outcome to be and feel successful or at least successful enough (good enough, fair enough..) to the separating couple it will need to achieve enough of the things that are important (values, needs, interest) to each of them (Outcome solution focused approach).

The process or means to achieving a successful outcome

Next, let us briefly consider the 'mediation process' (The means by which a successful outcome is achieved) because to achieve a good enough/fair enough/desired outcome the process, or means by which the outcome is achieved, must also be and feel fair enough/good enough to those constructing the outcome, the separating couple bearing in mind the topic of this article is domestic abuse.

For the process to feel fair enough each person must feel that the process enables and sufficiently empowers them to feel properly heard and understood enabling them to express their priorities and concerns.

The challenge

All this can feel like a tall order when at least one (or both) of the couple has felt, among other things: bullied, intimidated, controlled, manipulated, humiliated, and undermined, throughout the marriage.

The kind of situation this article has in mind is where there has been a 'pattern of abuse' but the couple, and in particular the victim of abuse, still wants to mediate because for example, they want to keep their costs down (or cannot afford lawyers) and avoid court.

Simply because the couple says they want to mediate does not of course mean that mediation is suitable/fit for the purpose.

It does not necessarily mean that either or both of them have the capacity and resources to meet the demands and requirements of the mediation process.

Whether it is possible to help a separating couple achieve a successful outcome in mediation depends on lots of things.

This article will focus on some of the important things that need to be considered and what can be done to give the separating couple any kind of chance of meeting a successful outcome in mediation, where there has been or is domestic abuse.

Mediation is of course a voluntary process and it is for the mediator to provide a safe and secure environment and space for the couple to be able to reach a successful outcome.

The pre-mediation individual meetings (MIAM/Intakes)

The person

Each person needs to be carefully and skillfully assessed for their capacity (resources) and level of commitment to engage in the mediation and all that is involved.

This means carefully screening each person to assess, among many other things, the impact of the abusive behavior on them and their ability/capacity in the circumstances to freely and securely express their views and ask questions of each other (even if this is through the mediator).

The mediator will also try to discover the extent to which the abusive behavior has been a pattern of behavior or whether it primarily relates to the period around separation.

There are a number of useful abuse screening models and questionnaires for the mediators can refer to.

The situation

The situation and circumstances will also need to be carefully and skillfully assessed for safety issues relating to vulnerable adults and of course children.

For example, it is likely to be important for obvious reasons that the couple are no longer living together if this is an abusive relationship and mediation is being considered.

Support network

As well as a detailed assessment and screening process the mediator will also need to find out what support network the abused person has such as

- Their family network and the kind of support they are receiving from them
- Support from organizations such as the Women's aid or Men's for example
- Whether they have seen a solicitor or need one recommended to support them with applications to the court if needed (and if the person can afford the solicitor)
- Whether there are any court orders or Bail conditions in place and if so what and whether these might have to be lifted in order for mediation to take place
- Whether the police have been involved and if so to what extent and whether they might be needed again.
- Whether the abuser has sought any help with their anger and behavior and whether there has been any improvement.
- Whether the abuser acknowledges the impact that their behavior has had on their partner and demonstrates any level of remorse
- Whether the couple has attended any counseling individually, the results and what each may have learned from this about themselves and each other
- And so on....
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Divorce Coach

It can be a very useful practice for each client to work with a Divorce coach (especially if they can afford it) who can work with them at a very personal level ensuring that they receive the individual support they need from all sources and resources.

The Coach will also help their client build their personal resources and sense of self so that they feel more able to engage in mediation at a level required to be able to reach a successful outcome

So where are we so far?

There needs to be a proper assessment and screening

There needs to be in place a good support network around each client to support them to engage in mediation at the necessary level.

Next, let us briefly look at the mediation process itself. How can the mediator construct and manage the mediation process to help their clients?

Online mediations

Many clients in abuse situations feel more comfortable mediating online rather than in person and in separate online rooms (breakout rooms) so that they do not have to see or hear the other person.

Indeed, many clients insist on this even if the mediator does not.

The point is that each person must feel able to freely express views and concerns without fear of punishment and reprisal.

Ground rules

During the assessment period the mediator will also have considered and discussed with both clients individually the kind of ground rules and guidelines the mediator has in mind for mediation ensuring that each client is aware that the mediator will or may apply these during mediation when required and has the client's permission to do this if the mediator believes that it will assist them.

Remember that mediation is the mediator's process to manage, not the clients.

The mediator

In cases of abuse, some mediators are more comfortable and skilled than others to support their clients in mediation.

This is for the mediator to decide and not take on the mediation unless they feel comfortable enough doing so.

Step by step

It is also important to remember mediation is a 'step-by-step process beginning with the initial assessment and screening telephone calls and meetings moving on to one mediation session at a time.

Feedback

Listening to, understanding, and responding to feedback received from all sources is a crucial aspect of running a successful mediation and particularly in cases where there is or has been domestic abuse.

The mediator should be taking feedback regularly from each client during the process and most definitely at the end of each session.

Time to reflect

Everyone must also be given sufficient time to reflect on their experience of mediation and whether they feel it continues to remain fit for purpose. That is the purpose of reaching a fair outcome.

If not, mediation comes to an end and anyone can bring it to an end, at any time. It is voluntary.

Sustainable outcomes

Finally, it is worth remembering that the mediated outcome will only be successful if it is sustainable beyond mediation, whether it relates to improving communication, financial proposals or parenting plans, for example.

If either person feels that they were pressurized, bullied, cajoled, or not given enough time to reflect on the outcome and so on, the mediated outcome will quickly unravel and dissolve into oblivion as if mediation had never happened because of course the process is confidential and privileged.