

Family court welfare and voluntary sector mediation in relation to domestic violence

There is increasing recognition of the impact of domestic violence on the process of divorce and its outcome. Recent legislation has also placed greater emphasis on the use of mediation when working with divorcing parents to establish future arrangements for children. Postal surveys of family court welfare officers and voluntary sector mediators explored their working practices in the context of domestic violence and their views on its impact on the process. The researchers found:

- f** Only 16 per cent of court welfare officers and 11 per cent of voluntary sector mediators used a primarily 'safety-oriented approach' to their work - involving separate meetings with couples to identify the presence of domestic violence.
- f** Nearly half the court welfare officers tried to identify domestic violence when preparing welfare reports. Few voluntary sector mediators attempted to identify the presence of domestic violence. Generally, this process was inconsistent and **ad hoc** for both groups.
- f** Almost all the court welfare officers and 52 per cent of voluntary sector mediators believed domestic violence to be potentially harmful to children. Most court welfare officers felt unable to act on this because they perceived a widespread minimisation of this issue in the courts and social services, partly due to a narrow interpretation of 'harm'.
- f** Where mediation or other joint meetings did occur in the context of domestic violence, court welfare officers pointed out the importance of using appropriate techniques to ensure that both parties had an equal say. However, only one-fifth felt that this had been effective.
- f** One in three court welfare officers had been verbally and/or physically abused by clients who were domestic violence perpetrators.
- f** 50 per cent of court welfare officers wanted a more systematic screening policy for domestic violence. However, there was a general reluctance amongst voluntary sector mediators to take a more active role in identifying the presence of domestic violence.
- f** The researchers conclude that:

While there has been an improvement in practice since their earlier study in 1996, there is an urgent need for mediators and family court welfare officers to place more emphasis on implementing recent recommendations for identifying and working with victims of domestic violence, and to continue to review these policies.

Background

Family court welfare officers and voluntary sector mediators are key professionals who work with separating and divorcing parents to help them decide the future arrangements for their children. While the two have different practices and responsibilities, there is also some overlap in terms of personnel and partnership funding arrangements.

Recent legislation places greater emphasis on the use of mediatory approaches and mediation, and links the latter to legal aid applications. However, concern has been expressed about the appropriateness of urging victims of domestic violence to negotiate with abusive partners during separation or divorce through mediation or joint meetings. There is also a growing awareness of the impact which domestic violence between parents has upon the welfare of children, and that this conflict often continues after separation.

This study highlights family court welfare officers' and voluntary sector mediators' views about the appropriateness of mediatory approaches for couples affected by domestic violence. It reviews methods of working, and what safety precautions are employed where domestic violence is an issue.

Practical approaches

The working practices of court welfare officers could be identified as:

- a 'safety-oriented' approach in which the professional held separate meetings with each partner, to identify domestic violence and ensure the physical safety and mental confidence of all parties during the process;
- 'impartial report writing', in which the primary concern was to enable the court to decide on outcomes and on the validity of domestic violence allegations;
- an 'agreement-focused' approach, with a commitment to joint meetings and to the establishment of the 'truth' of domestic violence allegations.

Most court welfare officers' practice lay somewhere along a continuum of the three, with half (51 per cent) tending to use a mixture of the approaches. Less than a fifth (16 per cent) used primarily the safety-oriented approach, although a further 7 per cent used this approach in tandem with others.

Among voluntary sector mediators two main practice approaches were identified:

- a 'safety-oriented' approach;
- an approach with an 'emphasis on always mediating'.

Only 11 per cent used the safety-oriented approach. Nearly three times as many placed greater emphasis on proceeding with mediation than on safety aspects (29 per cent). Most (60 per cent) used elements from the two approaches with neither predominating.

Defining domestic violence

Court welfare officers defined domestic violence in broad terms which included not only physical abuse but also sexual abuse and humiliation, threat of violence and abuse, emotional and psychological abuse, imprisonment and destruction of property. This was thought to be behaviour mainly carried out by men against women, and to contain elements of power and control.

Voluntary sector mediators tended to define domestic violence narrowly. For instance, about a quarter were reluctant to include psychological or emotional abuse as domestic violence, partly for fear of allowing too many 'common' behaviours to be defined as domestic violence.

Some voluntary sector mediators were especially concerned about 'gender bias' and consequently saw domestic violence as mutual - as likely to be from women to men as from men to women. These mediators also favoured the mediatory approach over the safety-oriented one.

The study found that the more court welfare officers and voluntary sector mediators focused on a 'safety-oriented' approach, the more likely they were to use the broadest definition of domestic violence.

Identifying domestic violence

Court welfare officers were increasingly attempting to find out if domestic violence was a concern for the parties, as compared with earlier studies (*Social policy Findings 100*), and as a result, to take into account issues of safety in their practice. However, there was a general lack of *systematic* screening for domestic violence throughout the court welfare process.

National Standards for Probation Service Family Court Welfare Work (1994) recommends that court welfare officers should consider the possibility of violence and its impact on the viability of joint meetings when preparing welfare reports. Despite this, only about half of the respondents did so when preparing welfare reports, and only about a quarter carried out screening for domestic violence at initial appointments/hearings.

Half the court welfare officers surveyed reported that a systematic screening policy would enable them to achieve appropriate and safe agreements. Others worried about the cost/time implications, and/or that screening would prevent couples coming together to reach agreement. Those officers who were specifically attempting to develop good practice had changed their focus from merely asking solicitors about domestic violence to seeing individuals

separately to ask questions about any fears or threats. This approach was being used by 14 per cent of officers across all aspects of their work.

In relation to legal aid applications, the Family Law Act 1996 urges the identification of cases 'where either party may be influenced by fear of violence or other harm' (S27(7) (b)). National Family Mediation has recently developed a national policy on domestic violence, which includes recommended practice on screening by means of separate individual meetings with both parties. This study found that the actual screening practices of voluntary sector mediators did not always match the suggested practice outlined in these guidelines. Although some services and/or individuals are in the process of developing screening approaches, only a small number of mediators (8 per cent) systematically used individual separate sessions with clients for the purpose of identifying domestic violence.

Voluntary sector mediators mostly assumed that other professionals would raise issues of violence or that clients would voluntarily 'screen' themselves out of mediation if afraid of negotiating with a former partner. Some mediators were worried about directly asking about abuse, fearing that it could cause embarrassment or alienation to clients, or that it would invite 'malicious' allegations of domestic violence by one of the parties. Some voluntary sector mediators emphasised that they should have *no* prior knowledge about clients, arguing that such knowledge would compromise the 'impartiality' of their approach.

Mediation as a voluntary act

The research highlights the various tensions that exist with regard to the use of mediation, whether in court or in the independent sector. Court welfare officers experienced increasing pressures from judges who wanted them to attempt mediation (just over half of the 78 court welfare teams surveyed were involved in court-ordered mediation) or wanted them to refer cases to mediation in the voluntary sector. Court welfare officers also mentioned facing court/service expectations to adopt mediatory approaches in all aspects of their work.

The trend to urge mediated agreements was also problematic for some voluntary sector mediator services surveyed. Of these, 76 per cent had some kind of partnership arrangement with the Probation Service. For some, this meant that the emphasis on 'voluntariness' in mediation was becoming more difficult to achieve, as funding relied on parties attempting mediation. In some instances there were also expectations from the courts and probation partnerships that clients should reach agreement through mediation.

The appropriateness of mediation and joint meetings

All the court welfare officers noted that joint meetings between a victim and perpetrator of domestic violence were likely to put the victim at a severe psychological disadvantage, but very few commented on the undesirability of joint meetings in such a context. 93 per cent of court welfare officers most often saw couples together at directions hearings/appointments and over a third began report writing by initially seeing both parties together. Because of the potential for intimidation, there was a general presumption that domestic violence cases were inappropriate for referral to voluntary sector mediation. However, there was also an acknowledgement that domestic violence might not always be disclosed prior to referral.

Where mediation or other joint meetings did occur in the context of domestic violence, court welfare officers pointed out the importance of using techniques to ensure that both parties had an equal say (such as challenging any intimidating, undermining or controlling behaviour - seen to be easier with two members of staff present, preferably male and female; ensuring the victim receives legal advice and has a support person present). However, only one-fifth felt that this had been effective.

Most voluntary sector mediators (74 per cent) also indicated that domestic violence could adversely affect the mediation sessions. 22 per cent reported having to stop mediations because of aggression from domestic violence perpetrators. Even so, and despite the fact that success was often thought to be limited, the majority assumed that mediation could always be attempted in situations of domestic violence. Only a tiny number of respondents (2 per cent), using a 'safety-oriented' approach, suggested that there should be no mediation in such circumstances, either because of the unsuitability of the process or the unlikelihood of reaching agreements.

One-third of the family court welfare officers had experienced abuse themselves when working with domestic violence perpetrators, and more than 40 per cent said they feared violence from such clients.

Children and domestic violence

Almost all the surveyed family court welfare officers (99 per cent) saw domestic violence as potentially harmful to children. In addition, 32 per cent also suggested that the very fact of witnessing domestic violence could be detrimental to the well-being of children. 46 per cent saw potential problems with contact arrangements.

While the majority of court welfare officers felt that domestic violence to the mother should be taken into account by the courts when looking at the best interests of children, most perceived a widespread lack of knowledge of this issue in the courts. Several pointed out that the concept of 'significant harm' was in itself problematic, focusing

as it does on the need for evidence of (usually sexual or physical) abuse, thus ignoring the less visible effects of domestic violence on children. As a result, many felt unable to put their concerns about children to the courts or to social services.

Voluntary sector mediators were less likely than court welfare officers to consider domestic violence as a potentially harmful situation for children (52 per cent), and tended not to link the safety of mothers with the safety and well-being of children. Some were using a narrow definition of child abuse, emphasising only acts of direct physical violence. Voluntary sector mediators often saw the protection of children from fear and harm in relation to contact with domestic violence perpetrators as contrary to the guiding 'principle' of mediation that children should have contact with both parents. Some were also reluctant to question the authority of agreements made by parents.

Conclusion: policy implications

The researchers conclude that, while there have been discernible shifts towards better practice in dealing with situations of domestic violence, there are a number of policy implications surrounding the current practices of court welfare officers and voluntary sector mediators.

- Screening for domestic violence is currently ad hoc. Court welfare and voluntary sector mediation services need to develop systematic screening practices for all cases, by means of separate meetings with both parties. These should occur prior to mediation (in the case of voluntary sector mediation), and prior to all aspects of the court welfare process. This screening should take full account of the impact of the violence/abuse on the victim.
- At all stages of court welfare and voluntary sector mediation work, safety considerations for both victim and children need to be formalised and monitored, during the mediation or other sessions and in the context of the final decision.
- Mediators may need specialist training to develop awareness of issues surrounding domestic violence, and how it might affect mediation processes and relationships between parties. These issues are especially important given the increasing emphasis placed on mediation and agreement-seeking arising from the Family Law Act 1996.

- Consideration also needs to be given to how issues of culture, race, ethnicity and disability may further affect the relationships between the parties in mediation and joint meetings. At present, court welfare officers and voluntary sector mediators indicate that their experience of such issues is limited.

About the study

Questionnaires were sent in 1995 to all court welfare officers in England and Wales (with the exception of one team) and to all National Family Mediation mediators in England, Wales and Northern Ireland. 319 court welfare officers returned completed questionnaires, covering 94 per cent of court welfare teams, and 42 per cent of individual court welfare officers. 227 voluntary sector mediators returned completed questionnaires, a 95 per cent coverage of mediation services, and 44 per cent coverage of individual mediators. Findings from the postal survey were explored further in 1996 by means of in-depth interviews with 15 voluntary sector mediators and 19 court welfare officers.

Further information:

A report, *Domestic Violence: A National Survey of Court Welfare and Voluntary Sector Mediation* by Marianne Hester, Chris Pearson and Lorraine Radford, is published by The Policy Press in association with the Joseph Rowntree Foundation (Price £11.95 ISBN 1 86134 061 3).

Related Findings

The following *Findings* looks at related issues:

Social policy

- 100 Domestic violence and child contact arrangements (Jun 96)
- 101 Inter-agency responses to domestic violence (Jun 96)
- 103 The longer-term impact of family mediation (Sep 96)

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