

The nature and significance of agreement in family court mediation

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This article explores the meaning of agreement, or settlement, in family court mediation through a review of pertinent literature illuminated by findings from a recent UK-based survey of users of child-centred mediation services. Particular attention is paid to issues of legal representation, the voluntariness of mediation, the persistence of agreements and the reasons why they do not last, representing the child's perspective, user expectations of mediation, and the impact of intimate partner violence in this context. It is argued that mediated agreements do carry considerable significance for parents who are seeking to manage contact and residence arrangements for their children.

Introduction

Whether or not parents in dispute about contact and residence arrangements for their children are able to reach an 'agreement', or 'settlement', is widely regarded as a key measure of effectiveness by practitioners, managers and researchers working in the field of family mediation. Walker et al. (1994, p.71), for example, state that,

The purpose of mediation ... is the resolution of disputes, hence the measure most commonly used to determine 'success' has been the 'settlement rate.'

However, a number of recent contributions to the literature suggest a growing disquiet with this way of gauging success: Davis et al. (2001a, p.113), for example, argue that it may be inappropriate to use such an 'all or nothing' measure after such a brief period of intervention in people's lives, while Robinson and Brisby (2001, p.62) suggest that reliance upon a single 'success or failure' indicator may provide neither an accurate nor a helpful picture of the outcomes of mediation.

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The purpose of this paper is to pursue this debate through an exploration of various constructions of 'agreement', drawing on findings from a recent large-scale survey of parents who had reached settlement in child-focused mediation at county courts in Essex, UK (Mantle, 2001a; 2001c).

The Essex Programme

The family court dispute resolution service (now provided by the Children and Family Court Advisory Support Service, Cafcass) is delivered by social work-trained, family court advisors, on court premises and characteristically entails one face-to-face meeting with the parents and their legal representatives. The meeting usually lasts for an hour and is primarily concerned with contact and residence issues. This is 'child-centred' alternative dispute resolution and follows applications made by a parent for a court order under section 8 of the Children Act 1989. Normally one mediator is present although co-working takes place in about 20 per cent of cases. Legal representatives are present during the meeting but are expected to remain silent: mediation may be interrupted for solicitor and client consultation which ensues in an adjoining room. No notes may be taken during the meeting but a written record of the agreement made between the two parents should afterwards be made available by the family court advisor. There are four county courts in Essex offering mediation.

Research design and methods

A mail survey was used to seek the views of parents who had reached agreement at family court mediation during one twelve months period in the county of Essex. All such cases were initially contacted, the aim being to effect complete coverage rather than to sample, although some attrition occurred because of incorrect addresses having been recorded on case files and the geographical mobility of potential respondents. A total of 722 parents were sent a questionnaire six months after they had reached settlement and 345 completed questionnaires were returned, giving a satisfactory response rate of 48 per cent. Of these returns, 130 were 'paired': in other words, in 65 cases, replies were received from both parents.

Items for the questionnaire were derived from ten face-to-face interviews, conducted in parents' homes, and six telephone interviews: in combination with insights drawn from the literature, suggestions from members of the

Steering Group and standard tenets of survey design (Moser and Kalton, 1971; de Vaus, 1996) this data was used to produce a draft schedule, which was subsequently piloted and duly refined. A follow-up request to participate was employed and a telephone contact, with answer machine, was provided throughout the main data collection phase. The survey data was coded and analysed using SPSS to generate frequencies and cross-tabulations. In addition, background data was deciphered from case records and made available for statistical analysis. The statistical significance of associations between variables has been gauged using the standard chi-square test.

Although the study was independent, it was also greatly enhanced by the Steering Group, which consisted of a district judge, solicitor, family court advisor, senior family court advisor and assistant chief officer. Attempts were made to recruit mediation service users to the Group but these unfortunately proved unsuccessful.

Meanings of agreement

One useful way of approaching the meaning of agreement in the context of mediation is to reflect on notions of 'settlement' in related areas, such as negotiation, arbitration and adjudication. It is customary to position mediation somewhere between negotiation – the settling of a dispute by the parties concerned without external intervention – and arbitration, involving a third party who listens to both sides and then takes a binding decision (this is similar to adjudication, although less bound by procedural rules). Mediation is concerned with assisting the disputants to find their own settlement and a mediated agreement is thus, at least ostensibly, something in which both parties might be expected to feel a significant personal investment. On the other hand, the agreement is not binding in any legalistic sense, in the way that an arbitrated or adjudicated settling of the dispute would be.

As one manifestation of informality, the shift away from bureaucratic, legalistic procedures (Roach Anleu, 2000, pp.124-137), mediation has become a popular means of resolving disputes in a wide range of settings: in primary schools, as a way of addressing bullying; in the field of criminal justice, bringing victims and offenders together; and in the commercial and industrial sectors. Family mediation has two main forms: 'child-centred', which is concerned solely with assisting parents to make arrangements about, mainly, residence and contact for their children; and 'all issues' or comprehensive mediation, which also includes financial and property matters. Family mediation also takes place in different settings and it is helpful to distinguish between 'in-court' mediation, conducted on court premises, and mediation that occurs

elsewhere. It would not be unreasonable to propose, for example, that the significance attached by disputants to an 'agreement' might vary according to the setting in which it had been achieved.

Most agreements reached at county court, child-focused mediation follow applications made for contact orders; applications for residence orders produce the next highest proportion and the remainder arise mainly from combinations of contact, residence, parental responsibility, specific issue and prohibited steps orders – all of which can be made by the court under s.8 of the Children Act 1989. In the Essex study, the percentages are 59, 16 and 25 respectively. Mediated agreements, in this context, are therefore chiefly concerned with contact issues and the following three examples are presented in order to illustrate their similarities and differences:

Staying contact: 10am on Saturday until 10am Sunday, alternate weekends, one week holiday 20.6.98-27.6.98;

Contact in principle: alternate weekends Friday to Saturday, two weeks in the summer holidays, visiting contact;

Contact at contact centre: on the first open date, to be for four sessions only as a trial.

Settlements may therefore involve arrangements for staying, visiting or both forms of contact; they may stipulate times for delivery and collection of children or this may be left for the parents to negotiate at a later date; arrangements may also include statements about where contact is to occur and whether it will be 'supervised'. Contact centres are available in many parts of the UK; they are run by voluntary organisations and provide a neutral, structured environment for non-resident parents and their children to meet. Any worthwhile search for the meaning of 'agreement' needs to embrace this wide range of possible forms while, for the purposes of this short paper, it is perhaps appropriate to draw special attention to the distinction between settlements that contain an abundance of detailed arrangements – dates, times and locations etc.. – and those which establish basic principles for contact, but leave much more room for on-going, parental negotiation. Put simply, agreement as a blueprint to be abided by, or agreement as a spirit of (future) co-operation.

In the Essex study, the decision that 'agreement' had been achieved was made by the mediator, although this would have been checked out with parents, their legal representatives and, subsequently, with the judge. All agreements, whatever their form or content, were treated identically in statistical analyses and this is clearly questionable, given the ways in which agreements varied, as identified above. Unfortunately, the official records to hand do not permit a more refined analytical approach to be undertaken: nor

is it possible to comment authoritatively on the proportion of settlements that had been written down.

Agreement and legal representation

Despite the fact that mediation, as one form of 'alternative dispute resolution', is customarily distanced from legal procedures, the majority of divorcing parents who undergo family court mediation are legally represented and it is common practice for solicitors to be present. County court, child-centred mediation cannot therefore be fully understood nor adequately analysed as a meeting of two parties in dispute, facilitated by a professional mediator – each parent normally has their respective legal representative in close attendance and, although solicitors may play little active part in mediation discussions, their presence and availability for consultation are nonetheless important factors. The nature of 'agreement' in county court mediation is, as a result, shaped at least to some extent by the solicitor's role.

Solicitors usually take steps to prepare their clients for mediation and an acknowledgement of the importance of this aspect of their role is apparent in the legal literature, although it is possible to draw a distinction between two very different senses of the word 'prepare' in this context. First, preparation may simply entail the client being informed about mediation in a relatively neutral or objective way. Second, in sharp contrast, preparation can be seen as a means of 'coaching' the parent for a 'performance' or, even, for a 'contest'. Bryan (1994), for example, argues that parents need to be alerted to the assumptions and difficulties characteristic of mediation, including the focus on relationship to the exclusion of individual rights, the 'seduction of informality' and the pressure to reach a settlement (p.216).

Perhaps one quarter of parents who attend county court mediation do so without legal representation and, given the widespread acceptance that to undergo divorce without a lawyer may be hazardous, having only one party represented looks to be questionable in terms of fairness. In the Essex study the main reasons for not engaging a solicitor were the cost and a belief that lawyers were unnecessary or that they might even detract from the need to find a settlement. Some of these parents had, nevertheless, regretted their decision not to be legally represented during mediation, because they had felt unsupported and/or they had missed the lawyer's role of keeping a record of the mediation agreement.

In the Essex research, 78 per cent of parents had felt that, in principle, the presence of solicitors during mediation was 'a good thing' and a similar proportion reported that, in practice, it had been helpful to have solicitors

present. The availability of immediate legal and procedural advice, and the support offered by solicitors, who often acted as a 'buffer' between parents, were seen as especially important advantages. On the other hand, parents who had not found the presence of solicitors helpful referred to an unwelcome, adversarial atmosphere that had been created. Clearly, legal representatives had made considerable impact on the process of mediation. However, there is nothing to suggest any corresponding effect on the robustness of the agreements reached, either in terms of whether or not solicitors had been present or whether or not their presence had been experienced as helpful.

Is mediation voluntary?

There is widespread acceptance that mediation is, and that it should be, entirely voluntary. In other words, parents should not feel obliged to undertake mediation – coercion and mediation being regarded as incompatible. In reality, mediation can be formally required: Robinson (1999, p.133) refers to services in California, for example, that operate on such a non-voluntary basis. Of course, the issue of participation is much broader because parents may feel that they 'ought' to take their disputes to mediation even though no formal requirement to do so exists. Some may even fear the predicted reaction of officialdom should they not do so. These are key sensitivities, bringing service user/consumer constructions of the basis of mediation to the foreground of consideration.

The pertinence of this review of voluntariness has been sharpened by recent developments, such as the provision of compulsory 'information meetings', under section 13 of the Family Law Act 1996, and the making of eligibility for legal aid conditional on the applicant having attended a meeting with a mediator to assess the suitability of mediation, under section 29 of the 1996 Act. Mediators have argued strongly that this latter development does not imply that mediation will no longer be voluntary (Parkinson, 2000; Stevenson, 2000, p.40) and, in a formal sense, this is probably accurate. However, section 29 includes the following precept:

... if mediation does appear suitable, to help the person applying for representation to decide whether instead to apply for mediation ...

and much would appear to hang on the interpretation of the verb 'help' therein. Clearly, the emphasis in the assessment has been placed on encouraging a decision for, rather than against, mediation. It will be interesting to see if this has any long-term effect on the user perspective:

early findings suggest that, even with the arrival of section 29, service users have not felt compelled to attend mediation (Fisher and Hodgson, 2001). It is also important to acknowledge the view that there cannot be a genuinely free choice in the absence of infinite resources and to note that there may be sufficient justification for some measure of persuasion towards mediation, especially at the stage of the first court appointment. Davis et al. (2001b) describe this time as,

... a highly pressurised negotiating environment and, arguably, not one in which a mandatory reference to mediation would constitute a further significant infringement of the parties' rights (p.267).

Of course, even if it is reasonable to conclude that mediation, as a general rule, is voluntary, there may be a number of external pressures on parents to reach a settlement once they have chosen to attend a mediation meeting. In regard to county court mediation, for example, the fact that judges are able to have the final word in regard to contact and residence arrangements for children is likely to act as a significant incentive for parents to reach agreement during mediation. The Essex study data include a small number of replies that vividly illustrate how the proximity and immediacy of adjudication may affect proceedings,

Basically the mediator told me I should agree because if I didn't then the Judge would do it for me....

Given the pressure on mediators to process a set number of meetings in a short time-span and to meet their performance target of settlements achieved, it is easy to understand how some may seek to expedite proceedings in this way.

Do mediated agreements last?

Very little attention has been paid by mediators or by researchers to the question of what happens to agreements over time. Practitioners have tended to assert the view that, once a settlement has been reached, then it is up to the parents themselves to make it work: researchers have similarly focused on the settlement rate as the primary, evaluatory measure and, arguably, been deterred from studying the persistence of agreements by conceptual and methodological difficulties (Mantle, 2001b). This apparent lack of interest produces problems for anyone seeking to find out what a mediated 'agreement'

might signify. For example, if all settlements were defunct within a matter of days post mediation, then it might be reasonable to describe a mediated agreement as, in the vernacular, 'not worth the paper on which it was written': in contrast, if settlements could be demonstrated to stand the test of time, then their worth would be beyond doubt, either as an effective, preceptive memorandum or as a powerful spur to collaboration.

In the Essex study, parents were surveyed six months after they had reached an agreement about arrangements for their children at county court mediation provided by the family court service. During the study period, 1998-1999, mediators had helped achieve a settlement in about 70 per cent of the mediation meetings held and approximately one half (52 per cent) of these agreements had still been intact at the six months point. Of those agreements that were, according to the parents concerned, no longer intact, 21 per cent had lasted less than one week, a further 30 per cent had endured between one week and one month, 27 per cent between one and three months and 22 per cent had lasted from three to six months. These figures match closely with those from a smaller survey by Morgan (1996).

If it were to be shown by further research that, nationally, some 50 per cent of county court settlements could be predicted to remain intact for a period of six months, there would be just cause for celebration within the mediation field. Given the level of conflict often apparent between parents in dispute, such would be no mean achievement. On the other hand, the high rate of break down over the first few weeks after mediation, poses searching questions for all those concerned with its delivery, management and governance. Put most sharply, was an agreement ever 'really' made? After all, any settlement worthy of the name would be expected to possess some measure of robustness. In order to illustrate this point, here are the words of one mother on the matter of the arrangements agreed at mediation,

Right from the start he did not comply as he was told by the mediator that he must write to his son before his first visit. He did not and never has. He turned up for the first visit and when I asked him why he had not written he replied 'I never said I would' ...

Given such a rapid collapse, it is difficult to imagine that any genuine or realistic agreement had ever been achieved in this case. The cause of the break down is identified as the 'other parent's' intransigence, although the interpretation of the mediator's intervention as prescriptive also raises important questions about the nature of the agreement – if it is accurate that the mediator 'told' the father what he 'must' do, then this would be some considerable distance away from the professed aim of mediation to help disputants reach their own settlement. One important objective for future research in this area would be to establish the proportion of parents who

felt that meaningful voluntary agreement had in fact been achieved during mediation.

Statistical analysis of the Essex study data has identified a small number of factors associated with the robustness of the mediated settlements achieved. In regard to the background characteristics of the sample, the only variable with a strong correlation with 'intactness' at the six months point ($p < 0.005$) is the number of children involved – where there is more than one child, the likelihood of arrangements being intact is considerably lessened (chi-square: $p = 0.00423$). This finding is not surprising given the larger the family size, the more chances there are for arrangements to alter. Two further factors showed significant associations with robustness ($p < 0.05$). First, the age of the sole or eldest child, although the relationship is complex in that, for children aged 7 to 12 years inclusive, the chance of agreements remaining intact is reduced while, for younger or older children, the risk is not so high. Although further research is required in this context, it may be possible to deduce that younger children are more amenable to fitting in with arrangements made by their parents while, for children aged 13 and above, parents are more likely to gear their expectations to the child's wishes. The second factor is the type of court order originally applied for – applications for contact orders, rather than residence or other orders, show the highest rate of break down (chi-square: $p = 0.01491$). Again, further study is required although it is reasonable to link this finding with the relative complexity and fluidity of contact issues.

With regard to mediation formats and processes: there is a strong correlation between robustness and whether or not the parent had felt able to say everything they wanted to during mediation ($p < 0.005$); and an association with whether or not the parent had felt fairly treated ($p < 0.05$). However, perhaps the more interesting finding is that so many other variables showed no statistically significant relationship with the robustness of the settlement; including, the number, race and gender of mediators, legal representation, and whether or not ground-rules had been set or applied effectively.

Agreements that change

It would be unfair to expect settlements made at mediation to remain unchanged for a protracted period of time. Some degree of change is highly probable, even unavoidable, given the complexities and developments common to families and their relationships. On the other hand, it is likely that parents will not welcome the occurrence of too rapid and/or extensive alterations to the agreement achieved at mediation – after all, they will have gone to considerable trouble and expense in order to construct the settlement.

An important avenue into the question of what significance is attributed by parents to the 'agreement' would therefore appear to be whether or not any changes to it are welcomed or regretted. In the Essex study, the vast majority of participants had not welcomed the changes made: a very small number reported amendments that had been seen as an improvement or as no less satisfactory than the terms of the original agreement but, overall, the picture is clear – changes to mediated settlements, at least over the initial six months period, are not looked upon favourably by parents.

Where agreements are no longer intact, at the six months point after mediation, the reasons most frequently given by parents are (a) the other party refuses to allow contact or to keep to the detail of the arrangements made for allowing contact; (b) the other party, in exercising contact, does not keep to the agreed arrangements; (c) the other party does not exercise contact, usually without providing an explicit reason; and (d) the child refuses to comply with the arrangements or changes residence on their own accord. From an analysis of the responses provided by 'pairs' – that is, from both parents – it is possible to say that, in many cases, one parent's call for more flexibility is perceived by their ex-spouse as an inability or unwillingness to keep to the mediated settlement. It is also important to acknowledge the high incidence of 'blaming the other party' and, indeed, the levels of antagonism, suspicion and disregard apparent within the replies to the question of why agreements are no longer intact. The dilemma for parents and for mediators of, on the one hand, seeking some degree of flexibility (especially for older children and for cases involving more than one child), while, on the other hand, attempting to establish a relatively stable agreement looks to be significant. The former requires a broad spirit of co-operation while the latter is more narrowly concerned with keeping to the letter of the settlement.

The meaning of agreement may also be illuminated by attending to what parents say on the question of how their settlements could have been made more robust. In the Essex study, there were two main themes in responses. First, parents wanted a written statement of the agreement to be provided,

From the outset the arrangements were interpreted differently by both sides. I feel it would have been better to have the arrangements written down at the time, in detail so that no-one could interpret them in a way to suit themselves,

and, second, parents called for the agreement to be made more binding. On both counts, parents were apparently more concerned with keeping to the letter of their agreement, rather than with the spirit of conciliation that it might have engendered.

Consulting the child

There is a powerful case for arguing that any mediated agreement worth its salt would have to reflect the wishes of the child or children concerned. Nevertheless, the direct participation of children is a relatively recent phenomenon and remains a rarity in court-based mediation (in the Essex study, not one of the 754 children had been included), the assumption apparently being that an adequate representation of their views can be expressed through their parents. This assumption is difficult to justify, given the levels of discord often seen between parents who attend mediation, and, indeed, Freeman (1996, xiii) has pointed out that securing a parental agreement might not necessarily be in the best interests of the child, and argued in favour of some form of independent representation for the child. The relevance of the child's age to the questions of whether and how to involve children in mediation is widely recognised: for older children the argument in favour of hearing their views is all the more difficult to refute. Defining 'older' as aged ten years or above would appear reasonable, given that children of that age may be charged with a criminal offence in the UK. Setting the limit at ten would also find support from experts in child development, who argue that by this age many children begin to 'vote with their feet', making strong alliances with one and, perhaps, refusing contact with the other parent (Robinson, 1999, p.135).

Little is known about the specific experiences, needs and views of the children of parents involved in family mediation and, as a consequence, an important attribute of the Essex study has been the establishment of a database on the characteristics of the 'children of mediation', including their ages, sex, special needs, number of siblings etceteras. The finding that about one in five study children were aged ten years or above, with slightly more than one in twenty being teenagers, indicates that increasing the involvement of the child in mediation would require considerable new resource. Similarly, the fact that about one half of the mediation cases concerned more than one child – 15 per cent of cases had three or more children – indicates a substantial amount of extra work for mediators.

Agreement and violence

The notion of agreement in family mediation implies that both parties have freely given their consent to a set of arrangements for contact, residence and related issues concerning their children. What then if the 'agreement' is achieved within a context of intimate partner violence (Bachman, 1999)?

Women who have experienced violence are likely to feel great anxiety about meeting their ex-partner. They may fear further violence and/or be distressed by the prospect of having to share a common space with their assailant. Meeting one's abuser demands considerable bravery and resilience but, in inviting women to mediation, this is precisely what is being asked of them, albeit unwittingly.

The difficulties of attempting mediation in cases where violence has occurred are acknowledged in the literature. 'Looking to the Future: Mediation and the Ground for Divorce', the government's White Paper (Lord Chancellor's Department, 1995), expressed the view that mediation was inappropriate in cases involving 'domestic violence' and Liebmann (1998, p.50) argues that mediation should not be used if there are threats or any fear of violence. Mullender and Hague (2000), in a major review of what women survivors of 'domestic violence' think about the public services they receive, report the fears expressed by women's organisations that survivors may be pressurised into mediation and other joint meetings with their abusers.

Mediation does take place in cases where women have suffered intimate partner violence, often because of ineffectual or non-existent screening, and settlements reached in such circumstances are likely to be shaped by the woman's response to feeling unsafe. There is evidence from the Essex study that some women who had experienced abuse participated in the construction of an 'agreement' in which they had very little faith, largely to escape further intimidation,

There was no way he was going to keep the arrangements anyway because he has always done what he wants and had his own way ... I was shaking inside but everyone seemed to want a happy ending so I went along with it just to get it over with as quickly as possible.

Paradoxically, parents may be more, rather than less likely to reach 'agreement' in such cases, although these agreements are, perhaps, unlikely to stand the test of time. (The Essex data do not allow for any statistical testing of this because, although many women made reference to violence, they had not been asked directly if violence had occurred).

Agreement and expectations of mediation

The meaning of 'agreement' will be framed by expectations of what is possible as well as by what is desirable. Such framing may occur because of the individual disputant's previous experiences of mediation but there are

also powerful social factors to be taken into account. For example, Walker et al. (1994, p.79) highlight the fact that many fathers agree to mediation settlements because they believe that what they are offered, in terms of contact, is all they are likely to receive. In other words, they are obliged to limit their aspirations by what is seen as acceptable by mediators, lawyers and judges – they may therefore leave the mediation meeting with a settlement that they would acknowledge as ‘fair’, even though they would ideally prefer much greater contact with their child.

Following divorce or separation, children are usually cared for by their mother and this fact serves to set a powerful precedent for both professional and lay expectations. However, it is important to recognise that this is not always the case and that sometimes children may be looked after by their father or by other adults. In the Essex study, 16 per cent of fathers had this responsibility, compared with 80 per cent of mothers; in 3 per cent of families the children lived with foster parents and, in the small number of remaining cases, the study children were separated. The case of resident fathers in this context has attracted little attention (Adams, 1996) and there is clearly need for much more research in this area. DeMaris and Grief (1997) suggest that the phenomenon of fathers as sole parents is likely to become a great deal more common in future, while research by Dowling and Gorell-Barnes (2000, p.19) indicates that men are able to parent effectively, the authors warning of the danger in generalising about what lone fathers are able to provide. Hetherington and Stanley-Hogan (1997, p.205) report that some 14 per cent of divorcing fathers in the USA are awarded sole ‘custody’ of their children. In spite of this evidence, there is no clear picture of what purposeful, post-divorce or post-separation fatherhood might look like, although the recent literature concerned with ‘generative’ fathering (Snarey, 1993; Hawkins and Dollahite, 1997) has given a helpful lead. It is also important to acknowledge the broader research and policy interest now being taken in the part played by fathers in their children’s upbringing (for a review of key research findings, see Foundations on-line, 2000) and, within this growing body of literature, more specific research that addresses fatherhood post-separation – the study by Lewis et al. (2002) of fathers who had cohabited is of particular note here, given the much higher level of attention devoted to marital breakdown.

For non-resident fathers, the absence of any widely-recognised role may have a significant effect on expectations, and mediators may perhaps resort to encouraging a standardised settlement based solely on accommodating the father’s right to have contact, regardless of the circumstances of the individual case. Non-resident fathers who wish to play a much more active part in bringing up their children may resent their marginalisation in traditional assumptions and procedures, yet feel obliged to limit their expectations accordingly.

Expectations are shaped by a range of social factors, including gender, race, ethnicity, socio-economic class and sexual orientation. Levels of satisfaction with services are known to vary with user characteristics: females, elders, and those from higher occupational levels tend to express higher levels of satisfaction, while people on lower incomes, with lower educational attainments and from larger families are generally less satisfied (Cheetham et al. 1992, p.32). It is fair to say that very little attention has, to date, been paid to such issues in the UK mediation literature (Parkinson, 1997, p.327), while, in the USA, Taylor and Sanchez (1991) have called for mediation to meet the needs of Hispanic and other minority groups. Walker et al. (1994) conclude from their survey of mediators that:

... the ideal mediation case would involve two well-educated, middle-class people, both in employment, jointly owning a house ... (p.122),

although the Essex study found very little evidence of unfair treatment on the basis of race, class, age, religion et cetera. Of the 345 respondents, only two made reference to a 'class bias',

*for example: I was judged. I was discriminated against because I was unemployed.
In fact I felt I was treated as a second-class citizen which indeed I was.*

In stark contrast, gender was a very common theme in replies concerned with unfair treatment. However, it is possible to argue that the 'unfairness' had been rendered acceptable or unremarkable by the effects of wider, social forces, duly internalised by the individuals at the receiving end. This is an area ripe for further research, although the absence of basic information about the characteristics of mediation service users does set problems for researchers. Official records used in the Essex study, for example, provided no demographic information, except age and sex. The apparent lack of concern that this betrays with the relative use made of mediation services by black parents is especially worrying.

Securing a mutually acceptable settlement will, to no small extent, depend upon how prepared the two parties feel for the mediation event and the professional mediation literature emphasises the need to prepare parents properly before the initial session takes place – information may be provided in the form of a leaflet while, in models employing a series of sessions, the first meeting can be used as an opportunity to clarify expectations and ground-rules (Haynes, 1993, pp.18-20; Parkinson, 1997, pp.125-159). Nevertheless, findings from the Essex study suggest that many parents felt unprepared for their mediation meeting, with 78 per cent of participants apparently having had no expectations based on previous experience or knowledge. Predicting

what might be possible during mediation was therefore a matter of supposition for many parents and there are examples of both surprise and frustration when the expectations, that parents did bring, and reality failed to coincide.

Conclusion

Users of mediation services afford considerable significance to their 'agreement' and many call for settlements to be given even greater weight, to be stipulated much more clearly and to be made less negotiable after the mediation event. Agreements that break down soon after mediation are not welcomed by parents and the persistence of settlement could become a useful performance measure for mediation services. Emphasis is placed on keeping to the 'letter' of the agreement, rather than to a spirit of co-operation.

Mediated agreements are forged within the dominion of a range of individual and social factors, all of which mediators must reflect in their delivery of services. The need for greater preparation of parents, the challenges of 'new fatherhood' for expectations of residence and contact arrangements, and the issue of intimate partner violence are of major importance in this regard. Many agreements constructed in the absence of direct consultation with the child or of any independent representation of their views and interests are likely to be especially vulnerable.

Finally, the efficacy of court-based dispute resolution has been questioned by proponents and providers of out-of-court family mediation services: the reliance of in-court services on one meeting with the parties in dispute has been the subject of particular, critical attention. However, it is difficult to offer a definitive comparison of the two approaches in the absence of sound research evidence relating to the persistence of agreements mediated out-of-court.

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