

Manx Family Mediation Network

Mediation Report

1st October 2011- 30th September 2012

Background

The Manx Family Mediation Network (MFMN) is an association of trained and qualified family mediators practising on the Island.

Some of the aims of the network are, when relationships between adults break down, to help couples reach agreements as to how to support and parent their children, rather than litigating issues. We wish to contribute to reducing the expense of divorce and separation to self funding clients and to the public purse for those legally aided, by offering a faster and more effective resolution to difficulties than may be possible through litigation alone. We believe that, as a general principle, children's interest are best promoted by the continued regular involvement of both parents in their lives and by the parents finding ways to cooperate and communicate effectively for the benefit of the child.

Mediation sets out to help separated parents communicate in a more amicable model than the traditional legal approach. It falls into three different categories, children mediation, finance and property mediation and all issues mediation.

Mediation is:

- a process by which couples negotiate face to face about the arrangements for their future with the help of a neutral third party – a mediator;
- a safe place to resolve their differences at your own pace;
- an opportunity to recognise the needs of children as well as of parents;
- a way of helping parents reach agreements which take account of all their, concerns and interests;
- comprehensive – all issues can be considered together;
- confidential, save for the sharing of financial information and any concerns about child protection;

It is suitable not only for married couples but also for those co-habiting, whether same sex, or heterosexual.

The mediators belonging to the Manx Family Mediation Network adhere to the four main principles:

1. Mediation is **voluntary**. There will be no undue pressure to participate in the process, although increasingly Courts expect couples to have attempted mediation before starting Court proceedings the choice to mediate still lies with the clients. In particular, mediators will be cautious about proceeding in cases of abuse or violence or an extreme imbalance of power;
2. The mediators are **impartial** – mediators will not direct or express a personal opinion. (Although mediators will not give advice, they will often provide substantial information and guidance);
3. Mediation is **confidential**, unless there are issues of Child Protection, Domestic Violence, or money laundering. Any set of proposals that are mutually acceptable will be written up as a confidential summary which will not be legally binding until ratified by lawyers or the Court and cannot be referred to in Court proceedings. Discussions during mediation and these confidential documents are conducted on a Without Prejudice basis. There must however be comprehensive disclosure of financial information; this can be shared with lawyers or with the Court in a separate document at a later stage;
4. **Decision making** rests with the participants; that is, the parents are treated as the experts in dealing with their children, your finances and their future.

As part of its commitment to professional practice and towards the development of mediation on the Island the network resolved to collect data on the effectiveness of mediation on the Island.

This first report covers the period from 1st October 2011 to 30th September 2012

Five qualified members of the Network were providing mediation services on the Island during the survey period. They were Sue Smith, John Kermode, Sally Bolton, Tina Hall, and, Wendy Megson. For the most part a co-mediation model is operated, that is using two mediators working together on cases.

Mediations can consist of one or several sessions spread over a period of days to months. The duration of the mediation and the number of mediation sessions is determined by the complexity of the issues, the wishes of the clients, the degree of conflict, the pressure of issues at a particular time in the parties' separations and the availability of finance.

In every case a lead mediator is identified who is responsible for the administrative arrangements with the clients, the coordination of the preparation of summaries to the clients and a final summary of proposals that could be used for the preparation of a consent order.

In practice clients arrive at mediation already in the state of quite high conflict. Their relationship with each other has broken down and it is rare for all of the issues leading to the separation being resolved. Mediation focuses on the future and the arrangements required for them and their children. There are often very strong feelings as to unfairness and how badly each has been treated by the other. They have already found it impossible to make agreements with respect to finances, children or all issues by themselves or with the help of advocates. From each partner's perceptions of the conduct of the other there is a general lack of trust or confidence in the other person's statements, motives and words. They arrive with a strong tendency to blame each other, punish the other for perceived wrongdoings and emotional hurt caused.

It would be hopelessly unrealistic to aim to resolve all of the complex issues that led to disintegration of a once affectionate relationship in a few mediation sessions. It should however be possible to help the couple to identify areas in which they agree and areas where they disagree. From this it is generally possible to identify areas where they can both support compromise proposals. In some cases and with some issues, after exploration of the views of the participants, it is clear no compromise will be possible on one or some points and arbitration by the court will be necessary. Where agreement is possible on some or all of the issues, a final summary, or in more complex cases, a memorandum of understanding can be prepared to be used in the preparation of binding consent order. Some couples will not require this step.

Not all clients require the preparation of a memorandum of understanding (which does involve them in additional cost), but all lead mediators provided written summaries of each mediation session.

In order to capture these various outcomes the Manx mediation network had proposed the following scale to be used as the basis for data capture:

Some positive outcomes were identified	Issues requiring adjudication were identified	A resolution or agreement of some issues was achieved	A written summary of proposals that could be used for the preparation of a consent order was prepared
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Methodology

All members were asked to review their cases records for mediations. Cases were included in this review if the last recorded mediation session fell within the period surveyed.

To avoid possible double counting, mediators were asked to include clients in their return only if they were the lead mediator.

Three mediators identified themselves as lead mediators and provided returns for clients using the following template:

Name or identifier	Date of last mediation session (1/10/11-30/9/12)	Some positive outcomes were identified (Yes /No)	Issues requiring adjudication were identified (Yes /No)	A resolution or agreement of some issues achieved? (Yes /No)	Was a written summary of proposals that could be used for the preparation of a consent order prepared? (Yes /No)
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Information on 56 cases was collected and analysed.

Results

The following results were obtained:

			Some positive outcomes were identified (Yes /No)	Issues requiring adjudication were identified (Yes /No)	A resolution or agreement of some issues achieved? (Yes /No)	Was a written summary of proposals that could be used for the preparation of a consent order prepared? (Yes /No)
Summary		"Yes"	51	28	42	15
		"No"	5	28	14	38
		Total	56	56	56	53
percentages	% Yes		91.07%	50.00%	75.00%	28.30%
	%No		8.93%	50.00%	25.00%	71.70%

The interpretation of 'Issues requiring adjudication' is complex and is difficult to disentangle from the data. It is a matter of judgment if "Issues requiring Adjudication" is evidence of a positive outcome or not. I would argue it is a positive indicator. I hold the view that if through mediation a complex emotional case can be reduced to a limited number of discrete issues for

adjudication then progress has been made and communication promoted.

Summary

The results are encouraging and may be summarised as follows:

- **In the vast majority of cases (91%) the mediators were able to identify positive outcomes.**
- **In 75% of cases a resolution or agreement of some of the issues initially separating the parties was reached.**
- **28% of all cases reached the point of requiring and producing a memorandum that could be used in the preparation of a consent order**
- **Whilst the identification of the need for adjudication on issues in 50% of cases may be seen as an indicator of limited effectiveness, as noted above it may also be a positive indicator.**

A further analysis of the data suggests:

- **Of the 50% (28 cases) where the need for adjudication was identified, 18 cases (a further 32%) achieved resolution or agreement on some issues.**
- **Of the 28 cases identified as requiring adjudication only 10 of these (18% of the total) were recorded as not having some resolution or agreement.**

Discussion

The results of this first survey are encouraging and provide a cause for optimism as to the value and effectiveness of mediation on the Island. However, surveys such as this based upon subjective data from the mediators themselves are, inevitably, limited.

Services can be evaluated on three dimensions: Firstly, the evidence that the service achieves what it sets out to do. Secondly, the relative costs of the service in comparison with others providing a similar service and in comparison to other methods of, in this case, dispute resolution. Thirdly, the views of the users and stake holders of the service.

This survey provides evidence that Family mediation on the island achieves some of its aims of helping couples reach agreement. It is proposed that evidence base for Family Mediation could be further strengthened by repeating this survey and also, systematically seeking the views of the clients and referring advocates of the services.

John Kermode

25/2/13