

Family Mediation in Britain

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founded December 1988

Family Mediation in Britain

Family members who come to mediation are struggling with major transitions in their lives. They need help to manage conflict and work out agreed arrangements for the future.

Family Mediation in Britain

Family mediation is likewise going through a series of struggles and transitions in becoming an established professional discipline.

What have we learnt in Britain?

What could we do better?

Family Mediation in Britain

In 1993, three national associations:

1. National Family Mediation (children issues)
2. Family Mediation Scotland (children issues)
3. The Family Mediators Association (all issues)

formed the UK College of Family Mediators
to set standards and present a united front
to promote mediation and liaise with government.

Family mediation in England and Wales

After nearly 20 years of campaigning for recognition and public funding for family mediation, the Family Law Act 1996 provided funding via legal aid.

National requirements introduced for services contracted with the Legal Aid Board and for mediators providing publicly funded assessment meetings and mediation.

MEDIATION IN ENGLAND AND WALES from 1997

Information and assessment meeting
required with a recognised family mediator,
before legal aid granted for court proceedings.

Assessment of suitability of mediation,
Screening for dom. abuse, child protection,
Eligibility for legally aided mediation,
Willingness to engage in mediation.

Core Principles

Voluntary

Confidential (with exceptions)

Mediator impartiality

Non-binding outcome.

Family mediation in England and Wales

Increased use of family mediation
from 1997 onwards

13,841 'mediation starts' 2002/2003

in which one or both parties publicly funded

12% increase over previous year

Family mediation in Scotland

Family Mediation Scotland (FMS) became co-ordinating body for 11 affiliated services

1999 - 2000 over 2,000 mediations
82% of children under 11 years old

CALM – Comprehensive Accredited Lawyer Mediators founded 1993 – all issues

Legal aid on a case by case basis

Family mediation in Scotland

FMS > Relationships Scotland and CALM

Confidentiality

of mediation formally approved

by the Lord President of the Court of Session

Family mediation in Scotland

Scottish Civil Courts Review 2009

recommended a free mediation service

for lower value civil claims,

but did not propose measures

to encourage more use of family mediation

Family mediation in Scotland

The Scottish Mediation Network

was established in 2009 to raise the profile of mediation and to act as a professional body for mediators in Scotland. The Network promotes mediation in many spheres involving family issues, including homelessness, social isolation and the criminal justice system, also in training peer mediators in schools and colleges.

Family mediation in Britain

Mediation has been described as a

'happy concatenation of economy and humanity'!

Does it save money and does it help participants?

“Reaching agreements through mediation can have a significant impact on the quality of post-divorce life people feel less bitterness and resentment...and communicate more regularly about their children.”

**McCarthy P and Walker J. *The longer-term impact of family mediation – a three-year follow-up study*
University of Newcastle, Joseph Rowntree 1994**

At 12 year follow-up, 30% of non-resident parents who took part in mediation were seeing their children once a week or more often, compared with 8% of parents who litigated.

54% of non-resident parents said they talked to their children weekly or more often, compared with 14% who litigated.

Emery R. et al. *Child Custody Mediation and Litigation: Custody, Contact and Co-parenting twelve years after Initial Dispute Resolution* Journal of Consulting and Clinical Psychology 2001, 69

Need to reform the whole Family Justice System

“Existing legal interventions have limited capacity to facilitate contact or reverse a downward spiral in contact relationships” (Trinder et al. 2002)

“Court proceedings may be effective in restoring contact .. but do not appear to improve parental relationships and therefore the capacity to manage post-separation parenting” (Hunt, 2009)

**Report to British Parliament by
National Audit Office, March 2007**

“Mediation is quicker, less costly and less acrimonious than court proceedings.

Research shows it secures better outcomes, particularly where children are concerned.”

Reforming the Family Justice System

Family Justice Review Terms of Reference 2010

Aim: - 'to produce a system which allows families to reach easy, simple and efficient agreements in the best interests of the children'.

Family mediation in England and Wales

Family Justice Review Terms of Reference 2010

'Long and complicated legal processes
are emotionally and financially draining
for parents and distressing for children'

Family Justice Review

Interim Report March 2011

A unified Family Court with specialist judges

Local Family Justice Boards

A time-table for child care cases

Access to mediation and out of court
dispute resolution

Family Justice Review

Final Report (Norgrove Report) November 2011

Endorsed the recommendations

'A system with children's needs
at its heart'

Increased use and availability of
family mediation

Family mediation in England and Wales

April 2012 Legal Aid, Sentencing and
Punishment of Offenders Act (LASPO)

Legal aid withdrawn for nearly all family
proceedings

Legal aid still available for family mediation
(but no one knew!)

Family mediation in England and Wales

Disaster for family mediation !

50% – 80% drop in referrals, 2012- 2013

Some of the largest services closed

Family mediation in England and Wales

Children and Families Act 2014
created unified Family Court

Attendance at a mediation information and assessment meeting (MIAM) required for court application (with some exemptions)

MIAM should be 'AIM' – Assessment and Information Meeting – to explain out of court mediation and collaborative law

Family mediation in England and Wales

Referrals to assessment meetings increasing

but attendance by Respondent not required – only expected

Court can direct attendance, but aim is to encourage mediation and avoid litigation.

Guide to Family Mediation for Judges, Magistrates and Legal Advisors (2014)

Family mediation in England and Wales

Mapping Paths to Family Justice, June 2014

Research on use and experience of : -

Solicitor negotiation

Collaborative law

Mediation

Family mediation in England and Wales

Mapping Paths to Family Justice, June 2014

Solicitor negotiation

About two thirds satisfied and welcomed the support, but common criticisms of delay and high costs.

Many clients found solicitor correspondence tended to increase stress and hostility.

Family mediation in England and Wales

Mapping Paths to Family Justice, June 2014

Collaborative Law

High degree of satisfaction from small and more affluent client group - only 8 cases in sample.

But high costs and complex power dynamics.

Focus on settling property and financial issues.

Family mediation in England and Wales

Mapping Paths to Family Justice June 2014

Almost 75% of family mediation users liked the process and commented favourably.

Just over 50% were satisfied with the outcome, many felt frustrated that it was not enforceable.

But some areas of practice need improvement.

Family mediation in England and Wales

Some users said domestic abuse screening had been inadequate. Some had felt pressured into or during mediation.

Emotional readiness for mediation and power imbalances need to be considered.

Perceptions of gender bias.

Researchers recommended more use of gender-balanced co-mediation (FMA model)

Family mediation in England and Wales

A separate research study of assessment meetings identified three types of mediator:

1. Idealists

2. Purists

3. Realists

(Bloch and Tooms, MoJ, 2014)

MEDIATION IN ENGLAND AND WALES

Family Mediation Council (FMC), representing six national bodies, is currently raising standards and requirements for training, practice and accreditation of family mediators, in line with the recommendations of the Family Justice Review.

Family mediation in England and Wales

Family Mediation Council commissioned an

independent report from Professor

John McEldowney on national

regulation and professional standards for

mediator training and accreditation.

Family mediation in England and Wales

'the skill sets required for family mediation are demanding and require regular updating. The changing nature of mediation is also a pressing challenge. The voice of the child is important and likely to demand greater recognition in the future.'

(McEldowney Report to FMC, August 2012)

Family mediation in England and Wales

Family Mediation Task Force Report, July 2014

<http://www.justice.gov.uk/downloads/family-mediation-task-force-report.pdf>

Recommendations to increase awareness and take-up of mediation and dispute resolution,
improve financial support,
raise standards of competence
and listen more to the voice of the child.

Family mediation in England and Wales

Researchers found that although mediators sought to put **children's needs at the centre**, this focus could be lost in mediating on all issues.

Researchers recommended more use of child consultation/child-inclusive mediation with compulsory additional training recognised by FMC.

"We needed help from outside, but there just didn't seem to be the right person to turn to. No one seemed to be there to help us, especially us, the children. Mum and Dad had the lawyers but we had no one."

Child quoted by Lyon et al., *Consultation with Children and Young People*, University of Liverpool, 1998)

Child-inclusive mediation : -

"offered children a safe, specialist avenue for their views and needs to be considered and indeed to impact significantly upon the way in which their parents were able to resolve their parenting disputes."

McIntosh et al., *Child-Focused and Child-Inclusive Divorce Mediation*, Family Court Review, 2008, 46 (1)

PROMOTING FAMILY MEDIATION

INFORMATION HUB AND WEBSITES

VIDEO AND POSTER CAMPAIGN

LEAFLETS IN PUBLIC PLACES

MEDIA COVERAGE

DEVELOPING FAMILY MEDIATION

New models : -

Child welfare mediation

Extended family

Care of the elderly

Hybrid family/civil mediation

DEVELOPING FAMILY MEDIATION

“The critical issue of peace and the need to convert conflict to co-operation the most effective way to produce social learning is through a participative design process”

Rapaport A, 1989, p. 442

DEVELOPING FAMILY MEDIATION

“I think there should be some kind of agreement between the children and the parents as to what should happen. I think the people who are involved should get to decide by helping each other to reach agreement as to what would be best”

Jake, aged 11 (Neale and Wade 2000)

DEVELOPING FAMILY MEDIATION

***“ And the end of all our exploring
Will be to arrive where we started
And know the place for the first time”.***

T.S. Eliot Little Gidding

The first Guide to Cross-Border Family Mediation



Resolving Family Conflicts **A Guide to International** **Family Mediation**



To help you
To protect
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- Addressing families from all around the world, regardless of their origin, culture and composition;**
- Sensitising parents on the interests and the well-being of children involved in cross-border family conflicts;**
- Highlighting the benefits and limits of mediation;**
- Highlighting the importance of the law in cross-border family conflicts and cases of child abduction;**
- With practical advice and lists of ressources to contact.**

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The text runs over the right pages, while the left pages illustrate the content with testimonials by mediation participants and concise messages.

International Family Mediation

"Mediation brought us back to our respective roles as parents, and cleared the rivalries away."

A father

"For the first session we walked on different pavements; at the last meeting we went together and drank coffee."

A mother

Mediation does not take the place of the judiciary system. Mediation completes legal proceedings and allows durable solutions to be found that work for all members of the family.

International family mediation can help you when you are living through a conflict that leads to a move abroad by one member of the family.

International family mediation puts the needs and interests of the children at the centre of discussions.

What is international family mediation?

Family mediation is a structured process in which an unbiased mediator enables members of a family in crisis, generally the parents, to speak in a constructive way about their conflict and how they will continue to parent their children. The goal is to resolve the conflict through communication and exchange in order to find solutions that work for all family members that are affected.

International family mediation seeks to resolve a family conflict involving at least two countries. For example, this could occur when parents separate because of conflict and one of them relocates.

International family mediation places the needs of the children at the centre of the process. The aim is to seek solutions that can ensure the children's well-being in accordance with their rights as given in the United Nations Convention on the Rights of the Child. *★Note 1*

Some important aspects to keep in mind

Engagement in the mediation process is voluntary. The mediator has separate discussions with each parent to assess if mediation is appropriate in their situation and whether both are willing to engage in the process.

During mediation, the participants in the conflict themselves look for, explore and formulate possibilities of reaching agreement. They control the results of the mediation because they are the sole decision-makers.

They can suspend or terminate the mediation process at any time if they are not satisfied with the way it is proceeding.

Each participant can be supported by an independent legal adviser to look through the proposals before the decisions are finalised in an agreement that is usually called a mediated agreement. *★Note 2*


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How can you prepare for mediation?

- Do you have in mind any kind of arrangement concerning the exercise of parenting in a situation where you are separating from your partner?
- Do you think this arrangement has a chance of meeting the expectations of the other parent?
- Is the arrangement you have in mind practicable for the children and in their interests? (For example, can they travel alone to the other parent, or will the other parent collect them, or will you drop the children off at the residence of the other parent?)
- Do you think your financial situation and the situation of the other parent are stable enough to maintain the arrangement that you have in mind for the middle and long term?
- What possibilities are there for the children to maintain contact with the other parent between visits (for example, by telephone or the Internet) and will that be done regularly?
- Do you think the arrangement you have in mind has the best chance of being respected by the other parent (for example, in relation to his working schedules or the time difference between the two countries)?
- Do you think that the parent who lives in the other country has enough information on how his children are living to be able to participate actively in their education?

International Social Service

For more information or to order the Guide:

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