



social care
institute for excellence

Safeguarding adults: mediation and family group conferences

Information for directors and senior managers



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Introduction

'Family group conferences for adults enable extended families to be involved in making the best, most broad-ranging and creative plans to address serious concerns of their family member, and help keep them safe.' (Marilyn Taylor, CEO at Daybreak)

This resource explains the use of mediation and family group conferences (FGCs) for adult safeguarding for directors and senior managers of health and social care professionals. It provides information on practice standards and training requirements, cost-effectiveness and a 'shared area of best practice', which focuses on the evaluation of innovative practices by local authorities in the UK. For background information, first read [Safeguarding adults: mediation and family group conferences](#).

1. Current use of FGC in the UK

Family group conferences (FGCs) are established as common practice in the context of child welfare in the UK. In a survey on the use of FGCs in child welfare practice in 2001, Brown (2003) found that 38 per cent of UK councils already provided an FGC service, and 93 per cent of these were in child welfare practice.

Barnsdale and Walker's (2007) report for the Scottish Executive showed that access to FGC services vary widely across the UK. Although schemes operate in most statutory social work agencies in Wales and Northern Ireland, only about 40 per cent of authorities in England and Scotland provide them. These FGC services cover situations in child protection, children in need, children being considered for accommodation, children in residential or foster care and those leaving a care placement.

Family Rights Group gave evidence to the 2011 Justice Select Committee inquiry into the family courts (HC 518-iii 2011) that 69 per cent of local authorities in England and 18 of the 22 Welsh authorities have or are setting up an FGC service. However, families are still offered FGC services in an inconsistent way – so a family in need is not guaranteed to receive the service.

A number of national organisations provide FGC services, including the following:

- **Family Rights Group (FRG)** is a national charity in England and Wales that advises the families of children who are involved with or need children's services because of welfare needs or concerns. The FRG provides training and consultancy services to local authorities in England.
- The charity **Barnardo's** works to support vulnerable children and young people. Barnardo's South West has run over 400 conferences in the past seven years, and its FGC service can provide project management, consultancy, training and independent sessional coordinators and advocates.
- **Daybreak** is a national voluntary organisation that has provided FGC services and training to a range of local authorities and other organisations for over 10 years. Its programmes address a wide range of issues, including child welfare and protection, adult welfare and protection, family and domestic violence and abuse and antisocial behaviour. It is currently the only provider to specifically offer training for agencies and professionals who are considering using FGCs to address issues concerning vulnerable adults.

Three local authorities – Hampshire, Kent and Essex – currently provide an FGC service for vulnerable adults, and a fourth – Medway – is considering implementing a scheme in 2012.

Hampshire County Council and Daybreak's 'Bluebird' project

In 2006, Daybreak explored the possibility of using FGCs for vulnerable adults in Hampshire County Council adult services. Daybreak had substantial experience of using the FGC process in cases of domestic abuse, and although this focused primarily on the safety of children, it also had good outcomes for the adult victim. In 2007,

Daybreak secured substantial funding from Comic Relief to set up the 'Bluebird' project, which used FGCs to address issues of elder abuse. The project covered Hampshire, Southampton, Portsmouth and the Isle of Wight. The funding allowed for referrals from any source, including direct referrals from older people and their families, and covered any type of abuse – including suspected or potential – of people aged 50 years or more. It also included advocacy services for vulnerable adults involved in the FGC process. The service has now been extended to all vulnerable adults who are experiencing – or are at risk of – abuse, and this is being evaluated (Daybreak 2010).

Kent County Council

Kent County Council established an in-house FGC service for children in June 2002 and extended the service to include older people and people with learning difficulties in 2006. An independent evaluation concluded that provision for both children and adults could provide more efficient services as long as relevant training is given to FGC coordinators. The report also recognised that expanding an existing children's FGC service to include adults should not be seen as an extension of current services but as a new development in FGC work. Despite the success of this pilot – including cost savings – the adult FGC service closed in 2010.

North Essex Mental Health Partnership NHS Trust

Children's services in Essex established an in-house FGC service for the care and protection of children in 1996. It noted that a large number of the families that were referred to the FGC service included a parent or carer with mental health issues (including substance abuse). It also recognised that these parents would benefit from conferences on mental health issues, and this led to the conclusion that FGCs would benefit people with mental health problems and their support networks, whether they had children or not.

In 1999, Essex piloted an FGC service for vulnerable adults in the context of adult mental healthcare planning. It is currently available to everyone on the Care Programme Approach (CPA) – a system for managing the care of people receiving mental health services – through a referral from the person's care coordinator. An independent evaluation found that extending the FGC service in this way was effective, although it needed a lengthy consultation period to address the challenges presented by practitioners and managers within mental health (Mutter *et al* 2002).

Medway Council

Since 2009, Medway Council has commissioned Medway Mediation to provide FGCs for children. A case file audit of safeguarding vulnerable adults in 2010 highlighted the need to involve vulnerable adults in the creation of protection plans, and FGC services were seen as a way to do this. The success of the collaboration between Hampshire County Council and Daybreak – together with the case file audit – contributed to the decision to extend the council's service to include vulnerable adults. As a result, the council's adults' and children's services decided to jointly procure services from an external provider. This is expected to run for three years from July 2012. Medway will also offer an advocacy service to support vulnerable adults who participate in an FGC. The scheme will be publicly evaluated and could become a core service if it is effective and sustainable.

2. Quality and accreditation

FGC services in adult safeguarding need additional competencies to those in child welfare, and the training and skills of practitioners should reflect this (Daybreak 2011; Marsh 2007; Mutter et al 2002).

There is currently no consistent quality or accreditation system or regulatory body for FGC providers and coordinators in the UK, however, FRG has a central role in promoting the development of common values in FGCs. It runs the **National Family Group Conference Network**, connecting organisations and individuals with an interest in the approach. The network aims to:

- agree and promote core principles and practice standards
- help members share and learn from each other's experience
- undertake and disseminate research on FGCs
- campaign for the widespread use of FGCs and promote FGCs use in different contexts
- advise and support agencies in setting up and sustaining FGC services
- provide access to high-quality training and consultation
- ensure that service users have a voice in the future development of FGC services (FRG 2012).

FRG also hosts a FGC Projects section, which provides contact details of local family group conference projects. FRG provides training and consultancy services to local authorities in England.

FRG obtained funding from the Department for Education in 2011 to regulate quality standards across FGC services by developing an accreditation framework for FGC services. This two-year project is led by FRG in collaboration with members of the FGC Network, Dr Louise Brown (University of Bath) and other key stakeholders (FRG 2012). They are currently seeking the views of FGC service providers, and aim to trial a draft accreditation scheme from April 2012.

The FGC Forum in Northern Ireland has published a set of six National FGC Standards (FGCF NI 2011). These were developed to help children, vulnerable adults, their families and professionals understand the FGC process.

3. Cost-effectiveness

There is little evidence of the cost-effectiveness of FGC services in a child welfare or vulnerable adult context. Although the benefits of using mediation and FGCs for adults are diverse and sometimes intangible, future projects should be evaluated against cost-effectiveness. Below is a summary of the limited evidence that is available.

An independent evaluation of the Kent County Council FGC service for adults found that it had been successful. People using the service, carers, families and professionals all reported high levels of satisfaction and improved professional coordination. The aim to reduce budget expenditure for adult services by an average of £7,000 per FGC meant that there was a combined saving of approximately £85,000 over two years. These savings were based on data gathered before and after the FGC was set up, and using estimates of expenditure over a two-year period if the FGC had not been held. There were some relatively small additional costs for health, including increased use of community mental health teams and some additional respite care. If the FGC model prevents the need for care proceedings, costs to other public services – for example, CAF/CASS and the legal aid budget – could be reduced. There was a notable increase in partnership working between families, friends and services – and between different services – which led to more efficient service provision. The report concluded that an FGC service covering both children and adults would provide the most efficient coordinator training and support (Marsh 2007).

An independent evaluation of the North Essex Mental Health Partnership NHS Trust identified that the average cost of each FGC was between £700 and £800, including the cost of the FGC coordinator. The report found that the FGC model strengthened the level of practical and social support and reduced isolation in people using the service. It also established a monitoring system that identified signs of deterioration so that further treatment could be offered or altered before a crisis occurred. This result implied that the effectiveness of FGC projects justifies the costs of setting them up once they are running at full capacity, however, no formal measure of cost-effectiveness was given (Mutter *et al* 2002).

An internal evaluation by Daybreak of their collaboration with Hampshire County Council reported that the FGC achieved clear cost-effectiveness (Daybreak 2010). Practitioners and managers of adult services reported that social worker time was significantly reduced. The evaluation also indicated that an older person could remain in their own home when supported through the FGC model, as they were less likely to want to escape abuse by moving to costly residential care. Following a successful FGC, cases could be closed or some services could be withdrawn safely. Again, no formal measure of cost-effectiveness was given.

FRG gave evidence to the Justice Select Committee inquiry into the family courts (HC 518-iii 2011) on the use of FGC before and during care proceedings. FRG argued that this would support partnership working between families and the local authority, ensure that children who are at risk of harm are kept safe, and allow more children who are unable to live with their parents to remain safe living within their wider family network. It was also argued that although the primary aim should be to improve outcomes for children, using an FGC before and during care proceedings is cost-effective and would

generate savings in the court, the legal aid budget and local authority budgets. FRG reported that every unnecessary (child) care case that is avoided saves more than £25,000 in court process costs. Even a decline of 5 per cent in the (child) care population could reduce expenditure on the care system in England and Wales by over £109 million each year, which could be more effectively redirected to promoting children's welfare. It also reported on a sample of four local FGC projects that:

- 159 children avoided becoming looked after
- care proceedings were avoided for 87 children
- there was a saving of approximately £6.76 million.

FGC project costs amounted to £968,000 in 2009–10, and FRG argued that this was a clear saving to public agencies, even taking into consideration the costs of supporting the family plan.

Barnardo's also submitted evidence to the Justice Select Committee inquiry into the family courts estimating the average cost of an FGC at £1,000–£2,000, depending on the number of family members involved. It also reported that the cost of running an FGC was approximately £88,000 but, where care proceedings were being considered, it estimated that this saved the local authority approximately 10 times that amount in care costs. The cost of commissioning one FGC referral is approximately £1,325 plus expenses (such as travel and room hire). The cost of commissioning a number of FGC services that are agreed and purchased in advance is likely to be slightly lower.

4. Current use of mediation in the UK

Mediation is not currently an established practice in child or adult welfare in the UK. However, it is widely used in the private sector and in court processes in private law, such as divorce settlements and child custody arrangements. Mediation is also commonly used in public law cases – including child protection cases – in some parts of the United States and Canada, and increasingly in Australia.

The *Family justice review* (MoJ 2011a) highlighted the potential of mediation to improve outcomes for families involved in the family justice system. It recommended a pilot on the use of formal mediation approaches in public law proceedings. The *Interim report* stated that mediation appears to be more flexible than the FGC model. It also reported that mediation has the potential to narrow issues during care proceedings and could be used to settle the details of care plans between the family and the local authority (MoJ 2011b).

The use of elder mediation and adult guardianship mediation is growing in the United States and Canada. Some parts of Canada now have legislation that makes mediation mandatory in adult guardianship matters such as powers of attorney, care-giving and long-term care (nursing home) issues (CCEL 2012). It is not yet an established field in the UK. However, the Elder Mediation Project (EMP) was set up in London in 1991. Associated with the national voluntary organisation Mediation UK, it provides free services to all those involved in conflicts concerning older, disabled and mentally frail people (Craig, 2000). While the project was seen to be successful, Mediation UK went into voluntary liquidation in October 2006 and EMP ceased to operate. Although EMP did not work directly with local authorities, it collaborated with those community mediation providers that did, and successfully increased referral rates (Craig 1998, 2000).

Evidence on the use of mediation in adult safeguarding is minimal. One recorded example is of Worcestershire Safeguarding Adults Committee, which reported the use of mediation in the case of a dispute in a residential home for people with learning disabilities (Worcestershire SAC 2008).

Mediators in adult safeguarding need additional competencies to those working in child welfare. This is due to a number of factors, including the additional physical and mental health needs of people using the service, the implications of the Mental Capacity Act 2005 the nature of family involvement, the potential for power imbalances, the needs of carers and the number of agencies that are likely to be involved. The training and skills for mediation practitioners should reflect this (CCEL 2012).

There is currently no network or organisation that oversees professional standards for mediators working with vulnerable adults in the UK. However, there are a number of key international documents that have attempted to define the issues and requirements for mediators working with older people or people with mental or physical disabilities:

- *Code of professional conduct for mediators specializing in issues of aging* (Elder Mediation Canada 2011). This is endorsed by Elder Mediation Canada, Family Mediation Canada, Mediation PEI Inc., Alzheimer Foundation of PEI, Ontario Association for Family Mediation, Mediators' Institute of Ireland and Mediation Switzerland.
- *Elder and guardianship mediation* (CCEL 2012). This includes sections on ethics, values and principles, ethics and mediation programme policies, elder and guardianship mediation training and standards, and best practices in elder and guardianship mediation.
- *Elder care and elder family decision-making mediation: Training objectives and commentary* (US Association for Conflict Resolution 2011).

5. Quality of mediation

There is no single regulatory body, universal standard of training or code of ethics for mediators across all disciplines in the UK.

There is, however, a Mediation Quality Mark for family mediation providers. Run by the Legal Services Commission, this Quality Mark covers standards of organisation and customer care for mediation services. It also offers an individual accreditation scheme for mediators working for those services. All family mediation services and individual mediators providing publicly funded family mediation services must meet these standards.

The Scottish Mediation Network links family, community and civil mediation providers in Scotland through its online searchable database of self-certifying mediators in Scotland – the Scottish Mediation Register. Those registered agree to meet minimum standards in training, continuing practice development, adherence to a Code of Practice, complaints handling procedures and appropriate indemnity insurance.

Currently there is no equivalent family mediation network in England, Wales or Northern Ireland. However, the Family Mediation Council regulates standards for family mediation in the UK. The Council approves family mediation bodies that meet its requirements. The government's Family Mediation database lists family mediators who are trained and accredited by organisations approved by the Council. The final report of the Ministry of Justice's Family justice review (MoJ 2011a) recommended that the government should closely watch and review the progress of the Family Mediation Council to assess its effectiveness in maintaining and reinforcing high standards. It also suggested that it should, if necessary, replace the Council with an independent regulator.

6. Cost-effectiveness of mediation

In 2007, the National Audit Office published a report on mediation in family cases involving legal aid (NAO 2007). It found that the costs associated with publicly funded mediation were substantially lower than those of publicly funded proceedings in family cases. The average cost of family court proceedings was £1,682 per case, whereas the average cost of family mediation was £752. It estimated a saving equivalent to £10 million per year if 14 per cent of the cases that went to court had been resolved through mediation.

The cost of family mediation – which is a reasonable comparison to the cost of mediation for safeguarding vulnerable adults – varies. Publicly funded mediation, where there are two or more sessions, costs between £756 (for sole mediation) and £1,064 (for co-mediation) per session, and up to a further £130 for an assessment meeting. Family mediation sessions are shorter and take place at intervals, so the model for delivery is unlikely to be the same as for adult safeguarding, which in most cases will require a single, longer session (perhaps half a day).

Publicly funded family mediation is on a fixed cost basis, depending on individual circumstances. The rate used by the Legal Services Commission for other (non-family) publicly funded mediation since October 2011 is £126 per hour. This rate applies, for example, to mediation in publicly funded proceedings in the Court of Protection. The cost of a mediator spending a total of 10 hours on a case – including meeting the parties beforehand and facilitating the mediation session itself – would be £1,260. However, mediation is a shared cost, and the publicly funded element may not necessarily be the total cost of mediation as one mediation party may be privately funded.

7. Cost-effective solutions for Deprivation of Liberty Safeguards

Legal proceedings under the Deprivation of Liberty Safeguards (DoLS) cost far more than the impact assessment expected (MoJ and DH 2008). The impact assessment predicted that the average cost of DoLS court proceedings would be £9,000, however, it is estimated that costs are more likely to be around £45,000 or higher (Series 2012). This is due to the complexity of cases, which are generally heard in the High Court and often require counsel and several expert witnesses. Supervisory bodies such as local authorities and primary care trusts meet a significant proportion of the costs, which are estimated at an average of £23,000 (Series 2012).

Although initially the number of appeals was lower than the 2.5 per cent anticipated in the impact assessment, the number of court appeals now looks set to exceed 4 per cent in 2011–12 (Series 2012). Appeals and reviews of detention have increased rapidly since the well-publicised case of the *London Borough of Hillingdon v Neary and Anor*. In this case the court found that a young man's rights under Article 5(4) of the European Convention on Human Rights (ECHR) had been violated in part because the supervisory body had not referred an ongoing dispute to court (British and Irish Legal Information Institute 2011). The DoLS are also highlighting other care and welfare disputes that are being heard in court under other parts of the Mental Capacity Act 2005. The financial impact on supervisory bodies of rising litigation under the Mental Capacity Act 2005 and DoLS is likely to be significant – particularly at a time of limited resources – and hard to predict for any individual organisation. The danger is that the high costs for litigation might prevent public authorities from referring disputes to the Court of Protection, therefore jeopardising the Article 5 and Article 8 rights of detainees and their families (Series 2012). The complexity and rising number cases reaching the courts are also likely to affect the work of the Family Division of the High Court and the Court of Protection. The Official Solicitor has recently indicated that he has reached the limit of his resources to take on care and welfare cases in the Court of Protection. His exception is for cases concerning emergency medical treatment or DoLS appeals brought by someone other than the relevant person's representative (Ruck-Keen et al 2012). This is likely to mean that for many disputes under the Mental Capacity Act 2005 – including certain kinds of deprivation of liberty cases – there is no available representation for the person who lacks capacity. As DoLS put more strain on the welfare and legal systems, it has been suggested that it may be time to start considering alternative ways of addressing these disputes (Series 2012).

An FGC – with its emphasis on the family meeting in private to generate their own plan to address concerns – is not an appropriate approach for those who lack capacity or for professionals with legal duties under the Mental Capacity Act 2005 and DoLS.

Mediation is, however, one form of dispute resolution that public authorities may want to explore for resolving disputes under DoLS and the Mental Capacity Act 2005. In private family law, mediation has led to more sustainable outcomes and reduced legal costs in decisions relating to children (Quartermain 2011). No such research has been undertaken for welfare disputes under the Mental Capacity Act 2005. However, the

successful mediation of disputes costs substantially less than hearings before the Court of Protection and may incur less delay.

Early use of mediation can open up channels of communication to reveal shared solutions before either side gets too entrenched in their approach. Mediation may be less intimidating for families than court proceedings, and shared solutions – rather than imposed solutions – are likely to gain the long-term support of all parties. In some Court of Protection cases involving welfare disputes, the judge has ordered or encouraged the parties to consider mediation (EWHC 2420 2011), although it has not been successful in all cases (EWHC 502 2011).

There are limitations to mediation – especially in the context of issues around incapacity and detention – which public authorities considering this route should bear in mind:

- Many court cases around the deprivation of liberty arise because the points of law are unclear – such as the meaning of ‘deprivation of liberty’ and the relationship between the Mental Health Act 1983 (as amended) and the Mental Capacity Act 2005. These issues still require judicial consideration.
- A mediator cannot authorise an ongoing detention, nor can mediation replace a detainee’s rights under Article 5(4) of the ECHR to have their detention reviewed by a court. Even if mediation leads to an agreed outcome between the detainee’s family and professionals, the detainee must still be supported in their right to have their detention reviewed by a court, particularly if they are objecting.
- In some cases, mediation can be funded through legal aid. However, where this is not possible – and if families and detainees are expected to share the costs of mediation – this may not be an incentive to mediate, as unpaid representatives and the incapacitated person will receive full legal aid for DoLS appeals in court.
- Consideration must be given to whether a person has the capacity to consent to mediation, to participate meaningfully in the mediation process and to consent to any outcomes, as well as how they should be represented and supported. The Official Solicitor has in the past expressed concerns about the over-reliance on mediation for disputes involving people who lack mental capacity (OS 2011).
- Mediators should be aware that – wherever possible – the person should be supported to take part in decisions about matters that are important to them. Mediators should use pre-mediation meetings to find out whether the vulnerable adult can participate with support, and – where appropriate – provide that support (CCEL 2012; Daybreak 2011; OS 2011).
- If a person is assessed as lacking the capacity to make particular decisions and to reach agreement on issues, the responsibility of the mediator does not extend to advocating for the person. They do, however, have a responsibility to

ensure that the person's past and present wishes and preferences are included in the process. Establishing the person's wishes and preferences is a requirement of the best interests decision-making process for a person who may lack capacity (Mental Capacity Act 2005, section 4(6)).

Mediation may be conducted alongside court proceedings, and may help all parties to identify or 'narrow down' the issues that need a more formal negotiation process. A more collaborative approach that results in fewer issues requiring judicial resolution may reduce some of the time and expense of legal proceedings.

Mediation allows professionals, people using the service and their family or other network of support to work collaboratively, but always within the duties and responsibilities that professionals have under the Mental Capacity Act 2005 and DoLS.

Useful websites

- **Barnardo's**
- **Daybreak**
- **Family Mediation Council**
- **Family Mediation Database**
- **Family Rights Group**
- **Mediation Quality Mark**
- **National Family Group Conference Network**
- **Scottish Mediation Network**
- **Scottish Mediation Register**

Social Care Institute for Excellence

Fifth Floor

2–4 Cockspur Street

London SW1Y 5BH

tel 020 7024 7650

fax 020 7024 7651

www.scie.org.uk

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