The International Family Law Group LLP
response to the Consultation of the Family Mediation Council
on mediators drafting consent orders
Introduction

This is our response to the consultation of the Family Mediation Council in respect of mediators drafting consent orders, specifically their consultation paper dated 30 November 2016.

Although coming from this firm, we state at the outset that we have two mediators. David Hodson OBE is a lawyer mediator, with a mediation practice alongside his more substantial law and arbitration practice. His mediation is almost entirely in finance and forum cases. Denise Carter OBE is a mediator, a consultant at this practice and head of our Mediation Services but not a lawyer. Her mediation is almost entirely in children work. Both have very substantial experience and expertise in family law matters with an international element. Both have been practising as mediators for many years. Both primarily work as sole mediators but from time to time work jointly on mixed children and finance cases. Denise endorses this paper although she herself would not consider drafting consent orders and emphasises that if a mediator were to consider it appropriate to draft a consent order, it would only be on the basis set out in this paper. This response has therefore been written by David Hodson.

Set out in the first appendix is the short biography of David Hodson and Denise Carter. This paper covers the three questions raised in the consultation paper but more broadly sets out experience in mediation in finance cases and the overall position on this issue.

In his general practice, David Hodson, is a solicitor with very substantial experience over very many years in family law work generally and specifically in finance cases with a particular distinctive specialisation in international aspects. Since 1995 he has been sitting as a deputy district judge at what was previously the Principal Registry of the Family Division, now the Central Family Court, dealing with a range of complex family law matters. This experience is applicable in the context of judges seeing a significant number of litigants in person and having to give them assistance in the finalisation of their consent orders. He was the creator and one of the founders of the English family law arbitration scheme and has qualified as an arbitrator, which provides further input into the analysis of the neutral conduct of family law disputes and interrelationship of roles. Furthermore he is also an Australian qualified solicitor having worked in Australia and retaining his practising certificate. This is of significant relevance as he had the opportunity in Australia to see a particular form of directive, lawyer mediator led mediation successfully at work, as referred to below.

He qualified as a mediator in about 1997 with FMA, initially working in the joint mediation model in his then law firm which combined lawyers, mediators and councillors. But subsequently he has worked exclusively as a sole mediator apart from occasional complex combined children and finance cases with an international element which he conducts with his colleague, Denise Carter. He was accredited in 1999. He is authorised to conduct MIAMs although he doesn’t do so. For two years he was the vice chair of the UK College of Family Mediators, particularly overseeing matters in the years following the 1996 legislation which was intended to give a major boost to family mediation. He is presently a member of ADR Group but openly declares that he has had no perceivable benefit from any mediation organisation over the past 10 years or so. He is not aware of any information provided by any mediation organisation to assist him in his mediation practice. There is no training specifically applicable to his expertise. He and Denise Carter have regular supervision with an experienced mediator which enables the opportunity to discuss the difficult issues which can often arise in mediation.
Support for drafting consent orders

From the outset, he sets out the position categorically. From the time of his qualification as a mediator, he has been willing to draft consent orders and has done so. He trained with FMA in the joint mediation model, and worked in a practice alongside nonlawyer mediators who were charging on a commercial basis. It was most obvious that if there was joint mediation and the client was paying to have one of the mediators from a legal background with their legal skills and incidentally their lawyer charging rate then it was sensible and obvious to maximise the skills and experience that the lawyer mediator brings to the mediation. This includes the neutral drafting of heads of agreement and consent orders. This mediation was then the more traditional, neutral, passive model of mediation with the emphasis on listening and helping the couple talk together to form their own solutions. When he worked in Australia for a couple of years from 2003 he saw first-hand what England would call the more directive mediation model. It was heavily focused on getting to a settlement, using very experienced lawyer mediators including part-time judges, and often with lawyers present in the mediation room. It is akin to the private FDRs going on now frequently in central London. It was still neutral and still not giving advice but was certainly giving a steer to help the couple towards a settlement when they were not managing to do so themselves through the more neutral and passive mediation model. When he returned in 2005, he specifically adapted his terms of business for this directive mediation. In reality, it is what many specialist family lawyer mediators were already doing without necessarily admitting the fact.

In about 2006, Resolution set up a working party when Andrew Greensmith was the chair to see how various directive forms of ADR could be encouraged. Andrew was a member and David Hodson was the chair. The report strongly recommended greater use of directive mediation. Directive terms of business were accepted by resolution and distributed to those who wanted. He has subsequently given it to a number of lawyer mediators around the country who are using it, as far as he is aware. His present terms of mediation business are set out in the second appendix.

Whether in this directive context or otherwise, there was the offer to go beyond the so-called memorandum of understanding and provide a draft heads of agreement and (the logical next step) a draft consent order. David Hodson has done so on several occasions and has been quite open about this fact.

His experience is that a couple in mediation, who have reached a successful outcome in as far as success means an agreement, have come to put considerable confidence in the mediator. There has often been several sessions, perhaps quite difficult and tense. They themselves have managed to get through it and come out the other side with some sort of agreement. This is for many couples a colossal achievement and they feel rightly proud and satisfied. In most of his cases they are legally represented either continuously or occasional one-off advice in parallel with mediation. Of course having drafted the mediation outcome document he tells them to take professional advice. But by this stage in his experience they have become wary of lawyers! They respect the need for legal advice. But they are wary about how lawyers can be unduly contentious and raise points out of a feeling of duty to do so but possibly not to advance matters too much. In those circumstances in his experience, and being told what the process of drafting the consent order involves, they ask him as their mediator with specialist family lawyer experience to draft it. He does, always of course recommending legal advice on its terms. In his continued experience, mediation works best where the lawyers are kept informed of what is going on so that they themselves can work with their clients.
None of this produces any qualms or uncertainties about roles. No one has asked if he was acting for either or acting for the other. It has been dealt with in an even handed and open fashion. It has been no different to the previous mediation sessions. Mediation has not stopped. It is continuing. The discussions about the terms of the consent order are part of the ongoing mediation process.

To answer the points raised in the consultation paper about advice, he is quite astounded at some of the suggestions made about lawyer mediators. Experienced lawyers and lawyer mediators are very alert to the difference between information and advice. Some also sit as part-time judges or arbitrators where faced with litigants in person who want them to give advice. Judges, including part-time judges who balance private practice with their judicial work, are alert to the difference between information and advice. The point often raised is about section 28 bars. David Hodson is satisfied that he can give information about this law, how it operates in practice and in the courts and the advantages and disadvantages in a neutral fashion, to the couple mutually and as information without being advice. Indeed he considers it is quite condescending to suggest that lawyer mediators are unable to distinguish.

But the most crucial element here is that the couple are working out whether, using this example, there should be a section 28 bar in the context of mediation. It is a safe environment. If they cannot agree then it has to go into the legal process through lawyers. But they have agreed other far bigger and disputed matters so far and he finds they would prefer to work this out through mediation with good information than their respective lawyers starting the traditional dingdong of correspondence. That is what they have tried to avoid. It is what they have managed to avoid hitherto. Lawyer mediators know exactly how it goes because it is the work that lawyers do and they see too many cases descend into unnecessary disputed correspondence.

Questions

So in response to the first question, to ask if the lawyer mediator role is being jeopardised or it is abandoning neutrality is, with respect, nonsense. To the contrary, the lawyer mediator is reinforcing neutrality by dealing with the consent order, and the issues arising from it which may not have been in the discussions leading to the mediation outcome document. It is in the classic tradition of independent neutral mediators. Of course when these parties come to an lawyer mediator they know that he or she is a specialist family lawyer in the day job. Why otherwise, in most instances, would they pay the higher charging rates of lawyer mediators when they could have far cheaper rates with non-lawyer mediators. This is part of the service provided as a lawyer mediator. It may be that some nonlawyer mediators working outside of law firms do not like this or do not understand how lawyers operate.

The Second question is whether it is possible to draft a consent order without giving advice on its terms. Yes definitely. Of course a lawyer mediator would recommend the parties to take legal advice on the memorandum of understanding, mediation outcome document. If they ask the lawyer mediator to draft a consent order, of course they are recommended to take legal advice on its terms. Mediation works best hand-in-hand with good legal representation. It seems incredible that this question is even being posed.

The third question asks if it is appropriate to draft consent order without giving parties advice on its terms and it seems this is answered by the second.

We do appreciate it is more problematical where one or both are in person. But if they choose not to take legal advice then should the lawyer mediator effectively wash their hands of the matter having
prepared the mediation outcome document? No. As a deputy district judge at the Central Family Court in the Financial Remedies Unit, David Hodson sees too many cases where the litigants in person have struggled to produce the draft consent order either after mediation or after some sort of agreement between themselves. Once upon a time judges would come to their aid and draft. Those days have gone. Judges are far too busy and mostly won’t do so. In any event recently the Court of Appeal in Minkin v Landsberg (2016) 2 FLR 948 endorsed the unbundling services of the lawyer consulted just to draw up a consent order.

Concluding remarks

There is discussion at the moment in the family law press about appropriate circumstances for family lawyers to act for both parties. We ourselves would not at the moment want to go that far. But it is being seriously discussed and one obvious area would be a lawyer acting for both parties in the drawing up of a consent order. It would be far better for this person to be a lawyer mediator in the mediation context. This shows the debate is moving on and this Consultation is at risk of appearing rather archaic.

We have no difficulties in the experienced lawyer mediator dealing with the consent order as part of the professional services. It’s one of the skills and experiences that solicitors can offer in the work as mediators. It is a competitive marketplace and there is no reason whatsoever why this attribute should not be highlighted. To prevent this would be an unfair emasculation. Nonlawyer mediators have valuable skills and distinctive experience which can be brought to bear, along with invariably lower charging rates. Lawyer mediators have their own distinctive skills and significant experience and this should also be used.

Around the world, directive ADR is conducted perfectly well in leading common law jurisdictions. Reference is made above to the distinctive directive mediation in Australia. But reference should also be made to Canada where there is a very successful med-arb process in which, if the mediation is unsuccessful, the mediator then continues as arbitrator. Some leading mediators in England have argued for its introduction here. Any slight argument about mixing roles between mediation and lawyer in this Consultation paper are completely transcended by moving from being a mediator to an arbitrator. Is England to condemn so strongly the Canadian mediation profession? Of course not. It’s just one of many models of mediation and dispute resolution.

There is no one model of mediation that is appropriate in all cases. For some mediators the traditional passive mediation is appropriate and this is what is wanted by a number of clients. But there are some clients who want a stronger steer and a more directive approach, and this is provided by suitably qualified mediators experienced in doing so. This directive element includes knowing what is likely to be in a consent order following agreements reached in mediation. There is no reason why the lawyer mediator should not then draw up that consent order, explaining to the couple in the safety of the mediation room and the security of the privilege of mediation what are the merits and disadvantages of the respective clauses and terms of the consent order. If the mediator feels uncomfortable then there should be no pressure to do so. If the mediator does not feel competent to do so then there should be no pressure. Where the mediator is comfortable and competent and is satisfied it is fair and appropriate in the particular context of the particular mediation then of course the mediator should be able to draft the consent order. It has been happening for more than a decade. It happens in other jurisdictions. It will continue to happen in England and Wales.

There have been too many splits in the family mediation history in this country. Differences have held back the progress of family mediation in England and Wales. The mere spectre of this Consultation
paper resulting in any ban on mediators drafting consent orders, and the consequential further divisions in the family mediation profession, should cause those with any sort of apparent responsibility to pause and look at the bigger picture.

Family mediation will not suffer by family mediators continuing to draft consent orders where appropriate. Family mediation will definitely suffer by any attempt to emasculate the work presently undertaken by specialist and experienced lawyer mediators, where a couple after opportunities for legal advice seek the lawyer mediator to undertake the drafting of consent orders and deal with any issues then arising. There should be endorsement of the entitlement and opportunity for mediators to draft consent orders where appropriate and where competent and comfortable to do so.

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Appendix 1

Details of the authors

David Hodson OBE MICArb is a family law dispute resolution specialist. He is an English solicitor (1978 and accredited 1996), mediator (1997 and accredited 1999), family arbitrator (2002), Deputy District Judge at the Central Family Court (formerly the PRFD), London (1995) and an Australian (NSW) solicitor and barrister (2003). He deals with complex family law cases, often with an international element.


He was appointed OBE (Officer of the Order of the British Empire) in the Queen's Birthday Honours list in June 2014 for “services to international family law”.

He is a Visiting Professor at the University of Law, giving keynote lectures and contributing to the development in the education of family law

He was joint founder in 1995 of probably the world’s first metropolitan practice to combine family lawyers, mediators and counsellors and with an emphasis on a conciliatory and holistic approach. It was subsequently copied in many practices across the world. He is past chairman of the resolution/Solicitors Family Law Association’s Financial Provision Reform Committee, Training Committee and Good Practice Committee and was founder member of its International Committee. He is a member of The President’s International Committee. He is past vice chair of the UK College of Family Mediators, the umbrella organisation for family mediation. He is a member of the Chartered Institute of Arbitrators. He is co-author of “Divorce Reform: a Guide for Lawyers and Mediators”, “The Business of Family Law” “Guide to International Family Law” and consulting editor of “Family Law in Europe”. He is an Accredited Specialist (with portfolios in Substantial Assets and International Cases), a Fellow of the International Academy of Matrimonial Lawyers, a Fellow of the Centre for Social Justice (CSJ), a past trustee of Marriage Resource, a member of the Family Law Section of the Law Council of Australia and a member of the Lawyers Christian Fellowship. He was chair of the CSJ Family Law Group whose report, “Every Family Matters” (2009), has been very influential in recent family law reforms.

He has written and spoken extensively on family law including many conferences abroad. Some papers and articles can be found at his personal web site, www.davidhodson.com

He is the editor and a primary author of “The International Family Law Practice”, (Jordans 5th edition Dec 2016), the leading textbook on international family law. In 2011 he received the inaugural Jordans Family Law Commentator of the Year.

Denise Carter OBE is a Mediator and Head of Mediation Services at iFLG.

Denise is a highly experienced and hugely respected Mediator in international child disputes and particularly in the areas of parental child abduction and child relocation, covering both Hague and Non
Hague States. She has worked with many of the world’s leading children law specialists including lawyers, judges and other mediators.

Denise has been highly innovative in the development of mediation in high conflict family cases and led the very successful pilot project creating a model for mediation in child abduction cases simultaneously with court proceedings. Denise has successfully mediated a number of high profile cases.

Denise has been accredited by the Legal Aid Agency to mediate in respect of publicly funded child abduction cases. As a private mediator, she is able to mediate and/or co-mediate in England and abroad using IT facilities to enable the mediation to continue even if one parent is abroad.

Denise also worked as an independent expert to the Hague Conference working alongside Professor William Duncan, a former Deputy Secretary General, and other world leading experts. She has prepared reports, undertaken research and made representations to the UK and other government departments, judges and family law experts both nationally and internationally in respect of international child issues.

Denise has been invited to speak by governments and international non-governmental agencies in many countries around the world. She had particular involvement in building up protocols and inter-country arrangements for the return of abducted children with Pakistan, Egypt and other Middle East countries.

In December 2011, Denise qualified to undertake direct consultations with children enabling her to meet directly with children so they may express their views regarding the separation process of their parents and issues concerning contact and residence. Denise can bring this into her own mediations or otherwise provide feedback to the parents and the mediator during the mediation process itself.

Denise is often the first port of call for comment on international children cases by both national and international radio and television.

Denise heads the iFLG Mediation Services team which offers family dispute resolution services in mediation, early neutral evaluation, arbitration, collaborative law and out of court settlements.

Denise was named ADR Practitioner of the Year in 2013 at the Jordans Family Law Awards. In October 2015 Denise was mentioned as ‘The “doyenne” of international mediators’ and has the ability to broker deals in highly confrontational situations’ as listed in the top Legal 500.

The International Family Law Group LLP is a specialist law firm providing services to the international community as well as for purely national clients. iFLG has a special contract with the Legal Services Commission for child abduction work and is regularly instructed by the UK Government (Central Authority). It acts for international families, ex pats and others in respect of financial implications of relationship breakdown including forum shopping and international enforcement of orders. It receives instructions from foreign lawyers and, as accredited specialists, acts for clients of other law firms seeking their specialist experience.

iFLG is situated in Covent Garden near the Law Courts. Its mobile telephone accessible website includes valuable information, podcasts, a government approved child abduction questionnaire and formulae as a starting point for calculating fair financial settlements. It has emergency 24 hour contact arrangements. Contact at www.iflg.uk.com
Appendix 2

AGREEMENT TO MEDIATE
BASIC PRINCIPLES AND TERMS OF MEDIATION

The following terms are the basis for mediation conducted by David Hodson. Please read each point carefully, noting any questions you may have to bring to the first meeting. Each party to the mediation will be asked to sign this document before the mediation commences as an indication of your commitment to the process and agreement to the terms. Thank you.

Mediation Code of Practice

1. I undertake this mediation in accordance with the Code of Practice approved by the Solicitors Regulation Authority of England and Wales.

Mediator’s professional capacity and functions

2. I am a family mediator and a solicitor and I undertake this mediation as part of my practice at The International Family Law Group LLP. My role is to assist you to resolve any issues that you may have or in making future arrangements for yourselves and any children. I will help you to explore the options available to you, with a view to your reaching a resolution that you consider appropriate to your circumstances. The choices and decisions are yours. I require you to give your commitment to the mediation process and to co-operate as fully as possible in seeking workable solutions and a settlement.

3. When working as a mediator, I do not represent the parties but instead I act in an impartial way to help you arrive at your own decisions. I will not assert or protect any legal rights of either party. I may provide legal or other information on an even-handed basis to assist you, for example in understanding the applicable principles of law and the way those principles are generally applied. I may make positive suggestions, observations and proposals that I consider, in my judgment and experience, may help you in reaching a fair and just outcome. I will tell you if I consider that your proposed terms are likely to fall outside of the parameters that a court might approve.

4. If I consider necessary to help produce an outcome, I may provide a legal opinion or analysis on the merits of respective arguments and claims, on what may be the outcome if the matter were litigated at court or other directive legal views and opinions to encourage resolution
5. It is always very helpful for you to have advice from your solicitor before the first mediation session and between sessions to discuss progress, developments and take advice on the next stage.

6. Mediation is commonly conducted without lawyers present. However sometimes it can be helpful for parties to have their lawyers present with them in the mediation room. I am happy to proceed on this basis if agreed by all parties. If your lawyers are present at the mediation meetings, you will have the opportunity of seeking legal advice from them before turning any decisions arrived at in the mediation (including any settlement proposals) into an open agreement.

No conflict of interests

7. Mediation cannot take place if I have prior knowledge of the situation through a previous involvement including as a solicitor, Judge or in any other professional role. If any other conflict subsequently arises or emerges, I will not continue to act as mediator (except with your specific informed permission).

Confidentiality and privilege

8. I will treat all matters in the mediation as confidential except as otherwise agreed, and subject to Paragraph 12. I ask you to agree that for training and quality assessment purposes that the mediation and any mediation documents may be reviewed on a strictly confidential basis by my Professional Practice Consultant and/or any other appointee of my mediation organisation.

9. At the mediation sessions I will meet with the parties together. Mediation is a transparent process. All information or correspondence from you or your lawyers will be shared openly with other parties. An exception to this is an address or telephone number which any party wishes to keep confidential. As the mediation progresses, I may exceptionally meet with the parties separately when at my discretion I feel that private meetings are appropriate and helpful towards a settlement. Any information disclosed to me in private meetings will remain confidential and will not be disclosed by me without the prior consent of the party who provided the information.

10. All financial or other factual information or evidence is provided on an "open" basis, which means that it can be used in court. This may be in support of a consent application made by you or in contested proceedings. Such disclosure will assist your legal adviser and will avoid information having to be provided twice over. (This reinforces the importance of full and accurate disclosure, as your legal adviser will need to check with you about the completeness and accuracy of all information received before advising you on any settlement terms.)

11. However, communications about possible options, proposals and terms of financial settlement are conducted on a "without prejudice" basis. This means, for instance, it cannot be referred to in court. They will not be turned into an open agreement until you have each had the opportunity to seek advice on them from your legal advisers. Also, an evidential privilege will ordinarily be claimed for all attempts to resolve issues in mediation including those relating to children. Where an evidential privilege exists, it can only be waived by agreement. (An exception to this is when the parties lawyers are present and advise each
party on the proposed terms and a settlement outcome document is then signed. This cannot bind a family court but is treated as open and from which it is difficult to resile.

12. These provisions for confidentiality and privilege may not apply if it appears that any child or other person is suffering or likely to suffer significant harm or a child is likely to be abducted. In this event, I would, as far as practicable and appropriate, seek to discuss the action to be taken with you before taking any action to contact the appropriate authorities in line with the Mediation Code of Practice under which I work and the Guide to the Professional Conduct of Solicitors and the Law Society Family Law Protocol. These provisions are also subject to any overriding obligations of disclosure imposed by law.

13. You agree not to call me to give evidence in court nor will you seek to have any of my notes brought into evidence.

14. These provisions for confidentiality and privilege will also not apply if information is communicated to me with the intention of furthering a criminal purpose. I am required by law to comply with the Proceeds of Crime Act 2002 ('the Act'), The Terrorism Act 2000, the Serious Organised Crime and Police Act 2005 and Money Laundering Regulations 2003 and 2007 and all other regulations made under the Act ('the Regulations'). The Act may cover your partner’s conduct as well as your own. It also covers overseas conduct, which, although lawful outside of the UK, may be or would have been unlawful if committed in the UK. First, the Regulations require me to carry out proper client identification procedures (see below) and to keep the information about identification up to date. Furthermore, if I become aware in the course of acting for you as a mediator, that you have engaged or may engage in any criminal conduct, I am obliged to report that knowledge or suspicion to the Serious Organised Crime Agency (SOCA) and by entering into this agreement, you authorise me to make such reports to SOCA as are appropriate under the Regulations.

15. In order to comply with the obligations as to client identification, I should be grateful if each of you could supply me with a photocopy of your passport (photograph page) or driving licence, together with an original utility or credit card bill showing your current address which is not less than three months old.

Financial and other disclosure information

16. You undertake and commit to provide complete and accurate information of all your financial and/or other relevant circumstances, with supporting, corroborative documents where necessary. This is called disclosure. If disclosure has already been given via court proceedings or voluntarily between lawyers, I may ask that each of you provide in advance of the first mediation session the Financial Statement (Form E), any chronology, the statement of issues, any balance sheets and any other relevant disclosure prepared already on your behalf, together with any written offers made.

17. Exceptionally if a dispute is well advanced, I may request in advance of the mediation meeting that your lawyers each provide to me (and simultaneously exchange) a written summary of your views on the case (a ‘Position Statement’), together with all of the documents to which that Position Statement refers, together with any written offers that have been made. I will read in advance and may ask questions or seek clarification. This can have the result of
helping better progress to be made at the mediation sessions themselves and be more time and cost efficient.

18. It is not my task as a mediator to verify the completeness and accuracy of the information you provide. But if required, I can help you to consider the ways in which you may make such enquiries or obtain verification and help you to identify what information and documents would help the resolution of any issues, and to consider how best these may be obtained. I may point out where any disclosure may be unacceptable to a court or may seem incomplete or require more verification by you or your lawyers.

19. I may also help you to consider the desirability of seeking assistance from other professional advisers such as accountants, expert valuers or others, or from counsellors or therapists.

20. I will ask you to sign and date a statement confirming that you have made full disclosure. If it should emerge that full disclosure has not been made, any agreements or court orders flowing from the proposals reached in mediation based on materially incomplete or inaccurate information could in some cases be set aside and the issues re-opened and costs orders made.

Disclosure summaries and recording of agreements

21. At the end of the mediation (or earlier if appropriate and required), I will ordinarily draw up:

➢ **A disclosure summary** of your financial and/or other relevant circumstances and facts which will be “on the record” and could be used in evidence in court if need be. This is the factual basis on which the mediation outcome is reached.

➢ **A mediation outcome** (sometimes called a memorandum of understanding) of your mutually acceptable proposals for the settlement of matters discussed in the mediation. This is a without prejudice document.

22. These documents enable you to obtain separate and independent legal and/or other advice before entering into an open agreement. You will need independent advice to assess how the proposed settlement terms may affect your own individual position.

23. I may also draw up as required

➢ **An interim privileged mediation outcome.** This is a record of mutually acceptable proposals about interim or short-term arrangements. It is also without prejudice.

➢ **A privileged statement of the final offers of settlement** made by each of you. This is only in the event that a mediation outcome is not achieved. It might also include the areas of agreement and the areas where you are apart. It can be valuable for your legal advisers. It is simple privilege and cannot be referred to openly nor has any efficacy in “new costs rules” cases.

➢ **Heads of agreement.** This will only arise if your lawyers are present, have advised on the mediation outcome and everyone is content to proceed to sign a comprehensive document. It is open and may be referred to subsequently in court
proceedings. Often your lawyers and I will draft (and you will sign) heads of agreement before you leave the mediation meeting. Your signing of heads of agreement will make the mediation outcome open and as close to binding as possible in family law matters.

- **Draft consent order.** This will only arise if there has been a comprehensive privileged mediation outcome and/or open heads of agreement on the terms of the mediation outcome and the parties and their lawyers ask me to draw up a draft consent order, either at the mediation meeting or subsequently. It has to be filed at court by the applicant's lawyers. It cannot be filed by the mediator. Solicitors usually undertake the formal recording of any agreements that may be reached in mediation after you have taken their advice. This includes drawing up a separation agreement or draft court consent order. I am willing to do this drafting if agreed by you and your lawyers. This has sometimes the advantage that the drafting is undertaken in a neutral fashion. Your signing of a draft consent order will make the mediation outcome open and as close to binding as possible in family law matters.

**Termination of mediation**

24. I am concerned to ensure that you freely enter into and continue with the mediation process able to discuss and negotiate freely together and without risk of threat or harm or duress. Please inform me immediately and privately if you have concerns about your ability to negotiate freely and/or your safety.

25. You may terminate the mediation at any stage. I may also terminate the process if I do not think it appropriate or helpful to continue. In either such event, I will if required provide information as to other options available to you to progress in your case and resolve any outstanding issues.

**Mediation fees**

26. My fees are £400 per hour plus VAT plus reasonable expenses. You are each liable in full for my charges but they can be shared equally or in any other way as may be agreed by you and with me. Exceptionally, I may require payments on account including for costs of preparation of documents. I will send bills after each session or as may be agreed with you. I require outstanding bills to be paid before any mediation session begins.

27. Depending on the issues, 3 or 4 sessions are commonly required, but more or less may be needed. Often sessions are of about 90 minutes duration but the first is invariably longer and subsequent sessions can be longer or shorter dependant on what needs to be covered and how the sessions develop. In exceptional cases where disclosure has already been given and where you agree, mediation can be in just one session with a view to producing an immediate outcome but the session would then be longer than 90 minutes but with a final conclusion time agreed in advance.

28. The hourly charging rate also applies for any work that may be required in preparation for mediation sessions and between sessions, for example in reading documents submitted, drafting documents or interim documents, and in the preparation of the final documentation as set out above. I will give an estimate, if requested, for the drafting process.
Regulation

29. I will work with you as a mediator in a manner which I trust and expect to be fully satisfactory to you both. Any concern you may have as to my practice or the service provided by me should be referred to me in the first instance. If I am unable to resolve this with you directly, any complaint or concern you have will be considered through my firm’s complaints procedure. Please let me know if you would like a copy of our Complaints and Compliance Rules, and I will provide this to you.

Dated the day of 2017

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David Hodson - Mediator

I agree to the above terms which I have read and understood:

Signed :........................................Dated ......................................................

Signed :........................................  Dated ......................................................