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## How to improve the assessment of family mediation trainees in England and Wales: a focus on the portfolio requirement

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### Abstract

The purpose of this paper is to consider how to make improvements to the current family mediation training in England and Wales in the way in which it assesses trainees. The current training lasts eight days and trainees have three years from the date they start their family mediation training to submit a portfolio. Passing the portfolio will lead to an accreditation awarded by the Family Mediation Council (FMC).<sup>2</sup> According to paragraph 22 of the Practice Direction on MIAMs,<sup>3</sup> this full accreditation will enable the family mediator to practise all aspects of family mediation including MIAMs and sign court forms.<sup>4</sup> The portfolio requirement and the supervision of this portfolio will be considered in this paper. The views of family mediators on the portfolio requirement will be considered as well. A further purpose of this paper is to demonstrate that there is scope to improve the way trainees are assessed in the family mediation training. Proposals and

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<sup>2</sup> Family Mediators Association Training Course <<http://www.aft.org.uk/details/event/1535b645945/Family-Mediators-Association--Family-Mediation-Foundation-Training-8-day-course.html?tzcheck=1>>

<sup>3</sup> MIAMs are Mediation Information and Assessment Meetings (i.e. the first family mediation meeting).

<sup>4</sup> Practice Direction 3A on MIAMs <[https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_03a#para22](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_03a#para22)> and 'Professional Standards, accreditation and registration' <<https://www.familymediationcouncil.org.uk/faqs-about-1st-january-2016-changes/>>

recommendations are put forward in this paper on the current portfolio requirement.

**Keywords:** Mediation, education, learning, innovation, assessment and portfolio.

## 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.

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. Mediators who complete their training must then satisfy the FMC's annual requirements, which include a specified level of supervision and consultancy and continuing training, leading to evidence-based assessment of competence to gain national accreditation with the FMC.

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 England. Once the questionnaires were collected, interviews were organised with 15 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 data collected 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 in order to assess the current effectiveness of family mediation in practice.

## **1.Methodology**

Upon confirmation of interest, participants were given questionnaires and some were subsequently interviewed through recorded conference calls. The majority of 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 these, 35 had previously practised as family solicitors.

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 mediators who were surveyed were practising in London, Birmingham, Newcastle, Manchester or Leeds.

Once the questionnaires were collected, interviews were organised with 15 family mediators. 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 cross-checking practitioner comments on several subjects at once to verify meanings and nuances.

## **2. Family mediation training: the portfolio requirement and its supervision**

At the end of their course, if they pass, family mediation trainees typically receive a certificate affirming that they successfully completed the course.<sup>5</sup> It is not a legal requirement to hand out these certificates to trainee family mediators, it is merely a practice.

According to the FMC, once trainees have received their certificate, they will be able to start practising as family mediators but that must be with other co-mediators.<sup>6</sup> Thereafter they will be able to consider the following step, which is the full accreditation by completing the portfolio requirement with the help of a supervisor. This portfolio requirement is set by the FMC.<sup>7</sup>

Trainees have three years from the date they start their family mediation training to submit this portfolio.<sup>8</sup> Passing the portfolio will lead to an accreditation awarded by the FMC.<sup>9</sup> According to paragraph 22 of the Practice Direction on MIAMs<sup>10</sup>, the full accreditation, as opposed to only receiving a certificate, will enable the family mediator to practise all aspects of family mediation including

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<sup>5</sup> This is the case for the ADR group and for other training providers <<http://www.adrgroup.co.uk/family-mediation-training>>

<sup>6</sup> 'Family Mediation Standards Board: Approval of foundation training courses for family mediators' <<https://www.familymediationcouncil.org.uk/wp-content/uploads/2016/09/COURSE-APPROVAL-Guidance-Notes.pdf>>

<sup>7</sup> FMC Accreditation Scheme <<https://www.familymediationcouncil.org.uk/wp-content/uploads/2020/05/FMC-Accreditation-Scheme-v.5-18.5.20.pdf>>

<sup>8</sup> Ibid.

<sup>9</sup> Family Mediators Association Training Course <<http://www.aft.org.uk/details/event/1535b645945/Family-Mediators-Association--Family-Mediation-Foundation-Training-8-day-course.html?tzcheck=1>>

<sup>10</sup> MIAMs are Mediation Information and Assessment Meetings (i.e. the first family mediation meeting).

MIAMs and sign court forms.<sup>11</sup> The portfolio requirement and the supervision of this portfolio will be considered in this section.

The family mediation portfolio has to reflect the knowledge and skills gained in practice by family mediators. The aim of the portfolio is not to expect non-accredited family mediators “to present a picture of a mediator as a ‘finished product’” but as a mediator who has learnt throughout the process, and ultimately been able to demonstrate that they have met the required competencies, which are set out in the Family Mediation Council Standards Framework.<sup>12</sup> The family mediation portfolio must incorporate a minimum of three completed case commentaries, which include the mediator’s observations, under the supervision of a Professional Practice Consultancy (PPC) supervisor who is typically a family mediator of many years’ experience.

Training providers are not involved in assisting trainees with their portfolio submission. 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”.<sup>13</sup> This is signed by both the supervisor and the trainee. In addition, “the three case commentaries are 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”.<sup>14</sup>

There appeared to be a consensus amongst the mediators who were interviewed that the portfolio was not the appropriate way for them to reflect on their family mediation experience and practice.

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<sup>11</sup> Practice Direction 3A on MIAMs <[https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_03a#para22](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_03a#para22)> and ‘Professional Standards, accreditation and registration’ <<https://www.familymediationcouncil.org.uk/faqs-about-1st-january-2016-changes/>>

<sup>12</sup> ‘The Family Mediation Accreditation Portfolio Process’ <<https://www.familymediationcouncil.org.uk/wp-content/uploads/2019/10/Understanding-the-Portfolio-Process.pdf>>

<sup>13</sup> Mavis Maclean, *Lawyers and Mediators – the brave new world of services for separating families* (Hart Publishing, 2016) 67.

<sup>14</sup> Ibid.

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 that they have to include in their portfolio”.

Mediator 12 stated that matching competencies in the portfolio was a horrific exercise involving hours of reading and re-reading the portfolio, for no apparent benefit or reason.

Mediator 14’s view was similar and she argued that the portfolio requirement was “ridiculous” and a “nightmare”; it was too “onerous” and it was perceived as a bar to accreditation. This mediator is referring to the fact that the portfolio is a difficult and a 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. This explains perhaps why so many family mediators are not accredited because of the time commitment to complete the portfolio. Mediator 7’s view was similar to mediator 14’s opinion since he stated:

*I am a part time very busy family solicitor. I came out of family mediation training feeling fired up and positive about mediation, and I felt like I could have a positive, real role as a mediator. As things have transpired, I feel like I have been thwarted at every attempt, the accreditation process [with the portfolio requirement] has proved cumbersome and difficult to complete. People are being put off by the portfolio requirement, and it’s such a shame as it is putting the profession off family mediation.*

Furthermore, 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. Other family mediators interviewed made their position clear on the portfolio process. For instance, mediator 4 stated:

*To be honest, I was completely lost with the portfolio process and what I was supposed to do with it. When I asked other mediators and my experienced supervisor for help, they were lost too. Setting it out was a*

*nightmare and I don't believe it represented a true reflection of the role of a mediator. After two years, I got interim status<sup>15</sup> and 10 months later I got full status<sup>16</sup>. I didn't feel I had much support throughout this portfolio process.*

Mediator 12 had a similar experience in that he explained that he has never come across such a “hideous process of examination”. He went as far as suggesting that he would actively discourage anyone considering undertaking the family mediation training because of this portfolio requirement. According to him, the time and effort involved in the portfolio was excessive. Finally, mediator 11 explained his position regarding his portfolio by stating the following:

*Because I do not have a therapy background, I found it quite challenging to write these case studies. I think training providers want to evaluate our competencies but because I had to tick all the competency boxes a few times, I lost the flow of how I understand that assessors want to see that a trainee has all the competencies required. To be frank, more freedom in writing this portfolio should have been given to us. I was very much confused on what should go on this column and that column and it distracted me from writing the case studies and completing the portfolio.*

From the above empirical data, it appears to be that the portfolio process is complex and challenging for those working towards family mediation 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.

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<sup>15</sup> Interim status in this context means that a family mediator has completed their training but has not submitted their portfolio to the FMC yet to receive full accreditation.

<sup>16</sup> Full status in this context means a family mediator who has obtained full accreditation from the FMC after having submitted and passed their portfolio.

On the point of the portfolio supervision, the PPC supervisor has a role in helping trainees to complete and submit their portfolio.<sup>17</sup> However, from the empirical data gathered, it appears to be that finding a PPC supervisor can be a challenge for many family mediators. For instance, mediator 11 explained how at first he was “lost” in trying to find a supervisor but that later on the service he trained with supplied him with a supervisor and made sure he registered with the appropriate regulatory bodies. He pointed out that without this, he would have struggled to find a good supervisor as, according to him, there seems to be a national shortage of supervisors and the only supervisors he knew were already over-committed. Another reason that was discovered in this empirical research that perhaps explains why some mediators are struggling more than others to find a supervisor is their geographical location. For example, mediator 8 explained:

*I understand that the accreditation process has to be thorough but if I knew now how difficult, frustrating and tiring it would be I would not have done the initial training as there seem to be too many obstacles in the way. If I worked in London then I believe I would now be accredited as I think there are more available supervisors in London. However, I am now more determined than ever to finish. The two biggest issues have been the number of completed mediations and the difficulty in finding a reliable supervisor which I think I now have in Leeds. How those problems can be resolved I am not sure. I am a member of the children panel, advanced family law panel<sup>18</sup> and accredited specialist of Resolution and we do not have this supervision requirement.*

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<sup>17</sup> ‘PPC Guidance’ <<https://www.familymediationcouncil.org.uk/wp-content/uploads/2019/01/PPC-Guidance-v.1-January-2019.pdf>>

<sup>18</sup> ‘The Family Law Advanced Accreditation is a recognised quality standard for family law solicitors and the Children Law Accreditation is a recognised quality standard for solicitors representing children in children law proceedings’ Children Law Accreditation <<https://www.lawsociety.org.uk/career-advice/individual-accreditations/children-law-accreditation>>

Moreover, from all of the above empirical research, it appears to be that finding a co-operative 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 as a consequence of the portfolio requirement and the insufficient support in finding a supervisor and completing the portfolio.

The accreditation seems to be onerous and difficult to achieve, especially when supervisors are either not geographically close to the trainees or when they already have a large number of trainees to supervise.

Another reason behind the difficulties in finding a supervisor was discovered in this empirical research. This reason seems to be that some supervisors consider newly qualified mediators as a direct threat or as competition. For example, mediator 5 explained that as the director of a small mediation service, he is reluctant to provide opportunities to observe and co-work let alone provide work to a mediator in training. He stated that in the past, he helped two family mediators get the experience to obtain accreditation only to find they 'ripped off' all his precedents even his referral forms and set up in direct competition with him.

### **3. Recommendations**

This paper recommends that currently non-accredited family mediators who are seeking a supervisor to complete and submit their portfolio should contact the FMC and the FMC will have to allocate a supervisor to them. This will avoid having trainees 'running around like headless chickens' desperately looking for supervisors who usually are fully booked.

Currently the College of Mediators (one of the FMC member organisations), for example, gives trainees access to a list of supervisors they can contact. However, it is recommended that the FMC, rather than its five member organisations, needs to introduce a centralised system that enables it to monitor the supervisors' capacities and equally distribute supervisees amongst supervisors.

It is also recommended that there is no obligation for the supervisor to live geographically close to the supervisee or vice-versa since COVID-19 has taught us to make use of online meetings as much as possible. Nonetheless, it is possible to anticipate that the FMC might face challenges in allocating each non-accredited family mediator to a supervisor. But this challenge may be overcome since the FMC already has access to all the names and contact details of PPC supervisors in England and Wales and can hence put them in touch with non-accredited family mediators.

It is proposed that the FMC has to have the right to require supervisors to take on family mediation trainees. The challenge would have been more difficult if the FMC did not have access to supervisors' data and could not compel supervisors to supervise trainees. However, it is likely that the logistical burden of having to allocate trainees to supervisors would cause the FMC to incur increased costs and be time consuming. Thereby this would divert resources away from other activities. However, this is outside the scope of this paper.

Also, due to its unpopularity and negative consequences on the trainees' learning experience, this paper argues that the portfolio requirement should be removed for trainees. The portfolio can be replaced with a viva at the end of the family mediation training, where the trainee will be able to convey what he or she learnt during their course and work experience in a mediation service. However, for current non-accredited family mediators who are yet to submit their portfolio to the FMC, this paper argues that it would benefit trainees to have a series of portfolio workshops, organised by the FMC, that trainee mediators could access as part of the accreditation process. These series of workshops are a means of providing clear and knowledgeable guidance regarding portfolio construction, requirements and compilation of the required elements. These workshops would offer transparency and coherence in the portfolio work and enable trainee mediators to practise in a self-assured manner. This paper also suggests that supervisors need to attend these portfolio workshops so that they can keep up to date with any new changes. It is proposed that the FMC, rather than the training

providers, should organise these portfolio workshops so that there is consistency across England and Wales in terms of the family mediation portfolio expectations.

#### **4. Conclusion**

In conclusion, this paper has explained and analysed how the current family mediation training can be enhanced by removing the portfolio requirement and replacing it with a viva. This paper also argued that if, however, the portfolio is to be maintained as a method of assessing family mediation trainees, then trainees will require more guidance on what to include and how to approach the portfolio from both their PPC supervisors and the FMC.

The FMC should also be responsible for allocating PPC supervisors to trainees in order to make these supervisors more accessible to all trainees.

I have sought to show that in order to fully equip trainees with the knowledge and skills that they will need in practice, more innovations and changes are required within the family mediation training programmes and in particular in the way trainees are assessed.