
Kluwer Mediation Blog

It does work! – Research on the Long Term Effectiveness of Mediation

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As much as we might like mediation's fluid and often intangible nature, every now and then it can be of benefit to come across some research which enables us to take a step back and look at the impact our work is having on our clients, even long after the execution of the Memorandum of Understanding. One such piece of research which is not getting nearly enough press is Reunite's study on An Evaluation of the Long Term Effects of Mediation in Cases of International Parental Child Abduction, authored by Trevor Buck, published in June of this year. It is one of only very few studies I have come across recently which evaluates the impact of mediation beyond "success" or "failure" in terms of whether or not agreement has been reached and a Memorandum of Understanding has been signed.

Reunite is a UK charity specialising in international child abduction and the movement of children across borders. They offer assistance, advice and information to families who find themselves facing cross border family conflict, and also provide a specialised mediation service in international child abduction cases. Reunite were involved in the TIM Training in International Family Mediation in Brussels in 2011 (see my post from November 2011) and their model for mediation in cases of international parental child abduction is based on an extensive body of research.

Mediation in the area of parental child abduction is highly specialised discipline, and mediators working in this area face unique challenges. The most significant of these include the very high levels of conflict involved in such cases, the need for close interaction with legal professionals and services, the logistical issues of setting up a mediation when parties are in different countries, and the time pressure attached to such mediations due to the nature of the legal proceedings in the shadow of which the mediation usually takes place. The model of mediation that has therefore been developed for application to such cases differs from that used in traditional family mediation. The aim of the report was to assess whether mediation in general, and in the form it is being used in such cases by Reunite, is proving "successful" in the long term by reference to a number of different criteria.

Before going into the findings of the report, it is important to point out that Reunite had already carried out research in relation to the "success", in the traditional sense, of mediation in such cases on the basis of a 3 year pilot project in the course of which 28 cases were mediated. Of these 75% resulted in a Memorandum of Understanding "focused on the best interests of their child, ensuring that the child continued to have a positive relationship with both parents and their extended family, thus avoiding a court enforced decision and future litigation." (www.reunite.org)

The Long Term Effectiveness Report was based on the experiences of parents who had already gone through the Reunite mediation process either during the pilot project or generally between 2003 and 2009. Two groups of cases were defined, namely “resolved” cases, that is, where a Memorandum of Understanding had been agreed and was quickly followed by a consent order in court, and “unresolved” cases, where no agreement was reached and the court was required to make an authoritative decision. The long term outcome of mediation was then evaluated against sets of criteria falling into three categories: legal/administrative consequences, the development of family relationships, and parental perceptions of the whole experience of the abduction case and its consequences.

It is difficult to sum up all the findings of the Report – which runs to 104 pages – in as small a space as this so I wanted to focus on a few that are of particular relevance to me as a practitioner and to the development of policy in the area of mediation. These come under a number of headings:

Impact on further litigation

A clear outcome of the study was that the resolved cases showed no further pattern of litigation, and generally good compliance with the terms of agreement reached. The main triggers for review of agreed residence and contact arrangements in such cases were children becoming increasingly mature and autonomous and parents re-partnering. By contrast, unresolved cases resulted in more litigation, even beyond the proceedings necessary to initially resolve the matter, and difficulties around compliance with court orders. Furthermore, it is difficult to find any positive comments by participants in the study in relation to their experience or court and litigation. Even where mediation had failed, the ensuing court proceedings were not viewed as a better option. It should also be borne in mind that as many countries provide free legal aid to at least one of the parents in such cases, the cost savings made in the resolved cases would be significant. Certainly in Ireland, where child abduction cases are heard in the High Court, and then often sent back to other courts for determination of related issues, such savings would be significant.

Impact on relationships

While most couples did not attribute the improvement of family relationships directly to the mediation process itself, resolved cases showed a general pattern of both parents maintaining positive relationships with their children, even across often significant geographical distances. They also showed parents being better able to manage at least a functional co-parenting relationship. Many cited the benefit of having the Memorandum of Understanding as a foundation for their arrangements. Also, the language used by the parties to describe the communication with the other parent was generally positive. In unresolved cases, on the other hand, communication between parents tended to be minimal if not non-existent, levels of mistrust and conflict remained consistently high and the effects on the relationship between parents and children were negative, particularly where the conflict continued to be played out via the children. Family life and contact arrangements tended only to settle down after lengthy legal proceedings were finally finished. I found these findings particularly interesting as they were not directly attributed by the parties to the mediation, since what we often hope to achieve as mediators is to help parties build more positive relationships in the future. In reading the report I found it difficult to pinpoint what exactly had produced the positive outcomes on relationships, whether it was the fact of any agreement having been reached at all, however it came about, or whether maybe it showed instead the hugely destructive potential of litigation and the way, at least in this part of the world, the courts (don't) work.

The Model of Mediation

Generally, co-mediation is used in child abduction cases. Notably, in this study the majority of the cases were co-mediated by two women, and even more interestingly, the majority of participants had no issues with this, some even citing they preferred it – including some men. Some participants, particularly in unresolved cases, did feel that one mediator from each gender would have been more appropriate. The Report does not go into detail on the nationalities of the mediators involved in the cases upon Report is based, but it is worth noting that the TIM model under which the European Network of International Family Mediators (www.crossbordermediators.eu) now works sees having one co-mediator from each of the nationalities of the parties as the most important consideration in appointing mediators, closely followed by having one from both the legal and psycho-social disciplines and one from each gender.

A number of parties voiced the opinion that the mediation in such a short time frame (usually 3×3 hour sessions over one or two days) was very pressured and made the mediation more difficult. Another participant suggested that follow up or on-going mediation after the residence and contact issues were initially settled would be of benefit. Parents in both resolved and unresolved cases voiced positive opinions about the mediation process itself, and in particular the skills and conduct of the Reunite mediators who handled their cases. One worrying finding, however was that a number of parents from the unresolved group stated that they had felt under pressure to mediate, that pressure emanating from the courts, their lawyers and sometimes the other parent. It would, in my opinion, be useful to look into this a little further in the context of legislators in many countries, and certainly here in Ireland, try to get to grips with how to divert cases into mediation without compromising the voluntary nature of the process. The report highlights on a number of occasions the need for robust screening procedures in order to establish the suitability of cases, particularly in this legally and emotionally charged area, and raises the question of whether more intensive screening might have filtered out some of the unresolved cases at an earlier stage. Food for thought...

I would urge anyone who is at all interested in family mediation to read the report, readily available for download on the Reunite website, and think about what impact it might have on their own practice. We are doing so within the context of the Network of International Family Mediators, but also on a national level. When trying to influence policy, I have learned that it is always good to be armed with some research to back up your arguments. It is a lot harder for lawmakers to say no to mediation when you can present them with proof of its benefits.

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