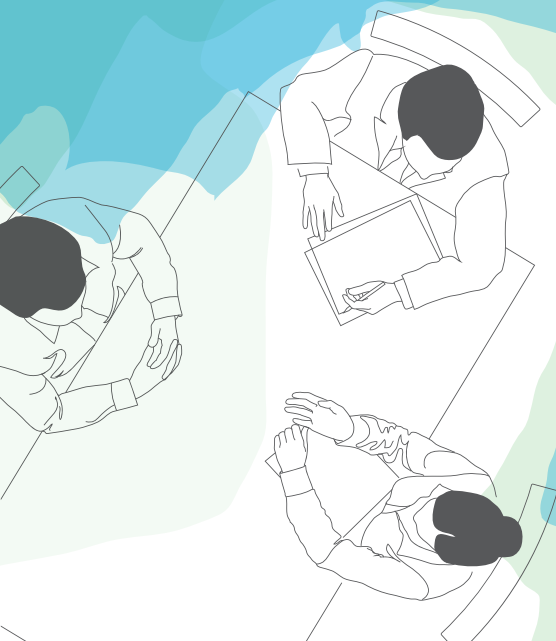


The Process of Mediation in the Family Court



MINISTRY FOR JUSTICE, CULTURE AND
LOCAL GOVERNMENT



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Preface

It is with great satisfaction that I am introducing this information booklet for the information of the general public on the process of mediation in the family court.

It is unfortunate that when matrimonial difficulties arise, these are very often referred to the courts of justice to settle such matters. However, the assistance of a mediator to help them reach an amicable settlement without recourse to formal proceedings in court is a less costly and more effective procedure. This booklet is intended to give the necessary information to those who opt for mediation rather than the more lengthy and bureaucratic court proceedings. This booklet is written in a way that can be understood by anyone.

The publication of this information booklet is another important step in the series of measures undertaken by my ministry to render the justice system more efficient and effective. The dissemination of information is one of the measures that would enable the citizens to understand their rights and obligations, whilst at the same time not feeling lost in a system that, after all, is meant to deliver justice to all.

Owen Bonnici

Minister for Justice, Culture & Local Government

What is Mediation in family matters?

When a couple is in dispute with one another regarding family matters, they can ask for assistance from a mediator to help them reach an amicable settlement without recourse to formal proceedings in Court. Although mediation is the compulsory first step that one has to take when resorting to Family Court, it also saves the parties from going through the expensive and sometimes lengthy procedures in Court, if they manage to reach an amicable settlement.

Mediation is highly confidential, and anything that is said behind closed doors remains between the parties, their lawyers and the mediator. There is also no winner and no loser, simply two consenting adults discussing their differences and reaching an agreement in the form of a contract, which is later made official by being published by a notary.

Who is the mediator and what is his role?

The mediator is there to help the parties reach an amicable settlement. He is an impartial and independent person appointed by the Court. In some cases, the parties choose the mediator themselves against a small fee. Mediators are all professionally qualified to act as such. Most of them are also family therapists, social workers or lawyers. At present there are ten mediators employed by Family Court.

A mediator can never provide evidence in Court as to what was said in mediation proceedings if the parties proceed to a Court case.

The mediator is not a Judge and cannot dictate to the parties. If the mediators are lawyers, they have no right or duty to provide legal advice to the parties. Legal advice should be sought only from the parties' lawyers.

Can the mediator be changed once he is appointed?

The mediator can be changed in two cases. These are:

- a.** When the parties and the mediator know each other personally, in which case the mediator will file a note in the Court Registry asking the Court to appoint another mediator in his place. This is done to protect the parties and to maintain impartiality.
- b.** When either of the parties feel that one party is being favoured over another. In this case, the party concerned can inform the mediator, who will in turn file a note in the Court Registry asking to be substituted with another mediator.

Who can apply for mediation?

Mediation in Family Court can be applied for in the following cases:

- a.** By a person who feels his marriage is not working, and wishes to separate from his/her spouse;
- b.** By a person who wishes to divorce his spouse provided that the spouses would have been living apart for four years or more;
- c.** By a person who requires maintenance from his spouse;
- d.** By a person who has a child out of marriage, and wants to regulate matters relating to the child, such as care and custody, visitation rights and maintenance;
- e.** By a person who wants to change his contract or sentence of separation or divorce;
- f.** By a person who wishes to change his contract of separation or judgement that regulates his child's care and custody, visitation rights or maintenance.

Therefore, one does not have to be married to apply for mediation.

How do mediation proceedings start and what do they consist of?

To have recourse to mediation, the interested person must file a simple letter, addressed to the Court Registrar, requesting permission to start the mediation proceedings. The letter must contain both parties' names and addresses, and at least the Identity Card of the person who is writing the letter. The letter is then signed by the person writing it, and does not need the signature of a lawyer to be valid. It is then presented in Family Court Registry. This process is completely free of charge.

Mediation can also be started by a note. A note is where both parties involved are already agreeing on certain things, usually done through their lawyers or a notary public. The note contains the same details of a letter, with the difference that the parties also present a draft of the contract which, if agreed to, will be published at the end of the mediation. The note must be signed by both parties together with their notary, or both their lawyers and their notary.

If the parties are not married, a birth certificate of their children needs to be presented with the letter or note.

Once a letter or a note is filed, a mediator is appointed from a list of mediators to hear each case. The mediator can also be privately chosen by the parties themselves in agreement. This will most probably speed up the process, but involves a small fee for the mediator.

The mediator will send for the parties by post with a specific date for them to come to Court. The sessions are held at the Family Court. The sessions are held in a private room with only the mediator and the parties, and if the latter so wish, the parties' lawyers as well. Mediation does not require a lawyer to be present, and if the parties wish they can attend the sessions with just the mediator present.

The mediator will first explore with the parties the possibility of reconciliation. This has to be desired by both parties equally for it to succeed. If the mediator feels that there is hope for the couple's marriage or relationship to work out, he/she can send them for counselling and put the mediation on hold.

If the parties feel that their marriage or relationship can no longer work, the mediator will then try to help the parties reach an agreement with respect to their children, their residence and their belongings, causing the least pain possible to both parties and their children, if any.

For an amicable settlement to be reached, the parties must attend the sessions with an open mind, and be flexible in their decisions.

The parties will be given a chance by the mediator to voice their opinions and to talk things through. The mediator is there only to help them understand each other's wishes, not to dictate.

If the parties do manage to reach an agreement, a contract is then drafted and read by the mediator, and if the parties are happy with it, the mediator will then present the contract formally in the Family Court Registry so that it can be forwarded to the Judge (or Magistrate in the case of Gozo). If the Judge/ Magistrate approves the contract, the parties can then go to a notary, who will publish the contract and make it official.

The parties need not fear mediation, but should make good use of it. The process is not as rigid as one would expect from a Court case, and parties are left free to express their opinions. When attending mediation session, one can wear casual but decent attire (i.e. no jacket and tie needed).

What happens if the parties want a divorce?

To apply for divorce through mediation, the parties need to have been living apart for four years or more but are not separated by law. If the parties are separated by law, they would have to go through a small court case which usually consists of only one sitting where the Court hears the parties and then pronounces divorce in open Court. If the parties are not separated by law, however, they first need to go through the mediation process.

For divorce proceedings to start, one of the parties' lawyers needs to file an application in the Family Court Registry and it is not possible for the party to do it himself/herself. The process is very much the same as in separation cases, with a mediator being appointed, and a contract being finally drafted if the parties agree. The only difference is that at the end of the process, when the Judge (or Magistrate in the case of Gozo) has signed their contract, the lawyer needs to file another application whereby he asks the Judge/Magistrate to pronounce the parties' divorce in open Court. The Judge/Magistrate summons the parties in Court and, in one sitting, pronounces divorce.

What if the parties want to talk to the mediator individually?

This is solely at the discretion of the mediator who is responsible for the case. If the mediator feels that this would benefit the parties, then he/she can hold meetings with the parties on an individual basis, provided he/she has the consent of both parties. What is said to the mediator in private remains confidential, so long as the party concerned does not give the mediator permission to disclose that information.

Do children have a say and can they be heard?

Children who are old enough can be heard by the mediator, if the mediator feels this is necessary. Children are brought before the mediator and heard by him/her privately.

Children can also be heard by social workers, psychologists, and child advocates appointed by the Court for this purpose. Occasionally, a child may also be heard by the Judge/Magistrate in his/her private chambers. Talking to professionals is nothing to fear, and may result useful and beneficial to both parties and their children. The Court always holds as a priority the best interests of the children, and will always make sure that these are well protected.

If the help of these professionals is needed in mediation, either party, or the mediator himself may file an application to the Court for them to be appointed. The professionals' fee will be paid by the parties in equal shares between them, except child advocates, who are paid by the Court and not by the parties.

In some cases, the Court may feel that a social worker from Aġenzija Appoġġ should follow the case, and this is also free of charge for the parties.

The professionals will then report to the Judge/Magistrate on the case, and the Judge/Magistrate will decide accordingly.

What is considered a successful mediation?

A successful mediation is one where the parties talk things through and reach an amicable settlement. Contrary to popular belief, it is not only successful when the parties manage to reconcile their relationship. The mediator does try to reconcile the parties, but he/she is not a counsellor, and for this type of help, the parties should seek separate professional help.

What happens if the parties do not reach an amicable settlement?

If the parties are unable to agree, the mediation is closed and the parties are authorized to proceed with a Court case. If the parties do not present a Court case within the time period of two months from when the mediation is closed, the whole process falls apart, and the parties have to start the process all over.

What happens if one of the parties does not attend?

If the party who has started the mediation proceedings does not attend, the mediation is closed on grounds of no interest, and none of the parties can proceed to a Court case. If on the other hand the party who has not started the proceedings does not attend, or has no interest in reaching an agreement, the parties are given permission by the Court to start a Court case. The parties are given a chance to attend to the sittings two consecutive times, if they do not attend, the sessions will be closed.

What if one of the parties lives abroad?

If one of the parties lives abroad, mediation cannot take place. A person who has a power of attorney for one of the parties cannot attend for mediation sessions in the other party's place. Therefore, the letter is immediately closed, and the person is given permission to open a Court case, where curators are appointed by the Court to represent the absent party's interests. This mediation is only opened by a letter and must always be sworn on oath. In the letter of mediation, the party has to declare that his spouse lives abroad.

What are the expenses involved during the process of mediation?

Expenses in mediation are relatively minimal when compared to a Court case. The parties only need to pay their lawyers if they choose to have one and their notary when the contract is published. If they decide to choose a common mediator, there is also the mediator's fee to be paid. If the process necessitates a professional to hear the children, there may be fixed fees that need to be paid to the professionals as well.

In the case of divorce, proceedings can only be started by a lawyer on behalf of the party, and therefore there are obligatory lawyers' fees to pay. There is also the Registry fee, the mediator's fee if the mediator is privately chosen and any professional's fee that may be involved in the case.

What do statistics show on mediation and on what grounds is it being used most?

Below is a table which shows how many new mediation cases were filed with the Maltese Family Court. Statistics show that the number of mediation cases increase with every passing year.

New cases of Mediation

2004	1493
2005	1327
2006	1322
2007	1322
2008	1466
2009	1502
2010	1548
2011	1589
2012	1581
2013	1809

How many couples reached an amicable settlement

2004	441
2005	687
2006	653
2007	678
2008	645
2009	628
2010	632
2011	700
2012	726
2013	815

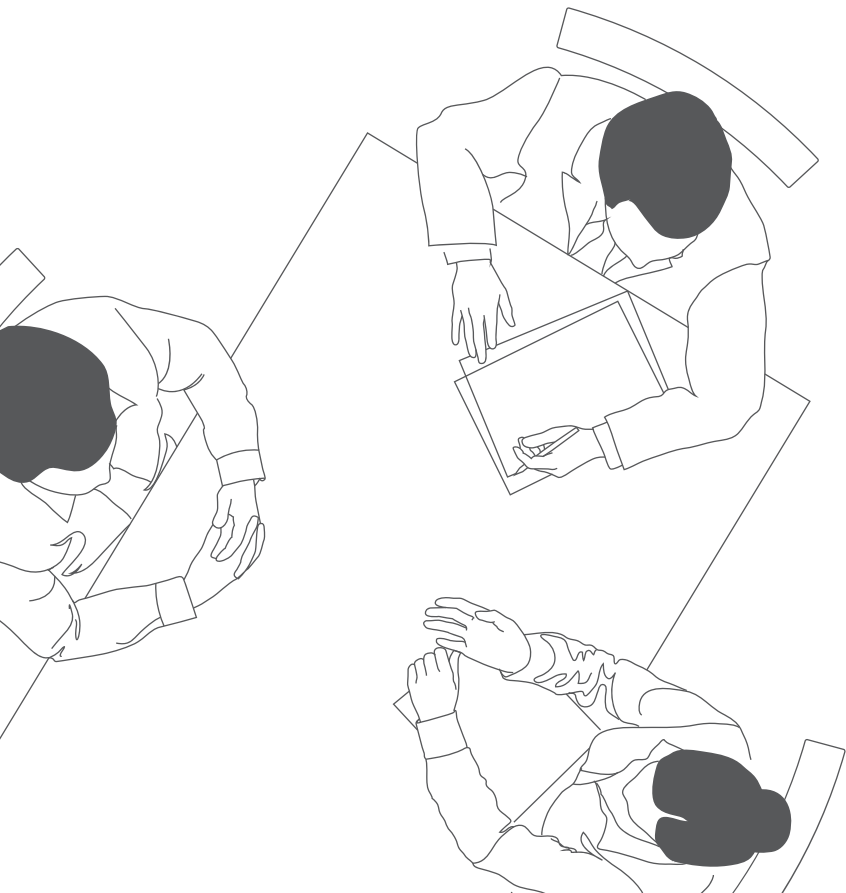
How many couples reconciled

2004	37
2005	112
2006	84
2007	84
2008	102
2009	89
2010	70
2011	82
2012	92
2013	75

So why should a person attend mediation?

Making effective use of the opportunity of mediation is beneficial to the parties because mediation is much faster than a Court case. As soon as the mediator is appointed, the parties are sent for and the process starts. If the parties manage to agree, a contract is drafted and the process is concluded. The process may sometimes only take a few weeks. Also, the fees involved are minimal when compared to what is required to proceed to a Court case. However, it is





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