

# **OXFORDSHIRE FAMILY MEDIATION**

**Legally Privileged**

**Without Prejudice**

**Mr A and Mrs A**

## **MEMORANDUM OF UNDERSTANDING**

**Date 23 April 2013**

We, Mrs A (W) and Mr A (M), have been in mediation with Polly Gavins and Roger Cullen, mediators, in order to resolve various issues arising from our separation and divorce. Six mediation sessions took place between 10<sup>th</sup> January 2013 and 23<sup>rd</sup> April 2013 and resulted in our mediated proposals set out below.

This memorandum is legally privileged and 'without prejudice'. It does not record or create a legally binding agreement between us. We understand that we may take this document to our legal advisors to be used as the basis for a legally binding agreement subject to the advice we receive. This is on the basis that the memorandum remains a privileged document.

An open statement of financial information accompanies this memorandum. It is made up to 31<sup>st</sup> January 2013 although there are notes in italics of recent changes. We understand that this may be produced to the court and we have had the necessity for full and complete disclosure explained to us.

### **Legal Advice**

We have both been informed of the importance of obtaining legal advice during mediation and have both consulted our solicitors during the mediation.

### **Background information**

We were married on 2<sup>nd</sup> May 2003 and lived together from February 1998. We separated in September 2012 and continue to live separately at the same address.

W is 37 years of age, (date of birth 29<sup>th</sup> November 1975), and currently is a full time mother. She is in good health and has a new partner. They do not currently live together. M is 39 years of age, (date of birth 9<sup>th</sup> February 1974), and is employed as a materials planner. He is in good health and does not have a new partner.

We have two children. G is 4 years of age (date of birth 24<sup>th</sup> May 2008), and B is 3 years of age (date of birth 7<sup>th</sup> May 2010). Both children are in good health and attend local schools or nurseries.

During mediation we have both continued to live at the family home, XXX.

We have not been involved in any court proceedings and there are no court orders in force.

## **The principles guiding negotiations**

In coming to mediation, we wished to come to an agreement that allowed us to provide a safe and secure and reasonable home for our children. At the outset of the mediation this was intended to be in an area that allowed the children to stay at the same school as they currently attend. We aim to be able to provide for our children so that they do not 'go without'. We aim for M to have a home in which the children can stay over.

We intend that the details in this document should form the basis of a consent order.

## **Summary of Proposals**

- M has commenced divorce proceedings and W does not contest the divorce.
- The children will live with their mother and have regular visiting and overnight contact time with their father.
- M will pay W £429 pcm in maintenance for the children, with £1 token spousal maintenance included, as further detailed below. Arrangements will be made to ensure that financial provision would continue in the event of M's death.
- Aside from maintenance, we intend to have a clean break settlement as far as all capital assets are concerned.
- We intend to sell the family home and split the net equity, after the following costs have been taken out:- i) all sale costs, ii) mediation, iii) court and legal consent order costs in respect of our divorce and iv) repayment of the loan used to pay off the overdraft on our joint bank account. The net equity split will be 76.5% in favour of W or £82,987 to W, whichever is higher and 23.5% in favour of M or the balance after W's share if it is £82,987.
- We will both keep the cars we are driving.
- We will both pay off the debts in our sole name.
- M will retain the sole benefit of his pension.

## **Divorce / Separation**

We separated amicably. M has commenced divorce proceedings and W does not contest the divorce. We have agreed that the court fees, mediation costs and the solicitors costs for drawing up the consent order will be shared 50:50 and will be paid for from the equity in our property following its sale. We will each be responsible for paying our own additional solicitors costs.

## **Arrangements for our children**

We acknowledge we will both continue to have parental responsibility for G and B. We intend to ensure that

- the children are settled and secure
- we have good communication between us that puts the children first
- we work together as parents
- we continue to respect and support each other's role as parent and put the children first
- we will not bad mouth each other in front of the children.

The children will live with W and will see M on alternate weekends and at other times by agreement. We discussed Christmas and special days in mediation but we feel that we are able to agree this between ourselves.

Our initial intention was that the children should stay in the XX area but having considered the housing options available to W and the ages of the children, we have accepted the proposal that W moves with the children to YY. We have taken into consideration the driving distances between our two homes and believe that this can work.

### **Child support (maintenance)**

We are aware of the potential involvement of the Child Support Agency in dealing with child support issues and of the circumstances in which they may become involved. We have been informed we should consider taking advice on this matter and have consulted the CSA / Child Maintenance Options website.

We have made an arrangement that the sum of £429 per calendar month will be paid by M to W. This will be in the form of a bank transfer on the 15th of each month and will last until B is 18 years old at which point we will review it.

The amount of child support will be reviewed annually on the anniversary of the making of the consent order. We expect that the payment will rise by the rate of inflation. In addition, either of us may initiate a review of these payments in the event of any substantial change in circumstances.

M is aware that W's eligibility for a mortgage will depend on her showing six months of regular maintenance payments.

### **Maintenance for W.**

We considered a spousal maintenance payment during mediation, especially in the light of any substantial changes to W's circumstances over the next years until the children are adults, and we have agreed that M will pay W £1 per calendar month in spousal maintenance until B is 18 years old. This will be in the form of a bank transfer on the 15th of each month. Our intention is that the £1 token spousal maintenance is to allow for the arrangement to be changed in the event of a life-changing circumstance that might necessitate it.

### **Insurance for child support/spousal maintenance**

W has been informed that to obtain a mortgage she will need to demonstrate her receipt of £430 per month from M in maintenance. M intends to take the necessary steps to ensure that this payment would continue in the event of his death. This may be secured through an expression of wish letter in respect of his pension or through life insurance.

W also intends to take out life insurance to cover her contribution to the children's expenses in the event of her death.

## **The family home and future living arrangements**

The family home is a 3 bedroom house at XXX. It was purchased jointly for £222,000 in 2009. There is an outstanding mortgage of £167,495, and we estimate the current value of the house to be £285,000. This gives an estimated net equity of £117,505 excluding sale costs.

We have agreed that the family home will be sold. Once sold, we will use the equity, after discharging the mortgage to pay our joint mediation costs (£1560), the court fees relating the divorce (£670), the solicitor's fees for the consent order (£600), the property sale costs (£5195) and a repayment of the £1000 borrowed to pay off our joint overdraft. We have budgeted a total of £9025 for these costs, leaving an estimated balance for division of £108,480.

We have agreed that W should receive 76.5% of the actual balance for division, or £82,987, whichever is highest and that M should receive 23.5% of the sum, or the balance after the payment to W of £82,987.

The amount required for W to re-home the children is £82,987. Thus, whilst we agree in principle to a 76.5:23.5 split, we are agreed to take the highest of a 76.5% share or £82,987 to be paid to W and the balance to M.

This proposal recognises the need for W to be able to move to a house that provides a safe and secure and reasonable home for our children, whilst allowing for M to have a home in which the children can stay over. It also recognises the difference in our earning capacities and the need to discharge our respective liabilities in order to start again.

W has investigated the cost of suitable properties in the YY area, which is where she intends to live with the children; and she has also investigated obtaining a mortgage. She has been told that on the basis of gross monthly earnings of £700 together with the £430 per month maintenance payment from M, that she could obtain a mortgage of £79,900. Her monthly repayments would be £364.10pcm. In order to obtain this mortgage, W needs to,

- show that she has paid off all of her debts.
- show evidence that she is employed and will earn the required amount
- provide six months worth of bank statements evidencing regular payments from M
- contribute £70,000 as a deposit.

The mortgage, together with the deposit of £70,000 allows W to buy a three bedroom property in the YY area for £150,000. She intends to rent in the area for the first six months, and then purchase a property, possibly on a shared ownership basis, after obtaining a mortgage. W has researched her options extensively. The actual figures she will need to pay will depend on local authority availability of shared ownership housing once she is living in the area. However, on the basis of her research, W feels confident that she will be able to obtain a suitable property within her budget. The equity split was agreed on the basis of these figures as it provides W with enough capital to cover her first six months of rent (approx £583pm), the costs of moving and the required deposit. W feels confident that she can obtain a job in the area to meet the mortgage income requirements.

M intends to live in reasonable proximity to his work and has investigated the possibility of obtaining a mortgage; M intends to purchase a property suitable for children to stay over, although he may rent initially. M's research indicates that he can obtain a mortgage for £125,000, which, with a deposit of £25,000 will allow him to buy a property for £150,000 with a monthly repayment of £700.

### **Other Assets**

We intend to keep the cars we are driving. This means W will keep the Honda Civic and M will keep the Ford Focus. The Honda Civic registration documents have been transferred to W's name. We intend to keep the bank accounts currently held in our own name.

### **Pensions**

M has a B\*\* pension with a total Cash Equivalent Transfer Value of £32,687. He has paid into it for 9 years and continues to pay into it. It is not a final salary scheme pension.

W has no pension.

We have agreed that M will retain the sole benefit of his pension.

We have made this decision taking into account the property equity split, the administrative cost of splitting the pension, the desire for a clean break with regard to capital and W's need for capital to purchase a new property.

### **Liabilities and bank overdrafts**

There are a number of outstanding liabilities.

We have already paid off an overdraft on our joint account by way of a family loan. As described above, this loan will be repaid on the sale of the family home. In addition we both have debts either in the form of an overdraft or credit card debts. M's are currently to the value of approx £300 and W's to the value of approx £1770. We intend to discharge our own debts from our share of the net equity.

### **Household Contents**

This issue will be dealt with between us by agreement.

### **Future inheritance prospects**

Neither of us has any expected inheritance in the imminent future nor do we intend there to be any future claims between us.

## **Tax implications**

We understand that it is our responsibility to take advice on any potential tax implications arising from these proposals.

## **Wills**

We are aware of the need to make new wills following our divorce and intend to take legal advice on this.

## **Summary of estimated future income and expenditure**

We estimated that W will have a total future net monthly income of £1692 once she has obtained a job. This is made up of income from part time employment £700, child and spousal maintenance £430, child benefit £146 and working tax credits of £416

W's estimated future outgoings total £1692

M will have a net income of £1570 per month after he has paid child support of £429 and spousal maintenance for W of £1.

M's estimated future outgoings total £1570.

## **Timetable and means of implementation of our agreement**

W will instruct her solicitor to prepare a consent order in the terms of this memorandum. We will share equally any costs relating to this piece of work as described above.

We would like this Memorandum to be attached to Form D81 provided to the judge when we apply for our consent order, in order to give details of our reasoning in reaching these decisions.

## **Return to mediation**

We understand that we may return to mediation at any time if we both wish to do so.

## Summary of the distribution of assets and liabilities

Notes:

- 1) We have agreed to deduct some costs from the net equity before division.

Interest in family home as per Financial Statement	£117,505
Less joint mediation costs, estimated at	£1560
Court fees relating to divorce, estimated at	£670
Solicitor's fees for consent order, estimated at	£600
Property sale costs, estimated at	£5195
Repayment of £1000 family loan	<u>£1000</u>
	£9025
Equity in family home after costs	£108480

	M £	W £
Equity in family home after costs	25493	82987
Bank Accounts	(307)	56
Shares	0	0
Cars	2000	900
<b>Sub Total</b>	<b>27186</b>	<b>83943</b>
Less Liabilities	0	(1770)
<b>Total</b>	<b>27186</b>	<b>82173</b>
<b>Pensions</b>	<b>32687</b>	<b>0</b>

These proposals reflect a distribution to W of 75% and to M of 25% of the current net disposable assets.

Distribution of pensions is 100% in favour of M.

Taken together (current disposable assets and pension), these proposals reflect a distribution to W of 58% and to M of 42%.

This Memorandum of Understanding records the agreement negotiated in mediation with Polly Gavins and Roger Cullen at Oxfordshire Family Mediation.