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by Tony Whatling

**The past is a foreign country. They do things differently there. (LP Hartley)
Those who do not remember the past are condemned to repeat it. (George Santayana)**

This article describes a very personal reflective narrative and should not be regarded as representing the views of any other person or organisation. Over recent years several colleagues have encouraged me to write this history, since it could be lost from the records forever. I am not claiming total recall of every event and readers may have different recollections.

It provides an account of the creation and subsequent achievements of the College of Mediators (COM), formerly the UK College of Family Mediators (UKCFM), including an attempt to force its closure. As an elected member of the Board of Trustees, I have the benefit of all minutes of Governors meetings over that troubled period.

In the beginning, there was 'conciliation'

An interesting link in this evolution and development history is the term 'conciliation' and its gradual transition to 'mediation', so it may be worth explaining this before starting at the very beginning. The differences and reasons for this transition are

complex but usefully summarised by Marian Roberts (2014: 39):

In the context of the early development of alternative approaches to settling *family* disputes, the term ‘conciliation’ was first used to embrace a general approach by mitigating the harmful effects of family conflict (Finer 1974). The terms ‘conciliation’ and ‘mediation’ were often used interchangeably too by the early family mediators, a conflation which compounded misunderstanding for the public because of the frequent confusion of conciliation with reconciliation, the reuniting of estranged couples.

The term conciliation, for some, conveyed an implication that the practitioner would act primarily in a conciliatory manner, even at times possibly making proposals for potential resolutions. The latter activity, came to be regarded as inappropriate, especially when working in the ‘facilitative’ style, where the role of the mediator is to re-empower parties to identify their own options for potential settlements.

The Finer report provided the impetus for an increasing number of independent groups across the UK to establish conciliation services to pioneer this welcome alternative to the traditional court process. In 1981 representatives of these emerging services met and formed the National Family Conciliation Council (NFCC). These early services were often staffed by the family courts through probation welfare officers, social workers, family therapists and counsellors. Typically, they were trained in the social sciences and most had a strong knowledge base rooted in client-centred principles. Consequently, these principles and values were inevitably articulated, and imported into aspects of mediation practice, offering the following:

- the demonstrable impartiality of the practitioner

- reinforcing the principle of client-centred empowerment
- the joint ownership and control of the negotiation issues agenda and process
- the joint ownership and control of any outcomes that became part of the settlement or set of agreements

Combined with the growth of ‘task-centred’ and ‘time-limited’ contractual practice models, they made possible a more effective way to manage the professional time of mediators.

NFCC training team

In 1984, the then NFCC training officer, Lisa Parkinson, obtained a grant from the Joseph Rowntree Foundation, to design a skills-based training programme for family conciliation. This programme was subsequently piloted by Lisa in a selected number of the aforementioned evolving conciliation services. From those newly trained conciliators, a small group of trainers, including myself and Marian Roberts, were selected to form the first-ever NFCC training team.

The task of our team was to deliver a second stage pilot of the programme to conciliators, usually in a combination of two-day regional modules and a national weekend. The training team then spent some long weekends in Bristol, pooling their experience of delivering the programme, and considering adaptations. For all of us, this involved going 'back to the drawing board' phase. In our role as trainers, we had to dig deeper into the foundations and range of mediation theories – its knowledge

base, principles and values, practitioner attributes, as well as skills and strategies. We had access to some published texts, particularly from North America and a few early writers in the UK. However, as still relatively novice conciliators ourselves, we needed to work together as a team to enhance our collective understanding of the above elements. At the same time, we needed to make connections with the similarities and differences in our own existing professional training and particular roles.

Coming from mixed professional backgrounds, we broke into sub-groups to work on discrete parts, created a mass of flip-chart lists, and then reported back to the main group. With hindsight, it was a privileged and exciting time. Out of all this new thinking emerged the NFCC Core training programme which was adapted for delivery to regional services across the UK and reviewed on a continuing basis.

By the time we got to the late 1980s and alongside the need to form a national regulatory body, the general consensus was increasingly in favour of using 'mediation' as the preferred term. Hence, the National Family Conciliation Council was re-branded as National Family Mediation (NFM). Service providers across the UK increasingly adopted the label. There were a few months, whilst debating this transition from conciliation to mediation, when we considered a bridging title – the 'National Association of Family Mediation and Conciliation Services'. This was an attempt to embrace all service preferences. It became clear that 'NAFMACS' was a less than desirable acronym!

In 1989, as part of the transition from NFCC to NFM, Marian Roberts, in her role as NFM Training Co-ordinator, completely rewrote the training programme, adopting the linear and cyclical process set out by PH Gulliver (1979). An NFM selection process was commissioned for candidates pre-selected by their regional services. This two-part half-day activity included observing a video of a mediation role-play, followed by a written questionnaire on perceptions of client's issues and practitioner skills. Running conterminously with that activity, another group were involved in a small group role-play activity based on each candidate, in turn, chairing a specific issue. This was based on a planning group agenda for setting up a new mediation service, for example, appropriate premises, practitioner selection and funding issues. The thinking behind this activity was a recognition that the role of the mediator had many similarities with the skills of effective chairing of meetings.

Forming the UK College of Family Mediators

I remember attending the historic conference where the then Lord Chancellor Lord Mackay, in anticipation of the Family Law Act 1996, called for the law to be taken from the centre of divorce and placed on the periphery. Conversely, he wanted mediation to be taken from the periphery and placed at the centre. He went on to add that, if the government was to allocate public funds to the provision of mediation, he did not want, as he put it, "any Tom Dick or Harriet hanging up a sign, claiming to be a trained and qualified mediator". His strong message was that the lead bodies had better start working together quickly on the creation of a single

independent regulatory body.

This turned out to be a huge moment for family mediation. The three main family mediation and training providers – National Family Mediation, Family Mediation Scotland and the Family Mediators Association – were united in their commitment to pull together to create the College of Family Mediation (UKCFM). They generously shared any existing policies, standards and codes of practice in a spirit of collaboration, dedicated to the greater good of achieving the single independent regulatory body for the development of family mediation in the UK.

I had the privilege of representing NFM and I recall the extraordinary time commitment and volume of work involved. It takes little imagination to appreciate the huge size of the task, and the pressure to create and launch this new organisation. Had UKCFM not been created in 1996, it seemed likely that it would have happened anyway over the following two to three years as there was a growing awareness of the need for practice regulation.

The reader needs to understand the complexity of this new organisation. It was neither a provider of mediation services nor of training courses. It quickly began recruiting practitioner professional mediators as members, helped by the fact that it held the franchise for legally aided mediation and also the competence assessment portfolio. The UKFM's multi-disciplinary members created a rare and rich body of knowledge – in particular its policy and practice guidelines on a range of highly relevant topics: children, domestic abuse, conflicts of interest, recording,

confidentiality and privilege, and, of course, its Code of Practice. The FMC did attempt to appropriate this body of knowledge but copyright prevented this happening apart from the Code of Practice.

As the group set about creating the key practice standards, a recurring theme was the inclination to limit any proposed minimum standards, particularly by those representatives of the membership bodies, known then as 'approved body' (AB) representatives.

A major issue developed around what should be the aspirational standard for college members for the minimum number of annual hours required for mediation practice or supervision. Tension developed between the AB representatives on the Board and the EM's representatives elected by individual members. The AB believed that if standards were set too high, their members would leave the College, or possibly their membership bodies. Such 'dumbing-down' pressures for a fraction of the total hours became a highly frustrating but recursive feature of any debate on standards. This routinely resulted in concessions by the EMs to the ABs, in the hope of raising the standards at some future time. The Board was structured in such a way as to give a small majority vote to the EMs. Despite this EM majority, there was a reluctance to force this issue, in light of the threats by the ABs not to recommend membership of the College to their members.

Since membership of the College was at that time the gateway to a public funding

franchise for mediation practitioners, AB representatives grew increasingly concerned that their members might be inclined to only join the College. Generally, the fees for College membership tended to be lower than those of the AB groups. Herein lay the origins of potential conflicts of interest between representatives of the ABs and their roles in developing a regulatory body that, paradoxically, might ultimately threaten the viability of their membership organisations.

Break away from UK College

I am reminded at this point of the quotation from Friedrich Nietzsche about the darkest days: “That which does not kill us makes us stronger.” This whole period of structural tensions and commercial conflicts of interest posed a threat to the stability of the UK College. It has been succinctly described and summarised by Marian Roberts (2014:282):

In 2006, with growing competition for membership in a small field, the training provider bodies (their nominated representatives exercising voting powers on the governing body), broke away from the UK College to form a new non-regulatory body, the Family Mediation Council (FMC). Reluctant finally to submit to the scrutiny and cost of the independent audit and fearful of financial loss arising from the inevitability of 'double billing', these bodies removed themselves from independent regulation. Instead, the FMC granted to each of its member bodies responsibility for overseeing the quality assurance of their own practices.

What then became apparent was that the breakaway FMC group had, unbeknown to the elected Board members, held meetings with the head of the Family Mediation Project team in the Legal Services Commission (LSC). It was also discovered later that

one or more of these clandestine meetings had included the recently appointed independent chairman of the College. They had apparently alleged that the UKCFM was facing potentially serious financial difficulties, but they could assure the LSC of a 'smooth transition' from UKCFM to FMC.

In reality, the College auditor had, as required, just reported that the UKCFM had the necessary 'financially viability' to continue trading for the next year. In addition, one of the Board members had produced a comprehensive three to five-year plan, based on increasing membership, and other fee income proposals, alongside potential reductions in expenditure. At a subsequent board meeting of the College, 19th April 2007, the chairman reported that, regardless of the agenda, the sole business of the meeting was to consider and, if thought appropriate, approve the ceasing of trading of the College. The vote resulted in an equal split between ABs and EMs, but the chairman used his casting vote in favour of the AB group.

Fortunately, a few weeks later, at the very last minute before this closure could be finalised, it was discovered that the AB members had all declined to renew their membership fees in January. This was presumably based on their assumption that they would be successful in persuading the LSC to support the formation of the FMC. Under the conditions of the UKCFM constitution, only paid-up board members were entitled to a vote. They were immediately contacted and letters of resignation were called for, which meant that the UKCFM was able to continue trading. Another fact that had been overlooked initially was that one of the board AB organisations was in reality

only a training provider of another AB and hence was not entitled to a vote. Had this been known beforehand, the EM board members would have had the voting majority. The key issue here was clearly of very major significance. Had the 'cease trading' bid proceeded, the college would not have survived and been able to reform. Overnight its members would also have been disenfranchised from legally funded mediation practice and so, presumably, be forced to join one of the other lead bodies.

Sadly, the LSC had not only granted the FMC the funded franchise for mediation practitioners, but also control of the mediator competence assessment portfolio, thereby removing both functions from the College. A very brief appeals meeting involving both sides was set up at the LSC but failed to bring about any change in the new arrangements.

It eventually became clear that the only way forward was for the UKCFM to apply to the FMC for membership. The latter was not formed as an individual membership body but for AB organisations, whose members would be registered and continue to pay a membership fee to their AB. Even though the UKCFM fulfilled every requirement of the membership criteria, it took several months for the FMC to respond. Finally, under sustained pressure, membership was granted for a probationary period. No other AB had encountered such joining difficulties and the UKCFM was eventually registered.

Time to circle the wagons

Another quote comes to mind, this time from Mahatma Gandhi: “A small body of

determined spirits fired by an unquenchable faith in their mission can alter the course of history.”

As the UKCFM Board and Professional Standards Committee (PSC) members 'rallied to the cause' it became clear it was time to regroup and reformat the structure. It was soon realised that, paradoxically, it now had the opportunity to create one single national College, with membership open to all mediation practitioners across all contexts.

In setting up the first UKCFM, this had been seen as a highly desirable objective and was subject to much discussion at the time. It was envisaged that such a College might be structured as an overarching body with branches for each mediation context, much as with the design of a family tree. Even before the establishment of the UKCFM, at joint conferences between NFM members and the then 'Mediation UK' – a charitable organisation primarily catering for the community, (neighbour), mediation – there had been active interest and debate about the creation of such an organisation. At that early stage, there was also a keen interest in, at some point in the future, having inclusive generic training programmes and qualifications, for practitioners across all contexts. Sadly, despite this vision, the amount of work and the limited timeframe required for the formulation of the UKCFM, this generic aspirational objective had been put on hold to some point in the future.

Paradoxically, the restructuring of the UKCFM suddenly opened the door again to that previous objective and hence the formation of the College of Mediators (COM). Quite

apart from the professional values and principles behind such a unique national development, it also brought the benefits of increased membership fee income, and so enhancing the College's financial viability. Ironically, the FMC continues to represent only family mediation, leaving the COM in a special position.

Where next? 'The rise and rise of the College of mediators.'

'You've seen my descent, now watch my rising.' Rumi.

The following quote from the front cover of The College of Mediators [Newsletter Issue 2 May 2008] heralded its early success: "College Continues 'Butterfly like' re-emergence as the College of Mediators."

As with the original formation of the UKCFM, there was a formidable volume of work needed to bring about this transformation. It seemed clear that it would not happen very quickly. Whilst many practitioners from other contexts were enthusiastic, concerns were inevitably raised by some about the cost of fees, and fears of being 'taken over' by the larger group of family mediators. Such tensions were not new, and at the aforementioned conferences between Mediation UK and NFM, there had been dissenters on all sides.

Family mediation had established quality training, competence assessment and supervision standards, and practitioners expected to charge for their services. By contrast, community mediation at that time was still developing core training and was

mostly unpaid. Practitioners tended to come particularly from a long tradition of community development and improvement, often linked to political activism, rather than for paid professional practice. This issue of practitioner regulation is usefully summarised again by Marian Roberts (2014:140):

On the other hand, regulation is problematic for different reasons for community mediators who, on the whole, resist 'professionalisation' in principle on the grounds that it brings control of entry into a field, the defining ethos of which is one of grass roots, volunteer, lay and community empowerment.

Nevertheless, steady progress was made in the development of the COM emphasising an ethos of 'inclusive' membership. This included the active encouragement of practitioners from other contexts to join the COM board and its Professional Standards Committee.

The COM membership has grown year on year to a current total of some 350 members. The following practitioner categories are included though they will not fit within the overall total as some members have registered as working in several different contexts:

Family 150	School 31
Community 58	Disability Discrimination 13
Workplace 58	Intergenerational 39
Civil and Commercial 41	Faith 21

It was always known that it would take several years to achieve the aspirational goal of multi-context membership. However, there is every reason that continuing growth patterns are now unstoppable. The College continues to take a national lead in defining and regularly updating comprehensive codes of professional practice and innovative new developments and is also unique in having a professional journal.

I will give the last word to “Confucius: Our greatest glory is not in never falling, but in rising every time we fall.”

References

Roberts, M. (2014) *Mediation in Family Disputes Principles of Practice*. Surrey Ashgate Publishing.

Tony Whatling, M Sc CQSW MCOMM, has a background in social work practice in child care, adult mental health, family therapy, practice, team management and university lecturing. He has over 30 years’ experience as a mediator, professional practice consultant and-self employed trainer. He has trained hundreds of mediators throughout UK in family, community, health care complaints, victim-offender and workplace mediation contexts.

Over a period of 12 years he trained some 1,300 Muslim family mediators in India, Pakistan, Kenya, Uganda, Tanzania, Syria, Afghanistan, Portugal, UK, USA and Canada. He has presented papers and workshops at several international conferences, published over 40 articles on mediation, and was a founder member, former elected governor, and Professional Standards Committee member, of the College of Mediators. His book, ‘Mediation Skills and Strategies – A Practical Guide’ 2012 has sold over 4,000 copies worldwide and is also published in Spanish. His second book ‘Mediation and Dispute Resolution. Contemporary Issues and Developments’ was released in May this year.