



CHILDREN, YOUNG PEOPLE and FAMILY MEDIATION: POLICY AND PRACTICE GUIDELINES

Revised and extended September 2002

Approved on behalf of the College by the Chair of the Board of Governors, September 2002

1. The policy of the College concerning children, young people¹ and family mediation

The College has a positive policy that family mediators should actively encourage parents and/or other participants in mediation:

- *to talk with and listen to their children so that the decisions parents make about arrangements for their children are reached in the light of an understanding of each child's perspective*
- *to consider the different ways in which children may be involved or consulted, including, when appropriate, offering opportunities for them to take part directly in discussions with the mediator/s*

2. Why this policy is so important

- 2.1 Parental separation and divorce affect very large numbers of children. Research findings² highlight a range of needs that children express. There are strong indications that many of these needs are not being met, because children have little or no opportunity to be informed, listened to and heard in the making of arrangements that affect them.

¹ Within this document the term 'children' means 'children and young people'.

² E.g. Ann O'Quigley *Listening to Children's Views; The findings and recommendations of recent research* York Publishing Services Ltd for Joseph Rowntree Foundation, 2000; Carol Smart & Bren Neale 'It's my Life too – Children's perspectives of post divorce parenting' *Family Law*, March 2000, Vol. 30 pp163-169; Economic and Social Research Council. *Children 5-16*, Research Programme 2000, ESRC.

Where these arrangements are made in the context of formal legal proceedings, there is statutory provision to ascertain the wishes and feelings of children. Increasingly, arrangements are now being made by parents in the course of the informal process of decision-making in mediation. The Family Law Act, 1996 [Part III of which has now been replaced by the Access to Justice Act, 1999], by extending the philosophy of the Children Act, 1989, encourages this approach emphasizing as well the central importance of hearing the voice of the child in the making of decisions in mediation.³ These principles are also contained in Part 1 of the Children [Scotland] Act 1995.

Publicly funded mediation in England and Wales involves a statutory requirement that mediators have arrangements designed to ensure that *the parties*⁴ are encouraged to consider the welfare, wishes and feelings of each child, and also, whether and to what extent each child should be given the opportunity to express his or her wishes and feelings in mediation.⁵ The following points need to be considered:

- 2.2.1 Fulfilling these requirements will involve mediators in the complex and sensitive task of helping parents consider how this can best be done.
- 2.2.2 There is always a difficult and delicate balance to be achieved between the respective, and possibly competing needs, wishes, rights and interests of individual family members, on the one hand, and the preservation of future co-operative and enduring family relationships, on the other. This tension is reflected, too, in the difficulty of striking the right balance between the rights and obligations set out in the Articles of the UN Convention on the Rights of the Child 1989 – rights to care, protection, direction, guidance and consultation.⁶
- 2.2.3 Research findings⁷ as well as identifying the needs and interests of children, also identify the range of services [professional and other] for meeting that variety of needs for children and relevant family members, e.g. counselling, access to information, advocacy, representation, etc. Family mediation cannot, however, be a substitute for this wide range of services. There must be no confusion either, between family mediation and other professional interventions that involve children such as therapy, social work, counselling, advocacy, etc.
- 2.2.4 Family mediators need to have regard to developing knowledge and evolving practice in the field, as well as to research findings. While family mediation is a process with acknowledged benefits for children – collaborative rather than competitive approaches to decision-making, improved communication between parents, the reduction of misunderstanding and conflict etc – it is also an unpredictable process. That is why it is so important to have a policy that recognizes the distinctive contribution of mediation, its limits and boundaries, and that respects and safeguards children’s interests.
- 2.2.5 The College of Mediators’ Code of Practice [section 4.7] highlights the importance that is attached to the central focus on children in the mediation process. The Code imposes duties on family mediators to encourage parents to consider their children’s wishes and

³ E.g. Family Law Act S27[8] 1996

⁴ This highlights the priority that is attached to parents themselves, rather than any professional, consulting their children.

⁵ Paraphrase of Family Law Act 1996, S27 [8][a] and [b]

⁶ E.g. Articles 3, 5, 9 and 12.

⁷ As 2 above.

feelings in the making of decisions affecting those children and to consider whether it is appropriate or not to consult children directly. Where mediators and parents agree that it is appropriate to consult any child directly, a mediator so doing must be trained for that purpose, must obtain the child's consent and must provide appropriate facilities. The Code [4.8.1 and 4.8.2] further specifies duties of the mediator in respect of child protection.

3. The role of the family mediator

- 3.1 The role of the family mediator in carrying out the policy of the College is:
 - 3.1.1 to support parents and/or other participants in understanding or focusing on each child's needs, feelings and views in reaching decisions that they (parents and other participants) consider to be in the best interests of the children concerned
 - 3.1.2 to assist the parents and / or other participants to identify and consider the range of possible options available to enable the children to have opportunities to express their own views, feelings and needs.
- 3.2 Family mediators need to distinguish their own role carefully from other forms of professional intervention with children such as counselling, therapy, advocacy and representation of children.

4. Pre-requisites where direct consultation/involvement with children in mediation takes place

- 4.1 In the mediation process it is possible to consider consultation / involvement with children in a number of different ways. The mediator will be able to explore the different ways with the parents or other participants. If direct consultation/involvement with children is to be undertaken, it is necessary for:
 - 4.1.1. The family mediator to be attentive at all times to the responsibility to accord each child due respect and consideration
 - 4.1.2. The family mediator to have the necessary aptitude, knowledge, competence and experience for the task
 - 4.1.3. The family mediator to be equipped to consult appropriately with children in relation to the ages and stages of development of the children concerned.
 - 4.1.4. The family mediator to have completed successfully a College of Mediators recognized training in consultation with children⁸
 - 4.1.5. Each child to be seen in an appropriate and neutral environment where the child will feel safe, free and neither stigmatized, confused nor coerced.

⁸ Accreditation arrangements are in the process of development

- 4.1.6. Both parents or other participating adults involved to give informed written consent and to have clarified and agreed to the purpose and proposed form of consultation/ involvement with the child/children and the arrangements for managing the outcomes.
- 4.1.7. There to be informed consent from the child based on age-appropriate planning and preparation, including information and explanation of when, where and how direct consultation/involvement is to take place. The right of the child to consider, and to choose to accept or decline is essential.
- 4.1.8. The family mediator to work within the College of Mediators policy on confidentiality in relation to direct consultation/ involvement with children, according to the practice guidelines, including child protection guidelines.
- 4.1.9. The family mediator consulting or involving children to have specific arrangements approved by an Approved Body in place for professional practice consultancy, in relation to this task.
- 4.1.10 All family mediators prior to having direct contact with children to be screened in accordance with approved procedures.

5. Preliminary practice guidelines for direct consultation/involvement with children in family mediation

In deciding whether, when, where and how children should be directly consulted/involved in mediation, full consideration should be given to all the following aspects:

- The suitability of the environment – welcoming, comfortable, non- stigmatic.
- A checklist for determining the kinds of circumstances when direct consultation might or might not be appropriate.
- The range of possible options and models for consultation.
- The culture, religion and ethnicity of the family.
- The appropriate stage and timing for consultation.
- The developmental stage of each child.
- The emotional and psychological state of each child [see also 11].
- The position of the child in the family group.
- The level of conflict in the family.
- The family’s own way of reaching decisions.
- The involvement of other professionals in relation to the children and the relationship between the mediator and other professionals.
- The importance of helping parents and / or other adults involved to consider the potential benefits for children of consulting them directly and, also, any potential problems of doing so.
- The need to have clarity about the mediator’s precise role in relation to the proposed consultation.
- The risks of creating unrealistic expectations among adults and children concerning the outcome of the consultation.
- The role of the Professional Practice Consultant [PPC] in this area of practice.

- The financial considerations and constraints.
- The implications of co-working.
- The need for clear documentation and contracts.
- The gender implications in each direct consultation and the possible inappropriateness of co- / solo working.

6. Legislative framework.

Mediators practise within a legal framework that requires them always to respect and promote the human rights of children. These include the right of the child to have their views heard and be given due weight in any matter or procedure affecting them. In family mediation where the adults are the decision-makers, a careful balance has to be struck between the rights and the obligations relating to the care, protection, direction, guidance and the consultation of children. The relevant legislation is as follows⁹:

6.1.1 The UN Convention on the Rights of the Child 1989

6.1.2 The Children Act 1989

6.1.3 The European Convention on the Exercise of Children's Rights 1994

6.1.4 The Children (Scotland) Act 1995

6.1.5 The Family Law Act 1996

6.1.6 The Human Rights Act 1998

7. Definitions

7.1 The perspective of the child is a crucial part of the information parents need if they are to make informed decisions relating to their children. This information can be introduced into the mediation process in two ways:

- By the parents themselves [Indirect Consultation] OR
- By Direct Consultation with the children within the mediation process.

7.2 The Indirect Consultation of Children in Family Mediation.

Indirect Consultation enables children's views to be included into mediation *via the parents*. Parents should always be encouraged to consider their children's views and perspectives fully and to take their own steps to consult with them.

7.3 The Direct Consultation of Children in Family Mediation

7.3.1 Direct Consultation enables the views of the child to be heard *directly* as part of the mediation process. Then, subject to following all the guidelines set out below, the mediator may consult the children directly. Direct Consultation of children may be of great assistance when the perspective of the child may be missing from parental discussions and when Indirect Consultation by parents is not possible. Whether children should be consulted directly, how, by whom, and at what stage, are matters to be agreed jointly by the mediator and the parents.

⁹ Note also the Council of Europe recommendation on Family Mediation R98.1.

- 7.3.2 The consent of the child is essential if there is to be Direct Consultation.
- 7.3.3 In cross-cultural mediation, mediators must be alert to their own assumptions and prejudices. This applies both where they share the same cultural identity as one of the parties and where the cultural identity of the parties is different to that of the mediator. In respect of the role of children in mediation therefore, mediators must be aware of the variety of views among different cultures concerning the level and scope of children's involvement in family decision-making.

8. Quality assurance requirements

- 8.1 Mediators who wish to undertake Direct Consultation are required to complete an approved training course provided by a College Approved Body or an approved External Provider of Continuing Professional Development (CPD).
- 8.2 The College will introduce, in due course, a requirement that all Training Providers incorporate a suitable assessment component, which must be completed successfully by participants.
- 8.3 With effect from 1st January 2003, all mediators undertaking Direct Consultation must have professional practice consultancy (ppc) with a Professional Practice Consultant [PPC] who meets the necessary quality assurance requirements for Direct Consultation.
- 8.4 All mediators undertaking this work must have a current Criminal Records Bureau Check.
- 8.5 A mediator's training shall be subject to 3 yearly review and updating by an Approved Body or External Provider.
- 8.6 Mediators shall be required to keep detailed written records for every stage of the process.

9. Detailed practice guidelines for the direct consultation of children in family mediation

- 9.1 These Guidelines set out the necessary conditions, competences and factors that mediators need to take into account when the Direct Consultation of a child is being considered.
- 9.2 General Information about the Consultation of Children in Family Mediation.
 - 9.2.1 The central ethos of family mediation practice is that all services and practitioners need to be aware of the importance of information for and about children and their right to be heard in respect of the matters that affect them.
 - 9.2.2 Information about the option of Direct Consultation should be available prior to mediation and throughout the mediation process – e.g. service leaflets etc.

- 9.3 It is important that mediators ensure that appropriate opportunity for Indirect Consultation is explored fully before Direct Consultation is introduced. Mediators need to guard against providing Direct Consultation before the implications have been fully discussed with and considered by both parents. Mediators will need to satisfy themselves that the conditions and factors listed below can be satisfied.
- 9.4 General Considerations to be taken into account when Direct Consultation is being considered.
- 9.4.1 There should be appropriate facilities for children.
- 9.4.2 The environment should be suitable i.e. welcoming, comfortable, and non-stigmatising.
- 9.4.3 There should be clarity of purpose and a positive reason for undertaking the task. There needs to be a realistic chance both that Direct Consultation will assist the parents' decision-making and be of benefit to the child.
- 9.4.4 There needs to be clarity in preparation, methods of feedback and recording.
- 9.4.5 The mediator needs to achieve positive rapport with children and young people in a short time.
- 9.4.6 Parents should be in full agreement with the purpose and conditions of the task.
- 9.4.7 Practice should accord with the principle of voluntary participation and consent [Code of Practice para. 4.1].
- 9.4.8 Principles of confidentiality should be understood and implemented. In particular, child protection concerns may override confidentiality and all principles and rules relating to confidentiality should be transparent.
- 9.4.9 The principle that the parents are the decision-makers should be upheld.
- 9.4.10 Parents need to agree to listen to what the children have to say and to value what is said particularly if it is not what they want to hear.
- 9.4.11 Mediators need to know how to handle the situation, should it arise, where parents might jointly agree to something in the knowledge that the child has made clear to the mediator that this would not be acceptable.
- 9.4.12 There should be clarity about the limits of Direct Consultation. Expectations of adults and children alike need to be realistic about what can be achieved.
- 9.4.13 The role of the mediator should be clear and distinguished from other interventions with children, such as, welfare investigation and reporting, therapy, counselling, representation and advocacy.

10. Specific Factors to be taken into consideration in deciding whether Direct Consultation is suitable in relation to the parties, the dispute and all the circumstances.

- 10.1 The stage parents are in their separation, divorce or stepfamily formation.
- 10.2 The stage of mediation.
- 10.3 The timing of Direct Consultation in the mediation process e.g. meeting with a child too early before parents have fully considered their own views; or too late when decisions have been reached before the child's perspective has had a chance to be incorporated.
- 10.4 The kind of issues involved and the level of conflict.
- 10.5 The cultural values of each parent in respect of their attitudes to the role of children in family decision-making.
- 10.6 The current capacity of each parent to focus on the children's needs.
- 10.7 The current capacity of each parent to collaborate on the Direct Consultation process.
- 10.8 The probable involvement of any other judicial or statutory service i.e. CAFCASS, Local Authority Social Services and Social Work Departments.
- 10.9 The existing involvement of the child with other related professionals e.g. therapist or counsellor.

11. The abilities, skills and competences for Direct Consultation [to be employed in the specific context of *mediation*].

- 11.1 Trust in the mediator and the mediation process is essential and needs to be earned – from the child and the parents, in particular, in their commitment to the task of Direct Consultation. There needs to be trust too in the child and the parents to deal with the effects and consequences of Direct Consultation.
- 11.2 The core abilities skills and competences for the conduct of Direct Consultation cover:
 - 11.2.1 The engagement with the child e.g. putting children at their ease; explaining roles; setting boundaries; clarifying the process and manner of “feedback”.
 - 11.2.2 Deciding whether to see children separately, as a group of siblings or both.
 - 11.2.3 Exploring each child's perspective and concerns.
 - 11.2.4 Acknowledging pain, anger, distress and other strong feelings.
 - 11.2.5 Using appropriate questioning to understand what the *child* is thinking and feeling.
 - 11.2.6 Using a third person perspective e.g. “ what some children feel.....”.

- 11.2.7 Giving appropriate support and reassurance.
- 11.2.8 Acknowledging and managing distress sensitively.
- 11.2.9 Having a clear view of what is normal.
- 11.2.10 Encouraging the child's own problem-solving resources e.g. discovering *their* ideas for their parents.
- 11.2.11 Managing "feedback".
- 11.2.12 Recording the child's wishes and views accurately.
- 11.2.13 Managing co-working e.g. to gain experience; as part of a model of working.
- 11.2.14 Helping the child to understand the perspectives of both parents.
- 11.2.15 Helping parents to understand and explore what messages to give to children and how to give them where appropriate.

12. The Do's and Don'ts of Direct Consultation.

- **Do** make sure that there is a clear purpose and task for Direct Consultation.
- Do make sure that you are familiar with the College Code of Practice and local child protection procedures and guidelines.
- Do check out carefully that both parents are clear about the purpose of Direct Consultation and the nature and limits of confidentiality [e.g. relating to Child Protection concerns], including the possibility that there may be confidentiality amongst siblings.[See Stage 4 for further details]
- Do use any aids, toys, flipcharts, geneograms, etc in an appropriate way.
- Do make sure that you are clear about your responsibilities should any child protection issues arise and that you have made these clear to the parents and the children.
- Do ensure that you seek regular Professional Practice Consultancy.
- Do be aware of the possible isolation of the child during family breakup.
- Do be aware of the possible "programming" of children by a parent [to repeat information] or of the "recruitment" of a child by a parent.
- Do ensure that both parents are able and willing to take account of the needs and wishes of the child even if these are painful or unwelcome.

- Do avoid arousing unrealistic expectations.
- Do see the child in a neutral, suitable and professional setting.
- Do maintain detailed and accurate records throughout.
- ***Don't*** work with a group of children without addressing power imbalances within the group especially if one is, or some are, more or less communicative than others.
- Don't consult directly when one or both parent[s] fail[s] to agree the ground rules or tries/try to dictate the process.
- Don't encourage a child to comment in too much detail.
- Don't collude with either a child or a parent.
- Don't consult directly if parents can do it themselves or have all the necessary information.
- Don't agree to Direct Consultation if levels of conflict are too high.
- Don't absolve parents from their responsibility to pass on significant decisions or to give news, good or bad.
- Don't allow parents to resort to Direct Consultation because they are stuck in their negotiations.
- Don't undertake Direct Consultation where it appears that either parent or the child could be undermined.
- Don't use Direct Consultation to "rescue" a child or parent.
- Don't allow Direct Consultation to put pressure on a child.
- Don't confuse Direct Consultation with the approaches and techniques of other interventions in relation to children – e.g. in the interpretation of drawings etc.

13. Managing a Direct Consultation.

13.1 Stage 1 – Contracting with the parents.

13.1.1. The contracting aspects of Direct Consultation need to be carefully undertaken. It is essential to be sure that both parents have fully considered the implications. This is particularly important in respect of any feedback including what they will do if they receive feedback that they do not really want to hear. Preparation for feedback is an important part of the initial agreement to proceed.

- 13.1.2. Even when children are requesting Direct Consultation the process of contracting with parents must be thorough.
- 13.1.3. Encourage parents to discuss possible support that children may need and what, if any, special needs they have.
- 13.1.4. Write down the purpose and task of Direct Consultation and details of respective roles and timings, both in the case record and in a letter to the parents.

13.2 *Preparing the parents for Direct Consultation and feedback.*

- 13.2.1. Clarify the pro's and con's of Direct Consultation with their children.
- 13.2.2. Ensure that the parents and the children are clear about the mediator's role and task.
- 13.2.3. Clarify issues about confidentiality with parents and, in due course, with children.
- 13.2.4. Ensure that both parents know in advance that the child might ask the mediator to keep private [i.e. not to pass onto one or both parents] something she/he has told to the mediator. If either parent does not agree to their child talking confidentially to the mediator, this needs to be made clear to the child in advance [see 13.4.4]. The mediator may conclude that this refusal on the part of the parents raises serious doubts about the appropriateness of Direct Consultation.
- 13.2.5. Agree exactly how feedback will be undertaken [by whom; with one child at a time or in a sibling group].
- 13.2.6. Practical arrangements such as the transportation of children to and from the agreed venue must be balanced and fair to each party.

13.3 *Stage 3 – Preparing the Children.*

- 13.3.1. The parents and the mediator prepare the children for the Direct Consultation. The mediator should be sure that the children are clear and confident about the purpose and the rules.
- 13.3.2. A letter, written with the parents' help and knowledge, explaining the process and purpose can be invaluable. Specific relevant factors include age, understanding and culture.

13.4 *Stage 4 – Face to face work with the children.*

- 13.4.1. Do not confuse the mediator's task of Direct Consultation with any other professional role in relation to children e.g. counselling.
- 13.4.2. The permission of the children must be reconfirmed at the beginning of the Direct Consultation meeting.

- 13.4.3. The mediator will need to explain to the child the limits of confidentiality with regard to child protection and self harm e.g. suicide risk. This needs to take place so that the mediator is not offering a total confidentiality which s/he later has to break, albeit in extreme circumstances. This should be done in simple, age appropriate language.
- 13.4.4. The mediator will need to inform the child, in advance, if his/her parent[s] have not agreed to the child talking confidentially to the mediator [see 13.2.4].
- 13.4.5. Age appropriate communications must be used throughout the session.
- 13.4.6. Bear in mind that children can have unrealistic expectations about the parents' capacity to sort things out. It is important that these hopes are carefully addressed.
- 13.4.7. Agree with the children what will be fed back to parents, and how this will be done.
- 13.4.8. The mediator will need to be aware that the children may be loyal to one parent or feel that that they have to protect one parent and not the other at any one time. This can present a considerable dilemma for a child and it is important that enough time and thought is given to considering how a child's perspective is fed back to the parents so as to ensure that any changes and implications in the parent /child relationship are explored as fully as possible.
- 13.4.9. The ending of the session must be handled carefully and sensitively, agreeing exactly what will be fed back and how and bearing in mind that there is no guarantee that the Direct Consultation will be successful.
- 13.4.10. On ending there must be a predetermined clarity about any future contact between the children and the mediator. Preferably, any contact should be via parents.
- 13.4.11. Feedback may be with the children present or on behalf of the children as agreed during the session. The main task of the mediator during feedback is to communicate the children's views or to help them communicate them to the parents.
- 13.4.12. After feedback the mediator should ensure that the parents show respect for the views expressed and agree what should happen as a result. This may involve an immediate change or a deferred decision.

Appendix 1: Relevant paragraphs within the College Code of Practice

[4.7.1] Mediators have a special concern for the welfare of all the children of the family. They must encourage participants to focus upon the needs of the children as well as upon their own and must explore the situation from the child's point of view.

[4.7.2] Mediators must encourage the participants to consider their children's own wishes and feelings. Where appropriate, they may discuss with the participants whether, and to what extent, it is

proper to involve the children themselves in the mediation process, in order to consult them about their wishes and feelings.

[4.7.3] If, in a particular case, the mediator and participants agree that it is appropriate to consult any child directly in mediation, the mediator should be trained for that purpose, must obtain the child's consent and must provide appropriate facilities.

[4.7.4] Where it appears to a mediator that any child is suffering or is likely to suffer significant harm, the mediator must advise participants to seek help from the appropriate agency. The mediator must also advise participants that, whether or not they seek help, the mediator will be obliged to report the matter in accordance with paragraph 4.5.3.

[4.7.5] Where it appears to a mediator that the participants are acting, or proposing to act in a manner likely to be seriously detrimental to the welfare of any child of the family, the mediator may withdraw from the mediation. The reason for so doing must be outlined in any summary which may be sent to the participants' legal advisers, who may be recommended that it would be appropriate for a Court Welfare Officer's [or other independent] report to be obtained.