



Should you mediate or use law in your family dispute?

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I am a family divorce lawyer and mediator. If you have ever gone to mediation, the first thing you will probably be told is, conversely, about the importance of family law. Many people going to mediation make the natural assumption that you can reach agreements without having to use the law at all. In fact the opposite is true. To make mediation valuable and useful it is very important that you understand your legal position too.

For example if you are trying to settle a dispute with an ex-partner regarding how to separate family finances, it is really important you know what it is generally seen as a reasonable settlement. You will already have your own knowledge, maybe friends who have gone through a similar situation. However, it is also very important to make sure that you broaden your knowledge so that you understand how a court sees it.

If you do not know what you are entitled to it is very difficult to mediate effectively. For example, many people think that not having contributed financially to the family home means they have no rights to it. The truth is very different in law, where equal sharing of matrimonial assets when needs will allow is a starting point. Financial contributions are only one factor. Others include a contribution to the welfare of the family.

Mediation can be a very effective tool, particularly in settling disputes regarding children, as long as the mediator has a really good understanding of family issues, preferably experience of children, and practical experience of family law and how the courts see disputes. It can be really effective to

have the opportunity to talk face to face regarding disputes about children in order to resolve them. However, it is also important to think about your legal position before you go into mediation, as it may be that you need to take some steps to secure your position. For example, if a child has been taken out of the UK without your agreement, your case is significantly weaker after 12 months, and so you would not want to spend much time mediating if the 12 months were coming to a close. The Court is also the forum to choose if you need protection from violence or threats and intimidation.

As a mediator myself I think mediation can be exceptionally useful in resolving disputes. However, it is always important that people understand their own legal position independently from mediation, as this will inform the way



that they mediate and the compromises they are prepared to make. It is also important because you may need protection such as to ensure property is not disappeared or money removed whilst you are mediating. Extra time can give the opportunity for a more unscrupulous party to improve their position whilst your position is weakening.

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