I am delighted to be with you today. I have been asked to offer my thoughts on high conflict separation cases and where they might fit in to the developing world of Family Mediation and Family Mediation Services. My perspective is essentially drawn from 10 years of experience working in a multidisciplinary group of experts who prepare assessments for Courts in cases that have involved protracted legal proceedings. The focus of these assessments, typically, is around gaining an understanding of the parental conflict, its dynamics - particularly insofar as they affect collaborative parenting - and the impact upon the children of the parental conflict. Increasingly, we are being asked to undertake follow-up therapeutic work.

In making connections with Family Mediation, I shall draw on more distant experience, from the 1990s, when, at different points, I was involved with four different services in the North of England, two of these as a practitioner and two as a management committee member or supervisor.

I shall start by making a few assertions, that form the basis of what I have got to say and resonate with my case work experience over the years. I do not necessarily expect everyone to agree with them!

- Not all parental separations that end in conflict or dispute are of the same character (more of this later when I review my August 2007 article);

- Not all separated parents disputes are suitable for Family Mediation and, thirdly;

- Children and children’s arrangements are usually the symptom of parental conflict rather than the problem itself.

The latter point is a fundamental one in my view. Typically, courts - and perhaps the world at large - in these days of children’s rights tend to look to children to find the answers to issues that adults and their parents cannot
resolve. My belief is that, whilst it is perfectly proper for collaborative parents to consult with their children, (and be guided by their children in the decisions they make, at least to some extent), the same cannot be said for children whose parents are in high conflict. A workshop exploring this proposition may be on offer later in the day. In those scenarios children can become pathologised – perhaps because they refuse contact with a parent – and are often in effect asked to make unacceptable choices between their mother and their father. By and large, a child in this situation, in my view, needs to be kept out of the parental conflict and only drawn into decision making as that conflict becomes eased or resolved. Anyway, I am sure we shall have plenty of interesting discussions along those lines during the day.

In one of the articles that was sent to you, entitled “Battling parents, are they receiving the right treatment?”, I refer to three typologies that I feel are useful to hold on to in terms of assessing the needs of separated parents who are in dispute. I shall briefly summarise these, as we may refer back to them in the later work that we do.

The first group of separated parents I call “temporarily dysfunctional”. Such parents will often have a history of collaborative parenting in the past, that has been adversely affected by the anger associated with loss and bereavement at the end of the marital relationship. It seems to me that, with this group, the task of courts and associated services is to help parents to recover their functionality as part of the emotional moving-on process following separation. A point to bear in mind with this group is that anger is a recognised part of the bereavement process. So, the fact that parents are angry with each other does not mean that they are not moving in the right direction and back towards future functionality.

The second group I describe as “significantly conflicted”. This typology can cover a range of different situations. Parents may have an ill-defined initial relationship – perhaps a ‘one night stand’ - that leads to pregnancy, or be very young parents with little in terms of experience of collaborative parenting behind them. These situations can become conflictual when parents come from families of origin where strong views and influences are likely to be present (the classic scenario of – “I told you he was no good”). I recall very early in my days of dispute resolution, having a meeting at a court in Humberside where both young parents appeared to have made, in quite a short period of time, a reasonable arrangement about contact. As she left the room mother turned to
me and said “it won’t work, of course”. When I asked her why she had that view, given the conversation we had just had, she stated that she had to return home to her mother. Her mother had never liked the father of the child and she was heavily dependent on maternal grandmother, both for accommodation and for childcare. Therefore she felt it would be virtually impossible for her to persuade her mother that the arrangement she herself would have been quite willing to make, was one that was acceptable in practice.

Indeed, a feature of this group is that other figures are likely to be powerful maintainers of the family conflict. Perhaps the most familiar one is the new partner. New partners may bring their own uncertainties and insecurities and find it difficult to live with the idea that their current partner should strive to get on better with their ex-partner (for the sake of the children). When the original relationship between the parents is unresolved emotionally – as is often the case with matters that come in our direction – it is likely that this will create quite an explosive scenario, where both new partners may see entrenched conflict between the ‘ex’s’ as critical to the maintenance of the ‘stability’ of the new relationships.

The task with significantly conflicted parents is often about empowering parents who may appear powerless in the face of the significant influence of others. Also, borrowing from Family Therapy, there is often a need to build up the strength of the positive elements in the family dynamics and challenge the more pernicious.

My central assertion would be that, in an appropriate form, mediation is a service well-suited to the needs of all temporarily dysfunctional parents and many significantly conflicted parents.

The third group I refer to are those with whom my colleagues and I work, the group where we define the conflict as ‘stuck’; a numerically small but deeply worrying section of the separated parents population. The article talks about this term both describing the fact that the case can remain in legal proceedings for a lengthy period of time, but also that, emotionally, parents are often ‘stuck’ in their conflicted positions. These scenarios may well involve a very good “fit” between the two parents in conflict, where they are each playing out not only the historical dynamics of a fight for control and power in their own relationship but also previous life experiences. Sometimes parents who are very stuck in conflict may be extremely successful in adult life generally but
nevertheless have things in their own past or from previous relationships, that put them at risk of becoming stuck in conflict after the breakdown of a marriage or significant relationship.

With this group the task is seen as essentially therapeutic one, with a need to work on the ambivalence that is typical in those conflicted parents. One part of them will have a strong need to remain in conflict whilst another part of them will recognise that it is doing a great deal of damage to their children and is not allowing them to move on. The work that we have done in this area has drawn us towards the connections with working with those with addiction. It may seem a strange parallel but there are some parents, that we all know, who are so wedded to conflict and going through the court process, that they experience the same difficulties in giving up – even though they know the rational reasons why they should do – as those who abuse drink or drugs. The models for promoting change that have been developed in working with addictions have been very useful in our experience in terms of helping these stuck families move on.

Having set out my sense of the different sorts of conflicted families that we all may face, I will now offer my thoughts on the challenges to those who work in Family Mediation.

Firstly, with regard to the practitioner, it seems to me that there is a challenge around assessment of the nature of the conflict and the needs that flow from that assessment. Mediation practitioners are usually able to make judgements about whether the people who are using their service are right (or, rather, ready) for mediation. Reflecting on the parallel that I made earlier with addiction, what has been learned in that field is that if you offer the right service at the wrong time it may set the client or family back in terms of being able to take up the service when they are ready for it. I think there is a good deal more discussion to be had, around the question of people being ‘emotionally ready’ to enter the process of mediation or ADR.

Turning to those who run or administer Mediation Services, it seems to me that, in the 30+ year history of mediation, there has been a strong positive tradition of developing related services around the central service of mediation. In my own recent experience I have been a consultant to a children’s support service within the Newcastle Family Mediation Service. There have been divorce experience courses, mothers groups, fathers groups and so on. It seems to me that if the needs of high conflict families are recognised as different to those who are
helped by way of mediation, it follows that Family Mediation Services could readily offer specialist help in that area within the broad range of services offered within many FMS in the UK. Like most in our field, I have been drawn towards the models of service delivery coming out of Australia. Family Relationship Centres would appear to me to be the ideal model, in the sense that the family go to a Centre where there are different doors offering different services, depending on their needs, as assessed by themselves and those who offer the services.

A very important point to stress here is that if one has a range of services offered within the same organisation, there is much less likely to be unhelpful competition between the different services. There is also likely to be a much smoother referral, from one form of service in-house to another form in-house. This is particularly important in mediation, in my view, because even with the extreme conflicts as described in my ‘stuck parents’ typology, the fact is that such parents can move and shift to the point where they are ready for family mediation. I have never been persuaded by the idea that mediation is best suited to the early days of separation - “before the bitterness sets in”. I find this notion to be an over-simplification of the complex and painful emotional processes that many conflicted parents go through. All the change models around, including those to which I referred earlier in relation to addiction, talk about the capacity to change and the duty of those who are providing the service to be in touch with where people are really at, in terms of their readiness to contemplate change. A good example of this approach is Brief Solution Focussed Therapy, an approach that we have drawn quite heavily in our own work, as many colleagues here today will do, I am sure.

Before I close I will give a brief account of the way we work therapeutically with stuck families, if only to delineate the approach from that of most mediators. Again, I would stress that in my view, it is complementary but different process.

In addition to taking detailed family and marital histories, we have a set of standard questions. This helps to tease out difficult emotions quite quickly but also provide safe boundaries. It is important, as with mediation in high tension cases, that the practitioner keeps a good balance between setting clear and firm boundaries whilst at the same time encouraging the (safe) expression of strong and painful feelings. Our opening questions include asking parents who was the most upset about the ending of their relationship and giving them each the
opportunity to say ‘sorry’ to each other for the things that have gone wrong. We try hard, as I noted earlier, drawing from motivational interviewing, to work on the ambivalence of those in conflict. The classic ambivalence in the case of conflicted separated parents is that between the need to continue to be angry with, and not let go emotionally of, the ex-partner and an awareness that the children may well be suffering as a consequence and will possibly have their lives blighted if the conflict continues.

With regard to the question of children in high conflict cases, our view is that it is important that children are not involved directly in our work, because of all the risks attached to children being pushed into positions of partiality. We strongly resist labelling the child as ‘the problem’ – for example, the child who is reluctant to go to contact when both their parents hate each other. However, we find there are ways of bringing children’s contribution into our work. One of the most obvious mechanisms is ensuring that the children are aware that mum and dad are working together to try and improve things between themselves. We had a case recently where an extremely powerful message was given back to us from the children, along the lines of “Thank goodness; it should have happened ages ago”.

We use many of the familiar therapeutic techniques, such as reframing, especially around the area of negative perceptions. When parents have been in a long-standing conflictual relationship, challenging them to look at their own behaviour, rather than complain about the other’s, if they wish to see change, can be a powerful intervention. Sometimes, in quite a matter of fact way, we make the observation to parents that they know each other’s faults and failings very well and suggest that, now, they need to develop ways of managing those in the least damaging and most effective way possible.

Going right back to the introduction, we take an approach that looks at the causes of post-separation conflict, the dynamics that it produces and the impact on parents parenting. We do not touch the symptom (say, detail of contact arrangements), in part because we feel that area is for discussion further down the road, when parents are perhaps ready to return to, or consider, mediation. Also, when you are working therapeutically, it is critical that you are, as one of my colleague used to say, “neutral to outcome”. It is not helpful if one or other parent see us as attempting to promote the development of contact in a situation of high conflict between the two parents.
In preparing this presentation I turned to the article that Neil Robinson wrote, on his own work in tandem with a Children’s Guardian, in high conflict private law cases, as described in February 2006 Family Law (“Resolving entrenched child litigation, Part 2; a new model of Court directed mediation”). Some of the points that Neil makes about how you work with high conflict cases are touchstones in our own work - especially the notion of keeping the focus on the parental relationship and the conflict within it. We also seek to establish clear boundaries and, as I have said before, take responsibility for creating both physical and emotional safety within the room and within the discussion. Careful setting up of the meetings is crucial. This can involve, in our Group’s case, a lot of work over the telephone, making sure that people are clear about the objects of the exercise and that their solicitors are ‘in the loop’. My colleagues all come from what can be described as a systemic background. Therefore we will often see the solicitor as the key figure in helping the reluctant client to come to the table with some degree of willingness to engage with us. This strategy often yields remarkable results, particularly when there is already a good trusting relationship between client and solicitor.

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