

Innovation in training Family Mediators in England and Wales

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Abstract

The purpose and goal of this paper is to consider how it is possible to improve the current mediation training in England and Wales. A significant recommendation made in this paper concerns the duration and method of delivery of the family mediation training. The current training only lasts two weeks and does not give sufficient time for family mediators to perhaps fully absorb the key skills and understandings surrounding their work. Therefore, the suggestion made in this paper is that the training should last one year and should be awarded upon successful completion of all classroom and online course requirements (blended learning approach to teaching). This paper also considers whether the program electives should allow trainees to concentrate on specific modules and expand their learning in a wide range of areas related to working with families in conflict. It is recommended that each module should assess trainees either through a Multiple Choice Test (MCT), a viva, a role play, a coursework or a written assessment.

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Introduction

Mediation is a form of intervention in which a third party – the mediator – assists the parties to a dispute to negotiate over the issues which divide them. The mediator has no stake in the dispute, and is not identified with any of the competing interests involved.

In every mediation, the interests and needs of the parties will be the focus of the mediator and the participants. Mediators and in particular family mediators need to be robustly trained in order to correctly design, configure and supervise the building up of a new type of relationship between the participants. This new relationship will be based on communication, children's interests, solutions and understanding of each other's viewpoints and emotions.

In England and Wales, the content of family mediation training must be authorised by the Family Mediation Council (FMC). To become a family mediator, one has to attend family mediation training provided by a trainer approved by the FMC (Family Mediation Council, 2020). Mediators who complete their training must then satisfy the FMC's annual requirements, which include a specified level of supervision/consultancy and continuing training, leading to evidence-based assessment of competence to gain national accreditation with the FMC (Association for Family Therapy, 2016).

This paper is based on research that solicited the views of mediators who currently practise in the family sector. Therefore, this paper is based on empirical research with data analysed from questionnaires and interviews. The majority of the family mediators surveyed were members of the College of Mediators or the FMC in the United Kingdom. All those surveyed practise as family mediators in London, Birmingham, Newcastle, Manchester or Leeds.

Once the questionnaires were collected, interviews were organised with fifteen family mediators who gave their opinion on the current family mediation training. Their identities are kept confidential so numbers have been assigned to each mediator.

The collected data was analysed using thematic analysis. Thematic analysis is a method for identifying, analysing and reporting patterns (themes) within data. Thematic analysis was used in this research, with the aid of the NVivo 11 software, to analyse quantitative and qualitative information and to systematically gain knowledge and understanding of the current family mediation practice in England and Wales.

Thematic analysis helped this research move from a broad reading of the data towards framing a specific research question. In other words, thematic analysis was used as a way to gain an accurate and deep understanding from the data gathered. This method helped develop a deeper appreciation of the experiences of family mediation from the perspectives of family mediators and family solicitors in order to assess the current effectiveness of family mediation in practice.

The purpose of this paper is to demonstrate that there is scope to improve family mediation training to become more robust and vigorous. This paper considers the status of the current training of family mediators in England and Wales along with the content and assessment strategy. Proposals and recommendations are put forward in this paper on how this training can be enhanced.

Methodology

Upon confirmation of interest, participants were given questionnaires and some were subsequently interviewed through recorded conference calls. The majority of the participants who were interviewed had several years of experience as family mediators, they also varied in age, background and experience.

As a result, numbers have been assigned to each mediator instead. This research solicited the views of 40 mediators who currently practise in the family sector (of whom 35 were practising family solicitors in the past).

The sample size mentioned above was sufficient to give a spread of responses and experiences in order to identify themes and extrapolate common factors. Family mediators were asked to complete a seven-page questionnaire concerning their own professional experiences, education and training. The majority of the family mediators who completed the questionnaire were members of the College of Mediators or the Family Mediation Council. All those surveyed (mediators and solicitors) were practising across the UK in London, Birmingham, Newcastle, Manchester or Leeds.

Once the questionnaires were collected, interviews were organised with 15 family mediators and family solicitors. During the interviews, which were undertaken as part of this research, open-ended questions were asked in order to extract as much data as possible on professional problems in the development of family mediation, particularly on matters relating to education and training.

All interviews were recorded, transcribed in full and filed. Transcribing the interviews in full allowed categorisation and cross-indexing of the practitioners' comments without loss of reservations, specifications, qualifications and changes of mind. It also permitted crosschecking practitioner comments on several subjects at once to verify meanings and nuances.

Current Family Mediation Training: Requirements, Goals, Portfolio and Criticisms

Before launching a family mediation training, a training provider has to submit their syllabus and delivery of their course to the FMC for them to approve it. The current family mediation training is tailored to introduce trainees to the theory and practice of family mediation. The syllabus includes the history and theory of family mediation, conflict management methods, family dynamics and the role of mediation in the context of ADR. The training also examines the relevance of the impact of separation and divorce on children and family finance issues such as property and pensions.

At the end of the training course, trainees are going to be acquainted with these concepts and should be able to determine how to apply them in a practical context by using different approaches, methods, abilities and the practical process of family mediation. Courses are run by a team of experienced and qualified family mediation trainers using a range of teaching techniques and learning aids, ranging from distance learning, lectures, videos, workshops, pair and group exercises, role-plays and case discussion, to individual and group presentations. These family mediation trainers are skilled mediators and training experts. Trainees develop their skills, competencies and knowledge of the theory

and mediation process by way of role-play and exercises that involves active participation from the trainees.

The family mediation training runs during a period of two weeks. During this time, trainees will have to study theoretical aspects of mediation, practical skills and they will have the possibility to observe or co-mediate prior to finishing the training.

Generally, a ten-hour co-mediation is required from newly qualified family mediators in order for them to start practising as family mediators. Trainers actively observe the trainees throughout the course and during their assessment. During the assessment period, the main factors that trainers will evaluate are the acquisition of skills and techniques taught during the training.

Also, there are two written assessments (oral and written). In order to encourage the learning of all trainees, some training providers make use of the exercise of video recordings. The written and oral assessments play an important part in the course in that they enable the trainers to monitor how well the information (theory and practice) given to the trainees was absorbed.

At the end of their course, trainees receive a certificate affirming that they successfully completed the course. Right away, they will be able to start practising as family mediators but with other co-mediators. Thereafter they will be able to consider full accreditation by completing the portfolio requirement with the help of a supervisor.

This portfolio must incorporate a minimum of three completed case commentaries, which include the mediator's observations, under the supervision of a Professional Practice Consultancy supervisor (PPC supervisor). The portfolio is a difficult and long piece of work of over 80 pages that includes a personal development and practice scheme, a CV, training certificates and witness testimony from the supervisor.

Furthermore, the portfolio 'includes a readiness to practise assessment covering four elements: to prepare and set up mediation; to stage the process; to manage the process and to evaluate and develop their own work' (Maclean, 2016). This is signed by both the supervisor and the trainee.

The PPC supervisor has a role in helping trainees to complete and submit their portfolio. In addition 'there are three case commentaries about five pages in length, each with outcome statements, a memorandum of understanding for each case, two open financial statements and a full set of case notes for one case, a reflective account of up to 2,000 words, responses to case study questions, and a completed FMC competences grid showing where assessors may find evidence' (Maclean, 2016).

There appeared to be a consensus amongst the mediators, who were questioned about their portfolio experience, that the portfolio was not the best way to assess trainees on their family mediation experience and practice. For example, mediator 1 explained that the portfolio is a large task and that new family mediators who are completing the portfolio become obsessed with the competences grid. She further explained that the FMC is not strict enough with the requirement of completing portfolios since mediators can start practising without having submitted their portfolio.

Mediator 14 agreed and argued that the portfolio requirement is "ridiculous" and a "nightmare"; it is too onerous and in its current form, it is perceived as a bar to accreditation. This explains why so many family mediators are not

accredited. Mediator 3 stated that the questions to answer in the portfolio were artificial because it was difficult to exactly recall what happened in mediation cases.

A further consensus amongst mediators was that the portfolio for family mediation does not need to be reflective, instead it should be about: which issues the mediator faced; the steps the mediator took to resolve matters and what failed (failed mediation does not mean bad mediation)? Moreover, mediator 13 explained that unfortunately due to shortage of FMC staff, mediators have to wait on average five months for their portfolio to be reviewed by the FMC. Mediator 15 explained that even though she submitted her portfolio three years ago and was accredited, she was surprised to learn that she needed to go through re-accreditation again every three years.

From the above empirical data, it appears to be that the portfolio process is complex and challenging for family mediators working towards accreditation. This is in part due to the fact that the portfolio instructions are vague and unclear. Also it is plausible to think that being limited to only use completed cases with outcome statements is perhaps not the best method to evaluate a competent mediator since many mediators have various cases which have not been entirely resolved but which can still show their capability to practise efficiently in family mediation.

In addition to being asked questions regarding their portfolio experience, all 15 mediators were also asked questions regarding their family mediation training and their experience of finding a supervisor to assist them after the end of their training. It was interesting to note that the majority of the mediators agreed that neutrality of mediators must be more emphasised in training and that family law knowledge is essential.

All interviewed mediators explained that alongside a course on family law, knowledge on finances, children, property law, trusts of land and Appointment of Trustees Act and Schedule 1 claims are required (especially for family mediators who do not have a family law background). They argued that during the training, mediators must be trained in soft skills (e.g. how to move from a discord to an agreement, types of questions to ask, listening skills, solving problems skills and how to move forward).

Mediators 10, 12 and 13 in particular argued that training must include more consideration of how mediation works by watching others; "add on modules" that cover an initiation to psychology are beneficial at the end of the two weeks of training and that it should also include an introduction to human nature.

Furthermore, on this point of training, mediators 14 and 15 explained how some of the role-play exercises did not fully prepare them for practice as these types of exercises simply invited them to impress trainers so that they can pass their assignments.

On this point of role-play exercises, Stokoe (2013) takes the view that the usual role-play is an artificial approach that diverges from real life. Stokoe (2013) introduced a method named 'Conversation Analytic Role-Play Method' (CARM) that works 'by transcribing and anonymising extracts from recordings that demonstrate different ways that mediators and their support staff formulate and organise particular actions (e.g. offering mediation)'. Stokoe's research, based on documentation and studying nearly two hundred intake calls to mediation in

the United Kingdom, pinpointed 'barriers to mediation that discourage disputants from engaging in mediation.

Training in CARM assisted community mediators to manage intake calls differently, describing mediation more effectively and expressing empathy towards callers'. This method may be already known to family mediators and it is valuable because it reminds the mediators to think with their heads and hearts. It can be argued that to learn in a more direct way, exchanges between family mediation trainers and trainees are essential following role-plays. In other words, 'this learning continues in constructive debriefing following role-play, in which co-mediators and 'clients' share observations and reflections in helpful ways that build confidence' Stokoe (2013).

Moreover, mediator 1 explained that the existing training (including submission of the portfolio) should be tightened to 2 years maximum in order to encourage mediators to complete their training and submit their portfolio within a shorter timeframe.

Mediator 2 mentioned that since skills are developed through practice and not necessarily through training, two weeks training is too short to prepare mediators to deal with parties who are going through a difficult period in their life. The two weeks training should perhaps be turned into a longer course.

However, mediator 9 disagreed and explained that although the training taught important skills (body language, different ways of describing things, some aspects of psychology, self-reading, some aspects of dynamics of marital background etc...), two weeks training is too long and if made longer, the training will become more expensive.

Mediator 15 had a different view to mediators 2 and 9 and explained that the length of the training is not a problem in itself. According to her, the main problem for trainees is that the training providers take no responsibility for incorporating a practice/apprenticeship component as part of the training programme. Trainees leave their courses without any framework or opportunity for obtaining practice observation and co-working experience necessary to complete their accreditation portfolio.

From the above empirical research, it appears to be that finding a cooperative PPC supervisor who is fully aware of the portfolio process is an essential element to achieving the family mediation accreditation.

It also seems to be that many family mediators currently feel let down by the training providers because of the non-challenging nature of the training and the insufficient support in finding a supervisor, undertaking co-mediation, observing mediations and completing the portfolio. The accreditation seems to be onerous and difficult to achieve especially when supervisors are not geographically either close to the trainees or when they already have a large number of trainees to supervise.

Proposals: Reform of the Current Family Mediation Training

Based on the empirical data above, it is plausible to make the following suggestions in order to improve the current mediation training.

First, due to its unpopularity and negative consequences on the trainees' learning experience, this paper argues that the portfolio should be removed from

the assessment requirement. Other ways of assessing trainee family mediators will be offered instead (these will be discussed below).

However if the current portfolio element is kept, then it could be argued that it would benefit trainees to have a series of portfolio workshops that trainee mediators could access as part of the accreditation process. It is a means of providing clear and knowledgeable guidance regarding portfolio construction, requirements and compilation of the required elements.

As part of this, an essential criterion would be progressive supervision rather than just case management or discussion. Along with the portfolio supervision, there is a need to develop the trainees' learning abilities, their observation in practice and to refine the training by providing current discussion regarding reading, role play situations, guidance and assistance. This would offer transparency and coherence in the portfolio work and enable trainee mediators to practise in a self-assured manner.

The second recommendation concerns the duration and method of delivery of training. This training should last one year and should be awarded upon successful completion of all classroom and online course requirements (blended learning approach to teaching).

A related point concerns the family mediation certificates that should administer an exceptional opportunity to sharpen conflict resolution capabilities while strengthening the trainees' understanding of family dynamics and relevant laws. Trainees will learn the basis of cooperative conflict resolution with a focal point on self-scrutiny in conflict. Their competencies in this area will then be applied in a setting that implicates assisting families and family members through a conflict resolution process.

Furthermore, the program electives should allow trainees to concentrate on specific modules and expand their learning in a wide range of areas related to working with families in conflict. Their learning should be assessed by way of a written and practical assessment of their knowledge, skills and capabilities.

Also a suggestion would be that trainees should select five modules from the following list: mediation skills, managing anger, effect of domestic violence on separated spouses, negotiation skills, impact of divorce on children and spouses, possible multicultural issues arising during a family mediation, identifying power imbalances, pre-mediation and caucusing (these are meetings that mediators hold separately with each side of the dispute), issues relating to use of drugs that might arise during family mediation, foundations of dispute resolution, foundations of family law that are relevant to family mediation (a compulsory module for trainees who do not have a family law background) and introduction to psychology.

Each module above should assess trainees either through an MCT, a viva, a role play, a coursework or a written assessment. This one year course can be divided in two parts. Part A is theoretical (selection of modules mentioned above) and part B is practice experience in a mediation service.

Each part of this course will last 6 months. During part B, trainees should observe and co-mediate with qualified and experienced family mediators. At the end of part B, trainees will need to undertake a viva to discuss their observations and experiences. Once trainees have completed this course (part A and part B), they will automatically be accredited.

Under this proposal, all family mediators who are currently practising but do not have an accreditation can either undertake the one year course, proposed above, in its entirety and receive automatic accreditation at the end of it or based on their experience, they can undertake only half of the course by completing the theoretical part of the course before receiving accreditation. In other words, current non-accredited family mediators who have years of experience in mediation, can be exempt from completing the practice side of the training (part B of the course) and only focus on the theoretical side (part A of the course).

Conclusion

Family mediators need to be rigorously trained to facilitate a more constructive relationship between the parties. A significant recommendation made in this paper concerns the duration and method of delivery of the family mediation training. Family mediation certificates should give trainees the possibility to discover and master conflict resolution skills and to learn about family dynamics and relevant parts of family law.

Each suggested module, mentioned above, should assess trainees either through an MCT, a viva, a role play, a coursework or a written assessment. The suggestion is to replace the two weeks' training with a one year course that can be divided in two parts.

Part A is theoretical (selection of modules mentioned above) and part B is practice experience in a mediation service. Each part of this course will last 6 months. During part B, trainees should observe and co-mediate with qualified and experienced family mediators.

At the end of part B, trainees will need to undertake a viva to discuss their observations and experiences. These suggestions should help address some of the inadequacies of the current training regime discovered as part of this empirical research, such as the portfolio, finding a PPC supervisor, the accreditation process, the length of the training process, the role-play exercises and the lack of diversity in the content of the training.

Future and broader research can be undertaken in this area to analyse the views of participants who used family mediation and consider whether there are yet further ways of improving the current family mediation training scheme in England and Wales. By doing this, perhaps more options could be given to help strengthen the family mediation training.

References

1. Association for Family Therapy. (2016), "Family Mediators Association – family mediation foundation training (8-day course)", available at: <http://www.aft.org.uk/details/event/1535b645945/Family-Mediators-Association--Family-Mediation-Foundation-Training-8-day-course.html?tzcheck=1> (29 August 2019)
2. Family Mediation Council. (2020). "Homepage", available at: <https://www.familymediationcouncil.org.uk/> (29 August 2019)
3. Maclean, M. (2016), *Lawyers and Mediators: The Brave New world of Services for Separating Families*, Hart Publishing, Oxford.
4. Stokoe, E. (2013), "Overcoming barriers to mediation in intake calls to services: research-based strategies for mediators", *Negotiation Journal*, Vol. 29, No. 3, pp. 289-314.

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