

Notes of the meeting of the CMC's Independent Consultative Group on 16th February 2009

Present: Karl Mackie (Chair), Maria Arpa, Ronald Bradbeer, Henry Brooke, Nicola Cohen, Peter Cresswell, Zanne Findlay, Carolyn Graham, John Hine, Gavin Lightman, Jonathan Lloyd-Jones, Simon Madden (MoJ), Ewan Malcolm, Alex Seshie-Vanderpuije (MoJ), Julia Smith, Tom Thomas, Stephen Walker.

Summary:

1. Given the demand identified by the Survey responses, the CMC should maintain and publish a list of those of its members who wish to be included in the list, so long as their entries satisfy certain minimum criteria. It must be careful to avoid membership of the list representing some kind of kitemark of quality, or the risk of incurring legal liability in relation to the accuracy of any of the contents of the list.
2. The CMC should set up a working party to explore whether the advantages of the CMC becoming involved in the field of community mediation would outweigh the disadvantages.
3. The CMC should proceed cautiously in relation to identifying minimum standards for training providers, and again the creation of a working party would assist in clarifying the issues. It is too early to create an independent Standards Board, but much will be gained by learning from the Scottish experience. In the meantime, in case of doubt, CMC-accredited providers must take the initiative in satisfying themselves as to the adequacy of the training their panel members have received.
4. In general, the CMC must make a clear distinction between registration (which should not be perceived as conferring a kitemark of quality), and accreditation (which should). The CMC should accredit¹ providers but (if it goes down that route) register individual mediators. The trainers should accredit those trainees who have been assessed as having reached an acceptable standard.

¹ Different people spoke of accrediting providers and of registering providers. The former is the term currently in use (and which is contained in the Constitution). The latter reflects the concern that the CMC does not have sufficient resources to confer a kitemark of quality on the providers it accredits under the current scheme.

The Three Main Issues: Points made during the discussion

A. Should the CMC compile and maintain a list (or register) of individual mediators?

- What do people mean by a “register”? The details are important. There must be a defined content, and a role for quality assurance.
- We must beware using the word “accreditation” in two different senses. The CMC should be concerned with registration.
- It has to be done. The question is “How”? Not “Whether”?
- There is a chicken and egg problem here. Where do you start? The priority lies with the training organisations. This is a critical area where benchmarks are needed. You can couple recognised benchmarked training providers with a simple listing of individual mediators. People will be able to see who has trained each mediator on the list.
- Mediation UK did this, in respect of individual community mediators.
- What would be the effect of registration? If it is a kitemark of quality, I fear there will be litigation. It would be a substantial responsibility for the CMC. There are different approaches to training in Europe, and we must not treat mediators differently in different EU countries. On the other hand, to prepare a list would be simple enough.
- One might think of a simple listing. “Trained by ...” It would be cheap and easy. At the far end would be a proper accreditation process, which would be expensive to set up and maintain. If we were thinking of going to that sort of level, how on earth would it be funded? There is still not enough work for the new mediator [to pay the level of subscriptions that would be needed].
- If the CMC runs a simple list, can anyone apply? Will there be no check on quality? Can we say “No” to anyone? From an EU point of view what is the difference between accredited providers and individual mediators?
- We have had the same debate in Scotland. The Scottish Mediation Register hasn’t solved all those problems. We need to be clear what the purpose of the register is. Clarity of purpose is essential. Each step will have a consequential next step, and we should hope to avoid completely unintended consequences.
 - In Scotland we decided to devise something from the users’ perspective. We wanted to provide something useful for them, so that they could find mediators who were broadly speaking OK.

- We catered for all types of mediation. We adopted a broad definition, which includes all types of mediation: facilitative, evaluative, transformative etc. We could not provide protection for the public if the mediators were poor. There is insufficient evidence of what constitutes a bad mediator.
- Our purpose was to reassure and provide information. We also decided, as a step along the route to establishing credentials, to have some independent body who could provide serious scrutiny of what we were doing. We set up a Standards Board by invitation.
- There were three representatives of mediators' groups (commercial – community – family); three representatives of users' groups (Scottish government; business; and an external organisation); two academics who could conduct research; and two who had experience of a regulatory approach elsewhere.
- The Standards Board set six requirements for registration: (1) basic training for up to 30 hours (including 15 hours of role-play); (2) at least ten hours of actual mediations; (3) at least 15 hours of some sort of practice development each year; (4) adherence to a Code - a Scottish Code of Conduct was published; (5) a complaints system; (6) appropriate insurance.
- Some organisations, such as the Scottish Solicitors' Complaints Board) run their own panel of mediators for their own purposes.
- The Scottish Government finds reassurance in these arrangements. It provided £20,000 a year for two years (although the arrangements cost more than this to set up).
- There were two years of consultative consensus-building before we created the register. What we have achieved is a starting point. We set out to be inclusive: English mediators' names are on the register.
- There are now 120 individual mediators on the register: 65% of them have said that they have received some work through the register.
- I am struck by the need and the opportunities. The legal landscape is changing. Access to justice is not easy for people. We must look at this from the users' point of view. I congratulate the CMC on what they have achieved so far.
 - There should be three criteria for inclusion on the list: (1) training by a CMC-approved trainer; (2) insurance; (3) adherence to a Code of Conduct.

- In my limited experience as a mediator I have encountered some quite difficult questions of conduct for the mediator. As to arrangements for handling complaints about professional conduct, these should come later.
- I support the proposal for a list. The CMC already has an accreditation process for providers: some of the requirements are quite stringent. A list would be a start, and we should review the position incrementally. The other day I encountered someone who had received dreadfully bad training, from a provider who has deliberately shied away from seeking accreditation as a training provider, where there is no independent assessment and everyone who attends the training comes out with the title 'mediator'. There are no arrangements for observerships. This individual was about to embark on his first solo mediation. We must protect the public.
- I reinforce this point of view. As a mediation provider, the onus is on us to ensure that our mediators are trained and have the necessary skills. We accredit our panels, and I certify to the CMC we have carried out a range of checks. One difficulty arises when I receive a referral for which I do not have the right person on my panel. If I do recruit someone from outside, we send an observer along to watch. This discussion is primarily about providing listing facilities for those who practise on their own. For my purposes the maintenance of such a list would be helpful.
- Many mediators would love to get on a panel, but are not able to. They therefore practise on their own, though they do not wish to.
- We have struggled with this in the community mediation world. We have "certified mediators" and "independent mediators" (in relation to whom two people have seen them in practice).
- There are lots of provider groups. Lots of people belong to more than one group. There is currently no definition of what training should encompass. The CMC should identify the minimum standards required of trainers.
- It helps a mediation provider if he can look at the qualifications of an independent mediator he is seeking to use.
- I am seeking to satisfy myself that anything extra is needed here. If anyone is to provide a list, it must be the CMC. It won't have much impact on those who already have established practices. The list will mature. In the fullness of time inclusion on the list might represent a kitemark – but not at the beginning.
- The Scottish Mediation Network does not believe it will incur legal liability in respect of the information it provides.
- The list should have on it the names of mediators who have been accredited by some training organisation.

- The Scottish system could be a useful point of reference. There would need to be a budget: how much will setting up a list cost?
- Karl Mackie: There is a consensus that the CMC should provide a list of individual mediators. Care must be taken about the language used, and the importance of avoiding legal liability in respect of the information on the list. Care must be taken about the content of the list, and about the quality of the training that will secure admission to the list.
- It is not only training: it is also experience that will need to be identified. As the accreditation of training and the agreement about common standards has only just been developed the experience of existing mediators and their contribution to the development of mediation should be taken into account.

2. Should the CMC have a role in relation to community mediation?

- There is a desperate need for some organisation to get hold of the situation. There are conflicts and wars and problems with funding. Boroughs with established community mediation services are now withdrawing funding. One Central London borough is putting its community mediation service out to tender. How should the community mediation world deal with local authorities? Or with local area agreements? How can it maintain a social change agenda?
- I agree, but my civil mediator colleagues need to be convinced of this. The CMC has already undertaken a phenomenal area of work. I am worried that it might overstretch itself. We need to take time to work with the community mediation fellowship. There are issues with regard to funding, and we could pull these issues together. We need time to have a good look at what the CMC might be able to bring to the community mediation scene, which is a diverse one.
- My organisation has strong links with four community mediation providers. Some areas of their work come close to ours and there are fuzzy boundaries. There is no funding available to mediators but Managers are salaried in these Charity Providers. There is co-operation between us but also some mutual suspicion, albeit we respect each other's valuable provision. It is quite a complex relationship.
- Fundamentally community mediation should fall within the CMC's remit. I do have concerns, however. There is a problem with standards in the community mediation world.
- Some community mediation services have a culture which means that they will not accept someone who is a volunteer.

- There needs to be an acknowledgement that although the skills of mediation are generic the settings in which mediation operates is not. At the moment some community mediators see their skills as transferrable into any setting, and this has been of concern in the past.
- This may well be the time to seek a change to the CMC's Constitution, because community mediation is a part of mediation generally.
- I think perception is important when we speak of constitutional change. Some people might read an expansionist agenda into the proposed change, which would be the wrong perception. This needs care.

[There was a general consensus to the effect that the CMC should establish a working party to explore whether the advantages in the CMC becoming involved in the community mediation world would outweigh the disadvantages. Nothing should be done in a hurry].

3. What should the CMC do about training standards and should there be an independent Standards Board?

- The advantages in having a quasi-independent Standards Board at the moment are not immediately apparent.
- We need to consult other organisations who are involved in training mediators, including workplace trainers.
- There is a danger if the training standard becomes too broad. There is a danger if we say "You must train in this way".
- I am concerned with the confusion between theory and practice. Family mediation training follows a particular model which I don't ascribe to. The British Association of Counselling recognises all types of counsellors, and not only those who follow a particular model. We need a more generic model. I am an OCN-registered provider (levels 2 and 3). Mediation UK worked very closely with the OCN. The knowhow is all sitting there.
- There is a problem if there is a stark division between civil/ commercial mediators and other mediators.
- I would not feel competent to undertake civil mediations without specific training. The definitions should not be so broad they become meaningless.
- There are a number of tensions around skills and competences. I am aware of community mediators going into the workplace without being equipped to do so. Context is important: what do you need to know before mediating in a particular field? In a joint working party we would be able to tease this out.

- It is a bit like a Corgi registration in the gas industry. You get a basic registration, and then a special registration for more specialist work.
- If the way forward is to publish a list which requires the person listed to have passed a training programme approved by a CMC-approved trainer, the working party would need to consider what the minimum training requirements should be.
- The CMC should identify broad headings that have to be covered in the training course. The trainees' performance should be assessed. What behaviours does the trainee have to demonstrate? There is not a single approach. Community mediators are included in the register in Scotland.
- There is some support for some kind of criteria. The problem is identifying what should be the minimum requirement.
- Mediation providers are already subject to CMC accreditation. They should certify the level to which their mediators should be trained. I am concerned about the amount of detail that would be involved. The CMC should throw the responsibility back to the providers. We can ask trainers what they are providing, and decide whether it is adequate for our purposes.
- It is clear that this requires further work.
- We need to be careful about distinguishing between accreditation and registration.
- We mediation providers should screen the process. I have community mediators in my panel. I only deploy them on cases which are suitable for their skills. There is a level of screening which already goes on.
- We should ask the Scots to give us their knowhow.
- We should look at what the Scottish Standards Board has been doing.
- We shouldn't rush things.

[There was a consensus to the effect that for the time being, if a mediation provider was worried by the adequacy of the training provided to a mediator who wished to join its panel, it should contact the training provider and satisfy itself (or otherwise) that its training was adequate].

A Final Word

At the end of the meeting Ronald Bradbeer produced a multi-coloured flipchart page he had prepared in advance of the meeting. It shows “the Mediation Iceberg”, and resembles a two-dimensional pyramid, half of which is below sea level and is occupied by “Consumers”.

At the top of the pyramid is the CMC – a nationally recognised body; with vision; a forum for debate; the ground rule setters; but not accountable (in the sense of not being legally liable for the performance of its members or for the information whose provision it facilitates, while remaining accountable to its members of all types).

Next come the “Providers”. They are registered with the CMC and some of them are also training providers.

Below them come “Other Trainers” as opposed to “Provider Trainers”.

Then come “Mediators”. Some come from Providers, and some from a non-provider source, but all must have been accredited by a trainer whose training conforms to criteria laid down by the CMC. Some mediators may disappear below sea level [for lack of work or inadequate training]!

Last come “Consumers”, who represent 80% of the Iceberg.

Below the Iceberg/Pyramid are five notes:

1. Distinguish between registration and accreditation (the latter being a function of training).
2. Mediators (who are supplied by a provider) are accountable through and to their provider.
3. Mediators (who are not supplied by a provider) are accountable directly to the parties.
4. Mediators may be with several providers or with none.
5. Mediators in each class can register with the CMC by completing a CMC *pro forma* online.