

Professional organisation and self-regulation in family mediation

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Summary

Family mediation has developed as an identifiable occupation since the 1970s, following the liberalisation of divorce procedures under the 1969 Divorce Reform Act. The first associations for family mediators appeared in the 1980s, and standards and assessments were introduced from 1996 primarily for mediators receiving public funding. An early attempt to form a fully-functioning, self-regulating professional institute ultimately failed, and in its place the Family Mediation Council (FMC) emerged as an umbrella body of six associations representing family mediators. Although the FMC introduced a number of common standards for the nascent profession, by the end of 2010 there was still no clear qualified status or effective means of self-regulation for family mediators, a fact criticised in the 2011 Norgrove review of family justice. Following a review of the FMC published in the following year, the Council took forward a project to research and develop an adequate self-regulatory framework. It is expected that this framework will be put in place in 2015; among other things it includes a single qualified status and means for revoking it, standards for initial training, an updated approach to continuing development, and a new semi-independent professional standards board. Experience with other emerging professions suggests that establishing the framework is likely to precipitate further change to the way that family mediation is organised as a profession.

Introduction

In the UK, the emergence of family mediation as a distinct area of work and as a nascent profession is closely related to the liberalisation of divorce procedures. The initial opening for mediation in relation to divorce and formal separation was provided by the 1969 Divorce Reform Act, which permitted negotiated solutions to divorces, and the Finer Report of 1974, which promoted the concept of what was then called conciliation (as opposed to reconciliation with the aim of saving the marriage). Conciliation services were at first largely provided by court welfare officers, and the first experiment at setting up a dedicated out-of-court mediation service took place in Bristol in 1977. Although the Bristol service, provided by social workers and marriage guidance counsellors on a mainly voluntary basis, was beset by funding difficulties it was otherwise highly successful and led to similar models being set up in other parts of the country; the background and early development of the service, as well as some of the developments which followed, are discussed in Westcott (2004).

Despite these rather modest beginnings, by 1981 there were enough voluntary-sector mediation services in the UK to support a national conference and the foundation of an association, the National Family Conciliation Council (later National Family Mediation, NFM). In the way that it was constituted, the Council was a service-led rather than a practitioner body, although it took on some of the functions of a professional association such as organising conferences, providing training, and

maintaining a register of individual mediators. A few family solicitors also began to provide mediation services themselves, this being permitted by the Law Society initially on the basis that it was pursued as a separate activity from the practice of law. In 1985 a project called Solicitors in Mediation was set up by the Solicitors' Family Law Association (now Resolution), with support from the Nuffield Foundation and expertise from the Bristol service, to explore the use of 'all-issues' mediation (i.e. covering finance and assets as well as children). This project provided the impetus for the formation of the Family Mediators' Association (FMA) in 1988 as a practitioner association and provider of courses in all-issues mediation. Subsequently the number of lawyers acting as mediators increased substantially, and the Law Society changed its rules to allow legal firms to provide mediation services directly. The distinction between mediators with social services or counselling backgrounds and those qualified in law also began to blur, with both starting to provide all-issues mediation; perhaps interestingly, evidence from the United States (SPiDR 1995) indicated that within reason the specific professional backgrounds of practitioners was not a critical factor in their effectiveness as mediators.

The beginnings of professional oversight

Family mediation started to become established as a mainstream activity during the 1990s. The first European conference took place in France in 1990, a European charter on training in mediation was produced in 1992, and in 1998 the Council of Europe made a formal recommendation on adopting family mediation in relation to divorce. In the UK boosts were provided first by the Children Act 1989 which increased mediation referrals as a means of speeding up cases involving children, and later by the Family Law Act 1996 which made legal aid available for mediation directly. Alongside this the then Legal Aid Board introduced a requirement for mediators undertaking legal-aided work to pass a competence assessment and follow a statutory code of practice, in addition to an audit requirement for mediation services and practices in receipt of public funds. In view of what can be regarded as a need for increased professional oversight of family mediation, in 1996 the FMA, NFM and the NFM's equivalent body in Scotland collaborated to set up a further organisation, the UK College of Family Mediators, with the intention that it would become a fully functioning professional institute encompassing all family mediators. In 2002 the Legal Services Commission relinquished its role in carrying out competence assessments in favour of schemes operated by the College and the Law Society, while setting up a quality standard (the Mediation Quality Mark, MQM) to support the audit requirements mentioned above. A more detailed account of the background and regulatory context of the College is given by Roberts (2005).

The UK College was however never more than partially successful, and although it attracted more than a thousand members at its peak, by 2004 this had fallen by a third. It is notable that the FMA continued to exist alongside the College, and family mediators were also to be found among the membership of the Law Society, the Alternative Dispute Resolution Group (ADRg), and in greatest numbers Resolution. This fragmentation – a not uncommon phenomenon in emergent professional groups – was hardly conducive to the success of a further organisation which all family mediators were expected to join. The College was finally closed in 2007 (the renamed College of Mediators continued as a voluntary membership body now open to practitioners in all areas of mediation); its former director Hugh England discusses some of the factors contributing to its demise in his article 'Planet Family Mediation' (out of print but available from its author via the Family Mediation Council).

The Family Mediation Council and the move towards a common framework

Following the closure of the UK College, the Family Mediation Council (FMC) was inaugurated as an umbrella organisation of the six main bodies representing family mediators: Resolution, the FMA, NFM, the Law Society, the College of Mediators, and ADRg. As well as acting as a standing conference and joint representative organisation, the FMC took over the assessment role from the College, with the Law Society retaining its own parallel assessment and accreditation process. While the FMC produced a common code of practice and a standard requirement for continuing professional development (CPD), its constituent bodies – commonly referred to as member organisations (MOs) – retained most of what other professional body functions existed, including responsibility for initial training and CPD courses, complaints and disciplinary procedures and the training and oversight of professional practice consultants (PPCs, experienced mediators who provide mentoring and an element of oversight to colleagues). It should perhaps be noted at this point that the only requirement for individual mediators to come within the self-regulatory regime overseen by the FMC and its MOs was (and at present remains) restricted to undertaking legal-aided work, carrying out mediation initial assessment meetings (MIAMs), and signing court forms to declare that divorcing or separating parties have attempted mediation or been assessed as unsuitable for it. For family mediators not providing these specific services, membership, assessment and even initial training are voluntary and depend (in common with the situation in the majority of UK professional groups) on the benefits perceived by the practitioner. With recent reductions in legal aid for family matters, something that has checked the growth of mediation and caused the closure or scaling down of several mediation services and practices, the need for the MOs to demonstrate their continuing relevance is likely to increase.

As early as 1999 the then Lord Chancellor commented on the confusion caused by multiple assessment or accreditation schemes in family mediation. The idea of a fully qualified level in family mediation was non-existent, with mediators claiming to be qualified variously on completing training, after sign-off by their PPC, or on taking the competence assessment; in addition to which some of the MOs developed their own accreditation schemes which did not provide approval to conduct legal-aided work. This situation failed to improve through the UK College era or under the early years of the FMC, and the family mediation community was given something of a wake-up call in the Government's Family Justice Review (Norgrove 2011). While the Norgrove review was strongly supportive of mediation, it reiterated the need for a minimum qualified standard for all mediators, and noted that the FMC had struggled to work effectively; the review recommended that if the FMC was unable to 'maintain and reinforce high standards' it should be replaced by an independent regulator (*ibid* p24). The majority of the recommendations in the Norgrove review have been accepted by the Government (see Ministry of Justice/Department of Education 2012), but it is uncertain how much the balance of risk would weigh in favour of creating a public regulator for family mediation; in contrast, discussion in the Department of Health's paper *Enabling Excellence* (Department of Health 2011, section 4) confirms the traditional UK position of only imposing regulation where the risk to the public is significant and proven.

In response to the Norgrove review, the FMC commissioned a review of its own functions and effectiveness from Professor John McEldowney of the School of Law at Warwick University (McEldowney 2012). The purpose of this review was essentially to identify the extent to which the FMC and its MOs could 'maintain and reinforce high standards', i.e. to operate an effective system of self-regulation. The McEldowney review concluded that the FMC was the appropriate body to set and

maintain professional standards, identifying that none of the MOs were in a position to take on this role credibly, while also being sceptical of both the need for external regulation and the ease with which it could be introduced. The review also highlighted and made recommendations on several organisational and standards-related issues. In terms of organisation, it identified that while the FMC's constitution makes it more than simply a discussion forum for the MOs, its effectiveness has been hampered by a lack of resources as well as a tension in the role of its members between representing their MOs and acting on behalf of the profession as whole. In relation to self-regulation, a number of weaknesses were identified including variable standards in family mediation initial training courses and a lack of any central course approval process; the need for a single, unambiguous and clearly-communicated qualified status for all family mediators, along with a central register of practitioners; the need for a common disciplinary process that could result where necessary in mediators being 'struck off'; and better oversight of MOs by the FMC to ensure consistency of standards and processes. The review nevertheless commented positively on the achievements of the FMC to date, and encouraged it to address the issues identified in order to develop a properly functioning self-regulatory framework.

The standards project

During 2013 the FMC set in train the beginnings of two projects to take forward the McEldowney recommendations, both with support from the Ministry of Justice. One of these concerned the development of a publicly-accessible register of practitioners, which was carried out in 2014 and will only be mentioned in passing. The second project, concerned with professional standards and self-regulation, began with the author of this paper being commissioned to carry out a scoping study to identify in more depth the tasks needed to create a robust self-regulatory framework, drawing on experience and research with similar systems particularly in other small and emerging professions. This work identified that the FMC and its MOs already had many of the necessary systems and processes available, if in places these were not particularly rigorous or co-ordinated, or only applied partially; it also highlighted a number of additional issues such as an outdated and mildly dysfunctional approach to CPD and a lack of universally-accepted professional practising or competence standards. The work identified in this study formed the basis of a project plan that was subsequently approved by the FMC and funded by the Ministry of Justice.

What has become referred to within the FMC as the standards project consisted of nine work streams, one for project management and the others examining professional competence standards, initial training and course approval, assessment and accreditation, transitional and non-standard entry, continuing development and reaccreditation, the roles of assessors and professional practice consultants (PPCs), complaints and disciplinary processes, and the constitutional and oversight arrangements needed to make the system work effectively, consistently and impartially. The different streams were each allocated to a working group of generally four or five volunteers, supported by the author and drawn from a pool of nominees provided by the MOs; the groups were assembled to ensure relevant expertise, provide a mix of mediators from different backgrounds and MOs, and provide both continuity and diversity of volunteers between the groups. In all 27 people took part in the groups, most working via one face-to-face meeting plus successive email discussions and rounds of document drafting. Drafts from two of the groups, on assessment and accreditation and on arrangements for continuing development and reaccreditation, were made available via the MOs to their members for comment. The outputs from all the groups were presented to the FMC for

consideration in early June, with a final set of documents being approved in mid-July. It is planned to launch these in the autumn of 2014 and for implementation to take place from the beginning of 2015.

Constitution and oversight

The main outputs of the project divide into reforms in constitution and means of oversight, and changes to standards, systems and processes. The principal constitutional change to the FMC that has been proposed is to create a board separate from the main Council, provisionally the Professional Standards and Accreditation Board (PSAB), to manage the self-regulatory framework. This will separate the function of operating the framework from the Council's roles of strategic direction, providing a forum for the MOs, and providing a common voice for family mediation. The PSAB will be independent of the Council, but reporting to it annually and with the option of co-observers between the two bodies. Unlike the Council, the PSAB is specifically designed so that there will not be representation from individual MOs, while ensuring that its family mediator members do not all come from the same MO, professional background or type of practice; it is also envisaged that its members will be drawn in roughly equal proportion from practising family mediators and from outside the immediate family mediation community, for instance from adjacent professions and from mediation or family law academics. This model provides the PSAB with greater independence than a typical professional standards committee in a self-regulating professional body, a measure considered necessary due to the nature of the FMC as an umbrella organisation, but it avoids setting up a separate organisation along the lines of those in law and architecture (it is envisaged, for instance, that a central executive within an incorporated, not-for-profit FMC will service both the PSAB and the Council).

The PSAB is expected to function via three or four main subcommittees concerned with initial training, accreditation (including CPD and reaccreditation), PPCs, and oversight of activities carried out by MOs (including complaints and disciplinary processes). Further panels may be convened on a standing or ad-hoc basis to deal with specific matters such as course approvals, oversight of the assessment process, accreditation and reaccreditation applications, appeals, complaints that have been escalated to the FMC, and periodic reviews. A further function will be to ensure parity of standards between accreditation processes operated directly by the FMC and those of the Law Society; as yet it is undecided whether this will be a PSAB function, or require a joint panel with the Law Society. Operationally it is expected that the work within the PSAB's remit will be carried out variously by panel members, by the FMC executive, and by delegation to individual MOs (mirroring for instance the current situation where the competence assessment scheme is administered by National Family Mediation).

The self-regulation framework

The principal components of the framework itself are a set of professional (competence) standards; a standard for initial training and process for approving and monitoring courses; a process of work-based development, assessment and accreditation, leading to a single qualified-to-practise status; measures for transitional and non-standard entry; requirements for renewing accreditation, including an updated approach to continuing professional development (CPD); requirements for PPCs and assessors; and minimum standards for complaints and disciplinary procedures, with clear roles for the MOs and the FMC, along with clear responsibility for removing accreditation and protocols to prevent

mediators from avoiding the consequence of malpractice by moving from one MO to another. As noted in the preceding paper, most of these components were already in place to some extent, though not always operated with the necessary degree of co-ordination or rigour; the current work therefore tended to build on and reinforce existing practice as much as creating standards and processes *de novo*.

The author's scoping study found four sets of competence standards or assessment criteria being used in family mediation, none of which could be described as adequate for use as general professional standards. The most comprehensive, the CAMPAG occupational standards for mediation (part of a wider suite for counselling and guidance), had been criticised as over-detailed, too rigid, and at too low a level, and were generally being ignored. A set of standards also existed specifically for intake meetings (MIAMs), along with a checklist used for competence assessment. A further set of practice standards were also present in the Mediation Quality Mark criteria, although these were designed for mediation practices or services and had variable application to individual practitioners. The working group, drawing on these sources and guidance from the author's research into professional standards (Lester 2014), produced a new set of standards that aimed to be at a sufficient level, able to support rigorous assessment, but also capable of accommodating varied contexts and changes in practice; the primary purpose of these is supporting the practice-based assessment for accreditation, but with a secondary purpose as general practising standards to sit alongside the FMC Code of Practice.

For initial training, a minimum set of requirements were agreed for course coverage and delivery, basically requiring that courses cover the topics outlined in the new professional standards, are pitched at a minimum of England and Wales qualification level 5, comprise at least 60 hours of contact (normally organised in blocks to aid consolidation and private study), and include at least 30 hours of skills development. At present, no requirement is being introduced for courses to have external validation from a university or vocational awarding body, although providers may of course seek this if they wish. An implication of the first requirement is that courses must now include MIAMs training, which had previously been the subject of a separate short course, as well as both child-related and property and finance mediation. Courses are also required to include formal assessment and moderation, and participants must pass the assessment in order to start working towards accreditation. A further change reflecting the recommendations in the McEldowney report is that all courses, including those run by MOs, must be approved by the FMC via a formal process using documented criteria; previously MOs could self-validate courses with only those offered by external providers going through an approval process operated by the College of Mediators.

A major purpose of the standards project has been to create a single qualified status (corresponding to the 'licence to practise' in fully regulated professions) for family mediators, regardless of whether they undertake any of the functions currently requiring qualification or work purely with privately-funded clients. This has provisionally been designated 'FMC Accredited Family Mediator' (FMCA), and replaces the former 'competence assessed' requirement needed for legal aided work, while also conferring approval to undertake MIAMs. It is intended that FMCA will require mediators to have a basic level of competence in both property and finance and child-related matters at the point of assessment, although there is no need to continue practising across both areas subsequently. The proposed route to FMCA post-training involves registering with the FMC, followed by a period of PPC-supported and supervised practice during which the new mediator gains increasing experience and

autonomy. During this period the mediator builds a portfolio that includes observing mediation sessions and being observed mediating, writing up case commentaries, and producing a reflective account and development plan. There was some debate on whether mediators should be required to co-mediate during this period, but the feasibility of this across all family mediation contexts was questioned and instead a number of restrictions on practice were agreed pre-accreditation, along with a high level of PPC support for the mediator's first cases. At the end of the period the mediator's portfolio, with PPC observation notes and comments, is submitted for formal assessment in the same way as the current competence assessment. Common standards and processes, and potentially a common pool of assessors, have provisionally been agreed between the FMC and the Law Society, so that although administratively there will be two different routes both will be subject to the same standards and both will lead to FMCA status.

The reforms will introduce for the first time a clear qualified status applicable across family mediation; until now the FMC competence assessment for legal aided work has existed in something of a vacuum, as there has been no related ongoing status or registration that could be revoked, other than that provided by membership of individual MOs. In theory at least it has been possible for a competence-assessed mediator to be ejected from one MO only to continue practising (including taking on legal-aided work) as a member of another. The FMC will hold a central register of FMCAs and will also make any decisions to remove accreditation in response to disciplinary matters. It is proposed that complaints and disciplinary procedures will remain with the MOs, subject to common standards and oversight by the PSAB; the FMC (via the PSAB) will also act as the final court of appeal. Disciplinary expulsion from membership by any MO will normally also result in loss of accreditation regardless of any other MO memberships held. A protocol for sharing information is also proposed to prevent defaulting mediators hiding the accumulation of lesser offences or avoiding any requirement for remedial measures by changing MO.

The reforms will also introduce the principle of reaccreditation or active reapplication, based on a three-year cycle and three basic requirements: a minimum level of practice, ongoing PPC support, and updating and continuing development. The minimum requirements for the first two are (at 15 and four hours per year respectively) the same as currently needed for legal-aided work. At present the FMC requires that all practising mediators within its remit complete at least ten hours of CPD per year, of which five must be through attending a relevant course or courses. During the scoping study it was clear that this requirement was the subject of considerable dissatisfaction and was perhaps more geared to the MOs being seen to be taking action to update members, rather than supporting them to undertake learning that is actually useful (see Wilson 2013, as well as at a more general level Gear *et al* 1994). It is proposed that the current 'hours and points' approach is substituted with a self-managed cycle of learning and development, in keeping with more recent practice in many professions. As part of their reaccreditation requirement, mediators will need to maintain a log of development activities, including a rationale and brief evaluation of the benefits; all types of activity can be included provided that they result in keeping up-to-date with developments relevant to individuals' area of practice.

A further significant change relates to the oversight and registration of PPCs. At present, PPCs are trained by individual MOs, then they become eligible to work with mediators from any of the six MOs. The proposed reforms will leave training with the MOs, while bringing in common standards for training and creating a central register of PPCs; PPCs will need to re-register every three years in

parallel with reaccreditation as a mediator. The relevant working group also had an extensive discussion on what the role of PPCs should be, as anecdotal evidence suggested that this was being interpreted inconsistently between MOs and differently again for the Mediation Quality Mark; some of the expectations in the MQM in particular were seen as putting PPCs in a potentially untenable and uninsurable position in respect of the level of responsibility that they were expected to take for 'their' mediators' work. The new PPC requirements have attempted to clarify these issues, so that while for instance PPCs would be expected as a last resort to report wayward mediators for malpractice, they could not be expected to have any managerial control over their work or become involved in investigating complaints that had progressed beyond the stage of informal resolution or needing a second opinion.

Issues for the revised framework

The revised framework represents an improvement over existing practice that should enable family mediation to represent itself coherently to the public, deal effectively with mediators who act unethically or incompetently, and move forward as a profession (however defined). Some aspects of the framework will however need to be reviewed in the early phases of operation to ensure that they are both practical and sufficient. These include whether the minimum length for training courses is enough to ensure that all the topics and skills needed can be covered in sufficient depth, whether arrangements for supervision and oversight of pre-accreditation practice are both practicable and adequate to provide public protection, whether a single undifferentiated qualification is workable or whether endorsements are needed for particular aspects of practice, and whether the assessment process has been enhanced sufficiently to be adequately rigorous (so for instance while observation of a mediation session has been added to the current competence assessment process, this compares poorly with many other 'people' professions where typically several sessions would be observed). Looking further ahead, consideration could also usefully be given to whether the framework should be extended to include additional aspects of mediation such as direct consultation with children and mediating in the context of abduction.

The reforms have also accepted a certain amount of structural compromise in relation to what could be considered an 'ideal' model, particularly in leaving primary complaints and disciplinary procedures with the MOs and accepting the continuation of separately administered Law Society and FMC schemes. Early on in the process it was agreed that an 'Engineering Council' model – with each MO operating its own accreditation and self-regulatory framework to a common standard overseen by the FMC – would be too expensive, cumbersome and ineffective. From this perspective the continuance of Law Society accreditation is an anomaly created by historic approval of both Law Society and UK College schemes for conducting legal-aided work, though from the Law Society's standpoint there is no reason why family mediation should not remain as one of its several specialist accreditation schemes. In practice both these matters are likely to be better considered via ongoing review of effectiveness rather than from a structural or political perspective.

The new framework is designed to be equally applicable to mediators working with legal-aided and self-funded clients. Nevertheless the only current points of compulsion for practitioners to come under its umbrella are if they wish to undertake legal-aided work, where there is currently a contractual requirement to hold the assessment that will be replaced by FMCA, and if they carry out and sign off initial assessment meetings (MIAMs), which are statutorily reserved to approved family

mediators (again expected to be those who are FMCA-qualified). Outside of this, family mediators are free to operate unregulated. This creates a dilemma for the FMC and its MOs, as on the one hand if they admit practitioners who do not hold and are not working towards FMCA, this will condone unqualified mediators and undermine the reforms; on the other hand, if as currently proposed all new and existing members are required to become qualified, there is a risk that a proportion of those not required to do so by statute or contract will simply work outside of the FMC umbrella without no oversight of any kind. At present the emphasis on MIAMs in the 2014 Children and Family Act points to an increasing need for mediators to achieve qualified status, while reductions in legal aid suggest a potentially expanding market that is potentially accessible to unqualified mediators. The way these forces will play out in the future is currently unpredictable, but the FMC and the MOs will need to avoid overestimating the extent to which mediators can be compelled to come within their oversight; they will instead need to convince mediators of the benefits of FMCA status, and the public of those of engaging FMCA-qualified mediators.

Continuing evolution of the profession

A significant factor that will influence the way in which family mediation evolves is the fact that it is not a primary profession that has early-career entry-routes via university courses or work-based equivalents (and arguably should not move in this direction, given the need for a degree of maturity in dealing with divorcing and separating couples and with other family disputes). Depending on viewpoint, it can be regarded as a secondary profession that is entered after gaining experience in a related field, or as a professional function that is carried out by practitioners from various backgrounds working in the family justice and family support arena. The former perspective rather than the latter is reflected in the way that it has developed over at least the last decade, although recognition is also needed that a proportion of people who undertake family mediation see themselves primarily as (for instance) family lawyers, counsellors, or mediators in general rather than as family mediators specifically. Both of these perspectives will remain important in how the family mediation community is able to shape itself as a profession, and they point to limits beyond which more restrictive forms of professionalisation and regulation may start to work against the public interest. At this point is perhaps worth noting that, while an academic discussion of professionalisation is beyond the scope of this article (a potted summary is provided by the author at www.sld.demon.co.uk/profnal.pdf), the way that professions evolve differs according to context and circumstances and it is a common misunderstanding for emergent professions to assume that they need to accumulate a standard set of characteristics to be regarded as fully professionalised.

An area that has not been addressed in the recent reforms but is relevant to this wider idea of professionalisation is how the family mediation knowledge-base is developed and how practitioners are encouraged to engage with it. In common with other secondary professions, family mediation draws on a number of academic and professional disciplines, a consequence being that relevant research and scholarship tends to be fragmented across university departments. However family mediation is also a discipline in its own right (Parkinson 2011), and it would benefit from an academic unit of its own to pull together, initiate and disseminate relevant research. In turn this could support better linkages between family mediation scholarship and both initial training and post-experience courses, enabling among other things a debate to be had about whether there should be an expectation that family mediation training is university-validated. Beyond this, vehicles for practitioners to engage with and contribute to the more scholarly aspects of family mediation, and

even to share practice beyond immediate colleagues, could be further developed; while the scope available for a community of perhaps two thousand practitioners is necessarily more limited than it is with larger groupings, several professions of comparable size run authoritative journals, publish practice notes or case studies, and encourage practitioners to engage in practical and more fundamental research. Currently the small size (in terms of family mediator members) of the MOs makes it more difficult for these kinds of developments to occur, and this may be an area where the FMC can provide a stronger lead.

The future organisation of family mediation

A question remains over how the family mediation community can best be organised post-reforms. The current structure, of an umbrella organisation comprising several membership bodies, is relatively unusual as a means of organising self-regulation; where this kind of model exists, the umbrella organisation tends to act as a standard-setting and oversight body for associations that are self-regulating in their own right (as is the case with the engineering, environmental and science bodies). In family mediation this model would necessitate increased resourcing for each of the MOs as well as for the FMC, hardly sustainable given the small population of family mediators; as explained previously it was rejected early on in the recent discussions for that reason and because it was likely to prove too unwieldy and inconsistent.

An alternative to the 'Engineering Council model' which offers a possible blueprint for family mediation is the approach that was initially used by heritage conservation. Conservation comprises around 3500 practitioners in total, by the mid-1990s split into a dozen membership bodies. A fully voluntary though government-supported qualified status and professional standards framework was introduced by the umbrella body in 2000 in conjunction with three of its member organisations. While this arrangement could have continued successfully (if somewhat clumsily from an administrative viewpoint), the impetus and spirit of collaboration engendered by creating the framework precipitated structural changes that resulted in the umbrella organisation and several of its constituent bodies dissolving themselves in 2005 to form what has since become a highly successful and respected professional institute. In theory this model could provide an appropriate way forward for family mediation, but at least in the short to medium term it would be likely to run into similar problems as beset the UK College of Family Mediators. The best that could be hoped for in this scenario would be a coming together of the FMC, the Family Mediators' Association, and possibly (and with more difficulty) the functions of NFM relating to individual mediators. This would still leave over half of family mediators needing either to join an additional organisation, or to forego their existing membership in favour of the new one.

A more feasible scenario that builds on the post-reform role of the FMC in holding registers of individual mediators and PPCs is that all the self-regulatory functions become drawn into the FMC, including complaints and disciplinary procedures. This would effectively lead to the FMC becoming the profession's regulator while the MOs continue to provide representation, training and member services. Although this is a logical next step, it raises a further question about whether the FMC's function as a joint forum of MOs representing the profession in the family justice arena (and beyond) needs to or should remain within the same organisation as the self-regulatory function, and if a split along the lines familiar in the legal professions takes place, whether this is financially sustainable. There is also a risk, as has happened in architecture, that the presence of a separate registration arm

creates pressure for membership of the professional association(s) to become voluntary. This might in turn lead to some mediators giving up their voluntary membership and therefore cutting themselves off from the benefits of professional association, with negative effects both on family mediation as a community of practice and on the viability of some of the MOs. A certain amount of movement towards the FMC as a more clearly-defined regulatory body is perhaps desirable, but it needs to be undertaken carefully and with appropriate safeguards if these pitfalls are to be avoided.

A final issue, at least as far as this article series is concerned, concerns the relationship between family mediation and other areas of mediation and dispute resolution. The 2008 European directive on mediation (2008/52/EC) applies across all areas of mediation, and in the future there are likely to be advantages to being able to represent UK mediation as a whole in relation to European developments. At the same time, the structure of European Union initiatives do not need to exert undue pressure in the way that mediation (or any other profession) is organised in the UK. The main implication is that while over the last few years family mediation has been absorbed with matters relating to its role in the family justice arena, in the future it will need also to take a more active role within the wider mediation community.

Conclusion

To conclude, the current reforms should help the family mediation community move forward to the point where it can act as an effective self-regulating profession, with a set of systems and processes that are able to evolve to meet future changes and challenges. There are a number of anomalies and loose ends that have not been particularly appropriate, necessary or feasible for the project to address in the short term, but which are likely become more pressing over time. In particular, setting up a semi-independent professional standards board is likely to create momentum for more aspects of family mediation to be brought under a common umbrella, with potential changes to how it is organised as a profession. From the perspective of an external observer and contributor to this process, it is difficult to see how a community of two thousand or so practitioners, sandwiched between legal and social services professions and subject to external pressures for self-regulation, can develop itself effectively as a profession without an authoritative body to represent and oversee it. An external regulator is a potential solution if the necessary cohesion does not appear, but should there even be the political will for such a move it is unlikely that a regulator would create the energy and focus to move family mediation forward as a profession, as opposed to consolidating it as a professional function; by definition regulators regulate, and though they may challenge and reform existing practices (the Training for Tomorrow reforms that are being introduced by the Solicitors Regulation Authority are a case in point) they are not normally in the business of acting as leaders and innovators on behalf of the communities that they oversee. Currently, family mediation is at a pivotal point in terms of whether it can act effectively as a self-regulating profession, something which is likely to be determined by the willingness of mediators and the bodies that represent them to implement and build on the standards project.

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References

- Department of Health (2011). *Enabling excellence*. London: The Stationery Office (Cm 8008).
- Gear, J., A. McIntosh and G. Squires (1994). *Informal Learning in the Professions*. Kingston-upon-Hull: University of Hull Department of Adult Education.
- Lester, S. (2014). Professional competence standards and frameworks in the UK. *Assessment and Evaluation in Higher Education* vol 39 no 1, pp38-52.
- McEldowney, J. (2012). *Family mediation in a time of change*. London: Family Mediation Council.
- Ministry of Justice/Department for Education (2012). *The Government response to the Family Justice Review*. London: The Stationery Office (Cm8273).
- Norgrove, D. (2011). *Family Justice Review*. London: Ministry of Justice.
- Parkinson, L. (2011). Training for family mediation – a glance across Europe. *Journal of the Family Mediation Association* November.
- Roberts, M. (2005). Family mediation: the development of the regulatory framework in the United Kingdom. *Conflict Resolution Quarterly* vol 22 no 4, pp509-526.
- Society for Professionals in Dispute Resolution (SPiDR). (1995). *Second Report of the Commission on Qualifications*. Washington DC: SPiDR.
- Westcott, J. (2004). *Family Mediation: past, present and future*. Bristol: Jordan (Family Law).
- Wilson, B. (2013). Into the labyrinth: the problem with continuing professional development. Paper for the Social Sciences Research Network, <http://dx.doi.org/10.2139/ssrn.2328694>.