Mediators drafting consent orders

Mediators should be able to draft consent orders for couples in mediation. This is the response of iFLG to a consultation by the Family Mediation Council. It can be found here [2] or by enquiry to the firm.

Of course as with any professional service, it should only be where the mediator is experienced in this work, as are for example lawyer mediators working regularly as lawyers in family financial cases. It should be where the couple have been recommended to take legal advice and have had the opportunity to do so. It should be where the mediator is comfortable that there are no power imbalances or other good reasons why drafting the consent order should not be taken. As always, there needs to be sensitivity and carefulness in the mediation.

But often a couple in mediation, having reached a successful agreement through mediation, then want the mediator to draw up the consent order. There is awareness that sometimes lawyers can create a polarising, disputatious element which the couple in mediation have wanted to avoid. Certainly the lawyer would discuss the terms of the agreement and then the consent order with the client. But the mediator would draw up the consent order neutrally and mutually.

If any issues arose in the drafting of the consent order which did not come out in the mediation process so far, it could be dealt with in mediation.
Some mediators oppose this, hence the consultation. They allege it confuses roles. It does not. A couple approaching an experienced lawyer mediator to mediate for them know fully that the mediator is neutral, does not give personalised advice but does bring experience to their benefit. An experienced lawyer mediator can say very well what would be likely to happen if the matter went to court, to give examples of how similar cases have been resolved and give constructive suggestions on ways to resolve their dispute. Drafting the consent order is no different to dealing with some of the many difficult issues arising in mediation about getting to a settlement. It is the skill and expertise of a mediator to help the couple reached the settlement. Where the mediator has particular skills such as drafting a consent order then this should be used for the benefit of the couple in mediation.

None of this detracts in any way from the fundamental importance of having independent legal advice in parallel with mediation, once any agreement has been reached in mediation and alongside the drafting of the consent order.

At iFLG, mediation is conducted by David Hodson OBE in respect of forum and financial cases and Denise Carter OBE in respect of children matters. If you would like to discuss, please contact us.

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The International Family Law Group
www.iflg.co.uk [4]
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