

# **CONFIDENTIALITY POLICY**

## **1 Client and mediator communications**

1.1 All communications in mediation are made on the basis that the communications are, firstly, confidential and, secondly, 'without prejudice'. This means that they cannot be referred to in evidence in any court proceedings about the same issues. Likewise, they cannot be used in affidavits or statements.

1.2 Mediators do not engage in communication between meetings with clients or anyone else regarding the content of mediation. Unless otherwise agreed, or in relation to a postal address, email or telephone number which a client requests to remain confidential, information including correspondence and emails from either client may be shared with both.

1.3 Recording of mediation sessions is not permitted under any circumstances. This applies whether sessions take place in person or via online communication technology, and in relation to live or deferred video or audio recording or relay. Mediation may be terminated if we believe a breach may have occurred and our expectation is that any such recording would be destroyed as soon as its existence comes to light.

## **2 Exceptions to confidentiality**

2.1 Our commitment to confidentiality does not prevent the mediator disclosing information where there is significant risk to the life, health or safety of children, the parties or anyone else.

2.2 If the mediator has reason to believe that either of the parties has benefited or may benefit from the proceeds of any crime, there may be a duty under the Proceeds of Crime Act 2002 to make a report to the National Crime Agency without informing the parties that this is being done. Under these circumstances, mediation may be discontinued without further notice.

2.3 If clients reach agreement and both consent freely, clients may jointly consent in writing to waive their legal privilege, which would allow them to use the 'without prejudice' content of their mediation documents to formalise the outcome in a legally binding fashion (or to present the outcome to the court if mediation has taken place in parallel with court proceedings).

2.4 If both parties are eligible for legal aid, the Legal Aid Agency (LAA) will have access to the Service's records and files. If one client is fee-paying and the other is eligible for legal aid, the client paying the fee has a right to veto LAA access to their file.

## **3 Confidentiality in respect of court proceedings**

3.1 Mediators may not be called as a witness to court proceedings, nor be required to produce in evidence any records or notes relating to the mediation or assessment meeting, in any litigation or other formal or informal legal process

arising from or in connection with the issues being considered in this mediation. Nor will the mediator act or agree to act as a witness, expert or consultant in any such processes. If any party does make such an application, s/he would be expected to fully indemnify the mediator in respect of any costs, including legal costs, incurred in resisting or responding to such an application.

3.2 In the event that the court should order the mediator to give evidence and/or disclose his/her files, then:

- (i) The party who has made the relevant application to the court will fully indemnify the mediator in respect of the mediator's costs, fees and expenses;
- (ii) If the court has made an order requiring the mediator to attend/give evidence/ disclose documents, then the parties will be jointly and severally liable for the mediator's costs, fees and expenses.

3.3 Where a party privately discloses to the mediator any information in confidence or any legally privileged material before, during or after the mediation, the mediator will not disclose that information to any other party without the consent of the party disclosing it, unless:

- (i) There is a significant risk to the life, health or safety of children, the mediator or anyone else; or
- (ii) He/she is ordered to do so by the court.

For full details of our Privacy Policy, please visit the 'Our policies' page of our website at <https://www.berkshirerfamilymediation.org.uk/about-us/our-policies> or ask staff for a printed copy.