

FAMILY LAW COMMITTEE MINUTES

Start : 5.30pm
At Martineau, 1 Colmore Square, Birmingham.

In attendance

Mary Kaye	Martineau	Chairman
Marc Saunderson	Mills & Reeve	
District Judge Dowding	Birmingham County Court	
Fiona Farrell	Shakespeare Putsman	
Jane Mullen	St Ives Chambers	
Vanessa Meachin	St Philips	
Claire Darley	Martineau	
Marie Kilgallen	Martineau	Minutes
Karen Moores	Sydney Mitchell	
Victoria Green	Majella O'Neill	
Liz Yates	BDFM	Guest - speaker
Kurt Wittwer	WFM	Guest - speaker

1. APOLOGIES

Cathy Price; Alan Bean; Jane Robson; Martin Canning; Philip Barnsley; Stephanie Brown; Helen Dickens; Zahra Pabani; Mike Follis; Mark Mansell; Janine Hall; Susan Daniels.

Minutes of meeting of 12 January 2010 were approved. Apologies given as above.

2. MATTERS ARISING

Wasted Costs Article

Marc Saunderson (MS) reported that he had prepared a Wasted Costs Article for submission to the Birmingham Law Society Bulletin. The article remains in draft form but MS is hopeful that he and Harry Cottam of Cottam Solicitors should be able to finalise the article shortly.

3. COMPOSITION OF FAMILY LAW COMMITTEE

Mary Kaye (MK) explained that it may be useful to have members of the Committee drawn from CAFCASS and the Family Proceedings Court, particularly to assist with children issues.

Following the Birmingham Law Society AGM in April 2010, all committee members will need to confirm if they wish to continue. The Family Law Committee is a representative body of family practitioners in the West Midlands region and all committee members need to be committed to regularly attending meetings.

4. TALK BY LIZ YATES OF BIRMINGHAM DISTRICT FAMILY MEDIATION

Liz Yates provided a Birmingham District Family Mediation leaflet and presentation notes. BDFM specialise in mediation relating to children, finance/property involving married couples and cohabittees.

There are government changes afoot to offer more mediation. Previously the majority of clients were legally aided, but this is now beginning to change. BDFM have recently been involved in a 6 month Court pilot which saw them present in Birmingham County Court and Family Proceedings Court two days per week.

The pilot has now completed. BDFM have funding to use Birmingham courts as an out-reach service and they currently have two mediators attending the FBC and County Court for one day per week. This service can be used by anybody, whilst at Court.

Kurt Wittwer confirmed the process of BDFM involvement at Court. The concept is that they see each party separately, complete an outline public funding assessment and allow the parties to generate options in a constructive way.

Discussion about feedback from the Court pilot. The feedback is currently being collated and Liz Yates will circulate it, when it is available. The early feedback is that mediators were well used in the Family Proceedings Court.

Discussion about the future in mediation in family law. It was accepted that mediation was going to be one of the future changes. BDFM hope that people find out about mediation pre issue rather than when they are already at Court. It was noted that compulsory mediation may lead to mediators becoming involved in box ticking prior to the issue and whilst encouragement of mediation must be welcomed. It should not become a form filling exercise. Mediation is based on being a voluntary process.

Discussion about the role of mediators. Liz Yates confirmed that mediators do not provide legal advice.

The purpose of BDFM speaking is to establish a relationship between solicitors and mediation to benefit the client.

5. THE ROLE OF CAFCASS IN PROCEEDINGS

Discussion about the use and appropriateness of CAFCASS reports and Wishes and Feelings reports.

Discussion about CAFCASS early intervention programme and the impact it is having on proceedings.

Discussion about contact activity directions, and, in particular, parenting programmes. It was accepted that Practitioners do not have an understanding of exactly what a parenting programme is and what the client should expect.

Discussion about the appropriateness of a wishes and feelings report. There should be a Wishes and Feelings report for a six/seven year old, but perhaps for a thirteen/fourteen year old a report would be appropriate.

It is widely accepted that CAFCASS are under funded and strained. In order for practitioners to work together, there may need to be some more training in the Family Proceedings Court as to when it is appropriate to order a CAFCASS report. On occasions, a CAFCASS report is ordered when all that is required is for parties to give evidence about their respective positions on contact, and there are no welfare issues for CAFCASS to report upon.

District Judge Dowding (DJD) will raise the issues discussed with Her Honour Judge Hindley.

It was recognised that increasing communications between the Court, practitioners and CAFCASS was key to ensuring that all who are involved in the service are able to achieve the maximum benefit for children in the process.

6. **SEMINAR**

Discussion about the possibility of hosting a seminar focusing upon the issue of mediation, and possibly, the role of CAFCASS. It could also include some information about the Parenting Programme.

The idea would be that there would be a format of 4/5 speakers i.e. a representative of CAFCASS, a solicitor or member of the Bar, a Judge, a Magistrate or someone from FPC and a member of BDFM.

It was suggested that BDFM run a course explaining how the Parenting Programme works.

A seminar was thought to be a good idea and general invitation to all members of Birmingham Family Law Committee and colleagues.

The seminar idea will be explored. The plan is to host the seminar prior to the summer break. It will be placed on the agenda for discussion at the May family Law Committee.

7. **DELAY IN LISTING OCCUPATION**

Discussion centering upon a whether it is usual for a Final Hearing to be listed in June 2010 following an application for an Occupation Order when mother and four children remain outside the former matrimonial home.

DJD reported that to obtain a one day hearing in the FPC you will currently wait thirteen weeks and a one day hearing in the County Court will be 24 weeks.

It was discussed whether listing was still a judicial function and DJD confirmed that it was. Court staff are under instructions not to give practitioners dates, but if the Judge wants a particular date or a Hearing to be listed for a particular time, they can contact the listing staff directly.

Without knowing the particular circumstances of the case, it cannot be known why the Judge did not ask for the Final Hearing to be listed sooner than June 2010. However, there are remedies and there is no reason why, in that case, an application should not be made for it to be listed earlier if the situation is critical. The Court staff handing out dates will not give dates for a Hearing until the Judge has direct that it be listed.

It was concluded that waiting six months for a one day Final Hearing in an occupation order case similar to this is not usual and appears to be an exception.

8. **AGM BIRMINGHAM LAW SOCIETY**

The AGM will be held on 27 April 2010. MDK prepared a short report and will feedback. However, she would welcome views on how to take the Committee forward in the next year.

9. **ANY OTHER BUSINESS**

None.

7. **NEXT MEETING**

Tuesday 11 May 2010 at 5.30pm at the offices of Martineau.

Birmingham District Family Mediation



Founded in 1984

Affiliated to National Family Mediation

Conducting 400 mediations each year

Offices in Birmingham and Walsall

Outreach services in Chelmsley Wood and Solihull



What is Mediation?

Mediation fits under the general umbrella of Alternative Dispute Resolution

Mediation is a voluntary, informal process that uses an impartial third party to help resolve conflict

The mediator manages the process but has no stake in the outcome

The mediator is independant of any other agency or stakeholder

The mediator's role is to help parties have the necessary conversations and stay focussed on the issues they want to resolve

The Mediator can provide information and help to generate ideas but does not give legal advice or tell parties what to do

Who is family mediation for?



Mediators work with couples both during and after separation, whether they are married, have co-habited or are in a civil partnership

Mediators can help to resolve any issues connected to the ending of a relationship, including those about children, property and finances

Timing is a big factor in whether or not mediation is likely to be helpful

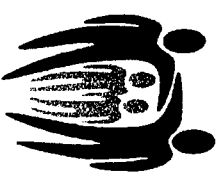
The heightened emotion in the initial stages of divorce and separation may not be conducive to a successful outcome, but mediation may still be helpful at a later stage

There are other instances where mediation may not be suitable:

Urgent steps need to be put in place to protect certain family members, particularly children
There is a strong imbalance of power that cannot be reduced sufficiently within mediation, perhaps because of a high level of domestic violence or because of mental health issues

The issues are not mediatable, for instance a paternity test is needed or a parent or guardian seeks a Residence Order after a child has been placed with them by the Local Authority

Where does mediation fit within the family justice system?



Requirement for legally aided parties to consider mediation first set out in Section 29 of the Family Law Act 1996

First Legal Aid Franchises for mediation services Piloted in 1998

Legal Services Commission introduce solicitor's fee scheme in 2007 offering higher level of payment where cases conclude successfully away from court in attempt to encourage referral to mediation

Children and Adoption Act 2006 makes provision for referral to mediation to be directed by the Court

Legal Services Commission and HMCS jointly run a Pilot in 2009 allowing mediators to attend and work at Court

In late 2009 the LSC make it possible for mediation services to apply for 'outreach' status for family courts to enable some continued funding to provide mediation

Draft Private Law Programme published in 2010 allowing for use of mediation both at and away from Court.

Government Green Paper published in 2010 announcing review of Family Justice System and increased promotion and use of mediation

Mediation and Legal Advice



Mediation works best when it is supported by independent legal advice

Triggers within mediation will prompt the mediator to suggest the client should seek legal advice:

Where clients are considering one or more proposals

Where agreement has been reached, to ensure proposals are feasible

Where clients are unsure how their circumstances would be viewed by the Court and would be helped by advice on what factors the Court will take into account

Mediation is confidential, however the mediator will endeavour to keep the solicitor informed of what stage the case has reached. In general terms this means:

Confirming receipt of the referral

Notice of whether or not mediation is going ahead

Notice of when mediation has concluded and whether or not agreement has been reached

In many cases it can be helpful for solicitors to have copies of summary documents produced in mediation such as an Open Finance Statement or Memorandum of Understanding. The mediator will generally provide extra copies to the client as a matter of course, only at the client's request will they send copy documents direct to the solicitor.

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