

What happens when a spouse does not agree to mediation?



If you are going through a divorce or separation and you cannot agree with your spouse or partner over financial issues or arrangements for your children, mediation is usually the next step. We take a look at what will happen if your spouse or partner refuses to attend.

The courts much prefer couples to make their own arrangements in divorce. If they are unable to find an acceptable solution, then by law they are usually required to consider family mediation before litigation is permitted. The advantage of this is that a neutral mediator will help you both to agree on issues, rather than having them imposed upon you by the court.

Mediation Information Assessment Meetings

While attendance at mediation is voluntary, it is generally compulsory to at least consider mediation. This is done by way of a Mediation Information Assessment Meeting, or MIAM. The mediator will explain the process to you and consider whether mediation is suitable for your situation. There are a number of exemptions from the requirement to attend a MIAM, including where:

- there is an investigation into possible domestic violence
- there are child protection concerns
- one of you is disabled so could not attend
- one party is not contactable
- one party does not live in England or Wales
- one party is in prison

- there are no available mediators within a 15-mile radius and within 15 working days.

Issues that can be dealt with in mediation

- It is open to you and your spouse to deal with any matters relating to finances or your children during a mediation session. Common points of discussion include: With whom children will live.
- How much time they will spend with the other parent?
- How they will stay in touch with their parents during the time they are not together.
- How much will be paid by way of spousal maintenance and/or child maintenance.
- Who will pay for the children's other expenses, such as uniforms, extra-curricular activities and trips.
- What will happen to the family home?
- How other assets including pensions will be divided.

How will failure to attend mediation be dealt with

The courts consider mediation to be largely beneficial and helpful to families in putting together workable and fair arrangements for the future. The court has the power to adjourn proceedings, with or without the parties' agreement, if it considers it would be beneficial to the parties to do so, though you and your spouse cannot be forced to mediate.

In looking at who will pay legal costs, the court can take into account the conduct of the parties, before, during and after proceedings. It is possible that a failure to cooperate by attending mediation or trying to negotiate through other means could be construed as negative conduct, and that party could be ordered to pay a portion of the other's costs.

In any event, if mediation is not attempted, it is highly likely to take longer to settle the issues between you and your partner.

How we can help

If you would like further information on mediation then please contact our expert [family law team](#) either by calling us on 01892 506191 or [get in touch](#) by completing our contact form.

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