

MEDIATION IN CHILD ABDUCTION CASES

In the UK there is an established procedure for mediating in Hague Convention cases in applications for the summary return of wrongfully removed/retained children. It is essential that any mediation scheme has the full confidence of both parties, their respective legal advisors, Central Authorities and of course the Court.

If parties agree to enter mediation it is essential that it runs simultaneously with the Hague Convention proceedings and should never be used as an alternative to the judicial process. In applications for a return time is of the essence and attempts at obtaining a voluntary return (Article 7) should not be allowed to delay the Court process or allow the abducting parent to flee. Thus even if there is to be mediation the proceedings will be commenced.

In Hague Convention cases in the UK the proceedings are started in the Court and Orders are obtained to ensure that the child's address is known, that the travel documents and passports are secured and safe and a timetable for the proceedings will be set out by the Court.

If the parties wish to enter into mediation the proceedings can then be put on hold for a limited period of time in order to allow intensive mediation through an appropriate organisation to take place.

The mediation will be voluntary but the Court will be aware that the parents have agreed to try to mediate their differences. The Court cannot order mediation.

The fact that mediation is taking place will appear on the face of the Court Order but all of the discussions and outcomes of mediation (unless a binding agreement is achieved) will be subject to mediation privilege and non-disclosable.

The object of mediation is for the parents to explore the potential resolution in a secure environment, where they can both feel secure in the knowledge that any concessions considered by them will not be used in evidence against them in the proceedings.

It is always preferable for any mediation to take place within the context and the confines of the Court process where the fact of mediation is recorded on the face of the Court Order.

Further by using the good offices of trained and expert mediators (rather than informal discussions between themselves or their lawyers) the parents will both be fully aware of the rules under which the scheme operates.

This ensures that the parameters of the mediation are known. It also ensures that there is no risk of privileged information being disclosed in open correspondence or within the proceedings about what is said in mediation.

The mediators will also carefully record what is actually agreed in mediation so that there is no danger that there is a misunderstanding of what has or has not been agreed.

If the parties reach an agreement or partial agreement the mediators will produce a Memorandum of Understanding (MOU) which is sent to the parties lawyers. The MOU

remains subject to mediation privilege until the parties agree that it should be recorded as a Court Order (and thus an open and binding order).

Mediation in non-Hague cases would follow the same process as above.