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Children Act First Appointment Mediation Scheme

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In April 2004, Milton Keynes County Court had almost no court welfare officers, welfare reports were taking an impossibly long time and cases were not being progressed quickly enough. The district judges invited the three mediation services with legal aid franchises in Milton Keynes to make accredited mediators available at court for Children Act 1998 private law first appointments. There was no money to fund it. However, the Legal Services Commission (LSC) agreed to pay for legal aid clients, as long as they had not been assessed for public funding for mediation in the previous 3 months and qualified for legal aid. Milton Keynes County Court was designated an 'outpost' by the LSC for the purposes of mediation at court on first appointments.

Significant numbers of cases were listed, increasing over time to up to eight a day, and sometimes more. The main day for first appointments eventually settled at Wednesdays. Two mediators were made available by the three services in rotation, initially mornings only, but it soon had to be extended to the entire day. Cases were listed in batches at 10am, 11.30am or 2pm. Parents (and other parties) were asked to bring evidence of income for a public funding assessment when they received their court papers. Child protection cases and other unsuitable cases were not mediated. The district judges would see parents into court with a mediator and tell them the mediator was available to help them try and agree arrangements for their children. He or she would say something along the lines of:

'You should know your children better than anyone. Why do you think someone who doesn't know your family at all (like me) should make decisions about it? The chances are no one would like my decision. It would be better to at least try and agree something. You might well be surprised: most people manage to agree at least something and many everything.'

So their problem was handed back to them with the hope of a solution in mediation.

The mediator and couple would use one of the two rooms made available at court for mediation, one for each mediator. The mediation agreement was amended to waive confidentiality to the extent the couple agreed, so that a brief case report could be presented to the district judge where appropriate. If mediation was successful and everything was fully resolved, or if it was partly successful and interim arrangements were agreed, those arrangements would usually be noted on the court file in the case report. Mediation was invaluable in at least establishing interim contact on cases where no contact was taking place and in many cases resolving everything with no further court intervention required. Some cases were continued back at the services' offices, where more lengthy mediation was possible. Some cases were listed for

review. This was often not required, but gave the applicant, who might be nervous of losing the court's supervision, the comfort of knowing that his or her application could be revived. Mediation in the deep shadow of the court was very effective in many cases where parents had previously avoided all attempts at compromise. Suddenly they seemed to realise it really was largely up to them – there was no magic bullet. At assessment, domestic violence screening was conducted in the usual way. There were some separate, but mainly joint, assessments and some shuttle mediation, though mostly joint. It was difficult to shuttle mediate in the court environment within the time constraints.

There follows an analysis of the consolidated figures for the three mediation services for cases assessed and mediated for a trial period between the 1 April 2007 and 31 March 2008, a 1 year period out of the 4 years. Numbers of successful or partly successful cases were very high indeed. The district judges and court staff are pleased: the number of court welfare reports has been significantly reduced, Cafcass is now up to strength and able to focus on difficult and child protection cases and its reports are currently taking about 16 weeks. Presently and historically, since April 2004 and to date, Cafcass and the mediation services have not been involved in working with couples between the application being issued and the first appointment, apart from Cafcass child protection screening. Everything awaits the first appointment.

Court Figures: March 2007–April 2008

Total cases listed at court	314		Percentage of all applications
Cases where mediation assessment conducted	172		55%
Mediation commenced	147	85.5% of assessments	47%
Mediation successful	116	79% of mediations	37%

There are advantages of this scheme over others, for example, such as at Northampton County Court. At Northampton, Cafcass and the mediator assess cases and refer some out to the mediation service's offices. This means a certain number of cases never reach the mediation service's offices, but had they been mediated at court, a mediation might well have taken place, with consequential mediated resolution or partial resolution in more cases. Also, the power of the district judge's homily at court, encouraging people to at least try mediation cannot be over stated. People get to court for, they hope, a favourable decision. Suddenly they realise it is not so simple and they may not like the outcome. Mediation suddenly seems more attractive and the other person has to be there and is encouraged to make an effort; not abdicate responsibility for the outcome.

The main problem with the system is the funding, which is completely unsatisfactory. Mediators are paid nothing for all private clients. They are not paid for legally aided clients after the assessment meeting, unless they produce evidence of income, which

they often do not. Three services have worked on this pilot comprising one National Family Mediation (a not-for-profit service) and two 'for profit' services. The commitment and goodwill of these services has been immense, as they have been paid very little for their efforts. One of the three mediation services has now closed and the other two are presently continuing on alternate weeks. The work is stressful and labour intensive.

Analysis

In an unrecorded (but high) percentage of cases either one or both parties did not turn up at court. Since issuing the application, matters had resolved. Despite the considerable deterrent of the court fee, some cases do resolve relatively easily: perhaps receipt of the court papers had focussed minds on settling matters. Most successful cases were completely successful, but some were partly successful, for example, setting up interim contact while a case progressed. The figures on the breakdown between wholly and partly successful mediations are beyond the scope of this work. Some 37% of all applications are mediated successfully to some degree if not completely. The number of Cafcass reports has been drastically reduced, reports being ordered in only 25% of cases. There is surely useful information from this initiative that may help shape the role of mediators at court for the future.