



FMC Newsletter

July 2017

Recent FMC Developments

Child Inclusive Mediation

The FMC was pleased to endorse the principles contained in the [papers it received](#) from its Child Inclusive Mediation (CIM) working group, at its Board meeting in June. The group has made recommendations for competencies and training in CIM, to lobby the Legal Aid Agency to properly fund CIM, and to press the DWP to carry out research into this area. The FMC has now remitted the papers to the FMSB which will consider how to implement the recommendations relating to standards and training, and will work with government departments to try to address funding and research concerns.

Consent Orders

The FMC has continued its consultation about mediators drafting consent orders by holding discussions with the Ministry of Justice, Association of District Judges and the President of the Family Division. The consultation process has led to a number of different ideas concerning not only consent orders, but also about else could happen once proposals have been reached in mediation. The FMC will consider the next steps to be taken with regard to this issue at its board meeting in August.

Re-accreditation for mediators who transferred in to FMCA

Mediators who transferred in to the FMCA on 1.1.15 will shortly need to renew their accreditation status for the first time. Thereafter they will join mediators accredited since that date on a rolling three year accreditation programme. If you transferred in to FMCA on 1.1.15 you will receive an e-mail from our Executive Officer in August, setting out the timetable for re-accreditation. The requirements for renewing accreditation are set out in the FMC [Standards Framework](#) (p.9 onwards).

Mediators working towards accreditation with a deadline of 31.12.17

Many mediators have a deadline for submitting portfolios for accreditation by the end of 2017. The FMSB and FMC are considering feedback received from PPCs about difficulties being experienced by mediators in completing their portfolios, and will shortly write to mediators working towards accreditation and PPCs to explain any changes to the rules and its policy on extensions.

New FMC & FMSB appointments

The FMC is delighted to welcome a number of new members to both the FMC and the FMSB.

Allan Blake and Dan Ronson have joined the FMC's board of directors. Allan has a background as an academic who sat on the Legal Aid Board, before he moved into business and ran large operations. Dan also has a business background, having run a successful hotel business, and now and works as a magistrate in south Wales. Both Allan and Dan bring new skills and perspectives to the FMC board, and its current directors are looking forward to working with new colleagues to deliver the FMC's programme of work.

The recent selection process for FMSB members has resulted in the confirmed appointment of two mediator members and one non-mediator member. Beryl Darling, who practises in North East London, and Juliette Dalrymple, who is based in Doncaster, join the FMSB, with extensive experience of practising as family mediators and as PPCs. Laurence Nicholson is a business consultant with a background in IT and project management who continues to manage large change programmes. Laurence, Juliette and Beryl join Adrienne Cox and Robert Creighton to bring the FMSB's current membership to five.

Developments from elsewhere

The Pension Advisory Service

The Pension Advisory Service (TPAS) is an independent body set up to provide access to free, impartial information and guidance on all pension matters, covering workplace, personal and stakeholder schemes and also the State Pension. It answers general questions, helps with specific queries and offers guidance for people with complaints about their private pension scheme.

It has recently introduced a dedicated pensions and divorce guidance service, providing tailored appointments for those who find themselves going through a divorce. The pre-booked appointments offer unique, independent guidance with a dedicated technical specialist, completely free of charge.

Each appointment explains:

- the pension options available to individuals during a divorce;
- what they need to think about and the questions they'll need to ask;
- the next steps and provides signposting to helpful organisations; and
- tips on how to access regulated financial advice if needed.

Should you wish to let mediation participants know about this service, The Pension Advisory Service can be contacted on 0300 123 1047 (Monday – Friday 09:00 – 17:00) or a divorce and pensions appointment can be booked via e-mail to Virtual.appointments@PensionsAdvisoryService.org.uk

Child Arrangements Information Tool

The Ministry of Justice has developed an online [Child Arrangements Information Tool](#). This tool has been designed to provide parents with information about different types of dispute resolution available. The tool is being publicly tested, and the team which developed the tool welcomes all feedback.

FMC Research

The FMC has heard anecdotally that some courts are allowing applications to go before a judge without parties first having been to a MIAM (and having a correctly signed form) or being eligible for an exemption. In contrast, courts in other areas are sending back applications where the form doesn't show parties have been to a MIAM or are exempt. We would like to find out more about what is happening in different parts of England and Wales. If you are aware of court practices in your area, please e-mail Helen Anthony at executive@familymediationcouncil.org.uk to describe your experiences.

Notices to Mediators

Can you provide Mediation for the Office of the Public Guardian?

The Office of the Public Guardian (OPG), an executive agency of the Ministry of Justice, protects people in England and Wales who may not have the mental capacity to make certain decisions for themselves, such as about their health and finance. Where the OPG takes action against an attorney or deputy regarding a concern, the resulting actions often result in costly and adversarial court proceedings to remove the attorney/deputy.

A large number of OPG's investigations identify family disputes as the key issue and therefore mediation in many instances would provide an enduring and positive benefit for families in dispute. The wishes of the person lacking capacity can be preserved, by increasing the likelihood that the attorneys they have chosen can find a sustainable solution and continue to manage their affairs.

OPG is seeking to establish a list of mediation providers across England and Wales who are interested in working in the Mental Capacity Act area, so they can provide mediation to their customers when appropriate. If you are interested or require further information then please contact Jack Holland - jack.holland@publicguardian.gsi.gov.uk , 0121 631 6820

Can you help with mediation related requests?

From time to time the FMC receives enquiries from Government departments, universities, students or others who want to contact family mediators to engage them in research or to learn from their experiences. The FMC also sometimes needs to canvass the opinion of a small number of mediators. If you are interested in being on a list of mediators who are happy to receive requests of this nature, please e-mail executive@familymediationcouncil.org.uk. You will not be obliged to comply with any request. Unless the request is generated by the FMC, we cannot guarantee how the material gathered will be used, although we will endeavour to send you requests which we believe have been made with good reason.

Board Briefing

Richard Schiffer is the FMC board member nominated by ADR Group. Paul Randolph is a CMC board member and Chair of the Civil Mediation Council's Academic Committee. Here, in anticipation of the CMC and FMC's first joint conference on 13 October, the two directors have cooperated on this short comparison between civil and commercial mediation.

All mediated disputes are essentially the same: one party demands something and the other refuses to give it. It matters not whether it is a company seeking compensation for a breach of a contract or a father wanting his children with him every other weekend. Each demand will be driven partly by rational and economic arguments, and partly by emotional and psychological objectives:

- 'We have lost money so we need to be compensated' or
- 'Who do they take us for - what makes them think they can ride roughshod over our company?' or
- 'I have specifically purchased a 3-bedroomed apartment so the children can have their own bedrooms' or
- 'I'll show her that she can't always have it all her own way'

There is a widespread assumption amongst many – particularly lawyers - that civil commercial disputes, unlike matrimonial cases, are wholly devoid of emotion; that they are simply number-crunching exercises. If that were indeed so, then few if any commercial disputes would reach the courts, for the parties would have resolved their differences with the aid of a calculator, slide-rule, abacus or some other calculating tool.

The sad fact is that those involved in commercial disputes are driven by emotional motives equally to those in family disputes. A 2007 survey by solicitors Field Fisher Waterhouse found that 47% of company executives and in-house lawyers admitted that a personal dislike of the other side had led them into expensive litigation.

So it is perhaps only the outward displays of emotion that are different. Yet there is little doubt that commercial mediators have it easier than family mediators.

The one factor missing in family disputes that plays heavily into the hands of the civil mediator is the 'commercial card': it can rarely be in the economic interests of any commercial entity to be or to remain in protracted litigation with another. Litigation depletes commercial organisations of three most valuable commodities: time; energy; and money. Litigated disputes can be hugely destructive: they destroy morale, efficiency and productivity, and in turn can devastate not only profits, but also the family life and the health of all those involved. The civil mediator can always play the commercial card: to fail or refuse to reach a settlement and to remain in conflict defies rational scrutiny; to continue in the dispute resists economic analysis. It can rarely be in the practical interests of any of them to prolong the conflict with the other.

Those civil mediators who acknowledge this advantage will take their hats off to their family colleagues, who do not have the commercial card to play. Family mediators must struggle with parties that seem to relish the acrimony, prolonged hostility and child-like behaviour that such litigation provides. And so they must deploy their mediation skills with redoubled effort.

Nevertheless, there is one aspect inherent in both civil and family mediation that continues to perplex the respective ideologies, and that is the differing format and model adopted by each. Commercial mediators find it difficult to understand how any longstanding dispute can be resolved without a shuttle process using 'private caucuses'. Family mediators, on the other hand, believe that there should be no secrets between the parties on their journey towards a resolution, and so the entire mediation is almost invariably conducted 'round the table'.

Similarly, the concept of trying to resolve a matrimonial dispute in one day is an anathema to family mediators. It is considered vital that the parties have time to reflect and consider and perhaps receive external advice; and hence the model of a number of shorter sessions over several weeks has evolved as the norm for family mediation. This is objectionable to most civil mediators, who regard it as axiomatic that all the decision-makers are present at the mediation and that the parties are not 'corrupted' by being exposed to the opinions of others during any intervals in the process.

There has undoubtedly been some cross-fertilization, with some family mediators adopting a greater level of private caucusing, and civil mediators prolonging the joint round-table meetings so as to greatly reduce the need for shuttling. But all mediators are passionate about their art; and it is perhaps understandable that divergence of approach will engender strong feelings. Nevertheless, much can be learned from each other. After all, if mediators cannot collaborate, how can we expect others to do so?

'Compulsory Mediation in the Civil and Family Courts: Opportunity or Threat?'
a one day academic conference takes place on 13th October 2017 at Woburn House in London.

Upcoming events & training

- 14 September 2017, Family Matters Mediation Training: [Difficult people and their behaviour; how to understand, respond to and engage them](#), Doncaster
- 19 – 20 September 2017, [FMA Annual Conference](#), York University
- 21 September 2017, College of Mediators' PPC Conference, Loughborough. Details available from admin@collegeofmediators.co.uk
- 22 September 2017, Resolution Training: [Secrets and Lies – A negotiation skills course for mediators and collaborative practitioners](#), London
- 5 October 2017, Resolution Training: [The Modern Family - A comprehensive update on emergent issues in child and family law](#), London
- 13 October 2017, CMC & FMC Academic Conference: [Compulsory Mediation in the Civil and Family Courts: Opportunity or Threat?](#), London
- 18 October 2017, NFM Training: Elder Mediation, London (Further date: 15 November, London). For more information, please e-mail training@nfm.org.uk
- 19 – 20 October 2017, [Resolution's Dispute Resolution Conference 2017](#), Nottingham. Details to follow in due course.
- 19 October 2017, NFM Training: [How to prepare for FMC re-accreditation in 2018](#) (A one-day workshop for all accredited family mediators), Birmingham
- 19 October 2017, CMC Training: [Save Time, Save Money, Save Stress \(Workplace Mediation\)](#), Solihull, West Midlands

- 8 November 2017, NFM Training: [Welfare Benefits Update and Refresher: Training for Mediators](#), London
- 9 November 2017, NFM Training: [Personal Tax, Pensions and Family Law Update 2017](#), London (Further dates: 23 November 2017 in Bristol; 6 December 2017 in Birmingham)
- 16 November 2017, Resolution Training: [Turning Enquiries in to Mediations](#), London
- Ongoing, [NFM Professional Practice Consultancy Training](#) (distance learning)
- Dates tba, Resolution Training: [Mediation Foundation Training](#), London. For more information please e-mail denise.sullivan@resolution.org.uk

*Family Mediation Council
2 Old College Court
29 Priory Street
Ware
SG12 0DE*

www.familymediationcouncil.org.uk Telephone: 0844 556 7215

Company reg no: 9560220