

Impact case study (REF3)

Institution: University of Exeter		
Unit of Assessment: UoA 18 Law		
Title of case study: Re-shaping family mediation policy and professional practice after radical legal aid changes, to improve user experience		
Period when the underpinning research was undertaken: 2011-2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Professor Anne Barlow ^a Dr Janet Smithson ^b Dr Jan Ewing ^c	Professor of Family Law and Policy ^a Senior Research Fellow ^b Research Fellow ^c	2004 ^a – date 2011 – 2014 ^b 2014 ^c – date
Period when the claimed impact occurred: 2014-2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>Some 108,000 couples divorce annually, with many unable to agree arrangements for finances and children. Legal aid changes in 2013 aimed to encourage greater use of family mediation in place of legal advice and representation, yet resulted in more disputes reaching the family courts. Research from Exeter both explained this phenomenon and informed the mediation response to it. The research has:</p> <ol style="list-style-type: none"> i. Shaped the development of government policy to improve understanding of the benefits of mediation and encourage uptake of mediation; ii. Improved public information and provided resources and tools to reassure and prepare those considering mediation for organisations including the Ministry of Justice (MoJ), Cafcass (the Children and Family Court Advisory and Support Service) and relationship charities, Relate and OnePlusOne; iii. Changed mediation practice and training in the UK and Russia, Italy, Denmark, Switzerland, Ukraine and Turkey through identifying the importance of 'emotional readiness' for mediation; <p>Been the catalyst for change in Family Mediation Council (FMC) standards and professional practice on:</p> <ol style="list-style-type: none"> iv. screening for suitability to mediate; v. child-inclusive mediation. <p>Since 2017 there has been a 20% increase in legally aided mediation starts, a 13% increase in mediation agreements and, child-inclusive mediation uptake has almost doubled.</p>		
2. Underpinning research		
<p>There were two phases of underpinning research activity led by Exeter during a radical revisioning of family justice. First, between 2011-2014, Barlow, as PI, directed the interdisciplinary, ESRC-funded <i>Mapping Paths to Family Justice (Mapping)</i> study with co-investigators Rosemary Hunter (Law, Kent), Smithson (Psychology/Law, Exeter) and Research Fellow Ewing (Law, Kent (2011-2014), Exeter (2014-)). In the second related phase, Barlow gained ESRC Impact Accelerator Account funding to bring together a crucial alliance of policy, practitioner and charity stakeholders to implement aspects of the <i>Mapping</i> findings to improve user experience in the <i>Creating Paths to Family Justice</i> project (<i>Creating</i>) (2015-2019).</p> <p><i>Mapping</i> produced the first up-to-date picture of awareness and experiences of the main non-court Family Dispute Resolution (FDR) processes (mediation, collaborative law and solicitor negotiation). Using a mixed-methods design, the study collected and analysed primary data from two nationally representative surveys, recorded FDR processes and qualitative interviews with practitioners and separated parties who had experienced FDR between 1996 and 2013. [3.1] The findings were published first in a Briefing Paper aimed at practitioners and policymakers [3.5] and later in a book. [3.1] They provided a critical evidence-base of which FDR processes were appropriate for which cases and parties, when a strong policy steer towards family mediation had just assumed its near-universal appropriateness following the <i>Family Justice Review</i> (Norgrove, MoJ, 2011). In 2013, to encourage its uptake, legal aid was retained for family mediation, whilst</p>		

the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) removed it for legal advice and representation in all but exceptional family law cases (e.g. proven domestic violence). Yet, contrary to government expectations, the number of publicly funded Mediation Information and Assessment Meetings (MIAMs), which assess suitability for mediation, and of mediation starts, declined sharply, whilst the number of those representing themselves at court rose steeply (National Audit Office, 2014). The *Mapping* evidence indicated this was an unintended consequence of the abrupt removal of legal aid for legal advice, where solicitors had been a key source of information about and referrals to mediation.[3.1] This created an access to justice gap, as nationally, only 1% would typically approach a mediation service directly, leaving separating couples, struggling to agree arrangements for children and finances, uninformed about (legally aided) family mediation.[3.5]

The *Mapping* findings relating to mediation in the new family justice landscape were:

1. Parties are increasingly turning to online information, advice and support following separation, but available information is confusing and difficult to navigate;[3.1][3.6]
2. Both parties need to be 'emotionally and practically ready' to engage in mediation, yet often one is not ready or preparation is unequal, leading to mediation breakdown;[3.1][3.5]
3. There needs to be better, more consistent screening into and out of mediation to avoid inappropriate cases (e.g. domestic abuse, mental health issues, skewed power balance) entering the process without proper risk assessment and potential safeguards;[3.1][3.5][3.6]
4. Mediation is child-focused but rarely child-inclusive, limiting children's voices in decisions affecting them when parents separate.[3.1][3.2][3.3][3.4][3.5]

Identifying a joined-up approach as vital to address the situation facing those separating post-LASPO [3.2][3.6], the academic-led *Creating* workshops used the *Mapping* evidence to inform new initiatives and approaches to best practice for the changed landscape with stakeholders. The collaboration included the Ministry of Justice (MoJ), Child and Family Court Advisory Support Service (Cafcass), Department for Work and Pensions (DWP), Family Justice Young People's Board (FJYPB); relationship charities Relate and OnePlusOne; as well as Resolution (the national association for family lawyers), the Family Mediators Association (FMA) and the Family Mediation Council (FMC) which sets standards for mediation.

The ***Creating* recommendations** were published in a Briefing Paper [3.6] aimed at informing public policy and mediation best practice within the wider stakeholder community.

Actions recommended and followed up included:

- a) a policy-led joined-up approach to provide authoritative user-friendly online guidance;
- b) further development of online tools for testing emotional readiness and online mediation;
- c) securing, as a priority, adequate screening and signposting in high conflict and domestic abuse cases to achieve safe, successful mediation, especially online mediation;
- d) steps be taken to facilitate (not just assume) the voice of the child in non-court FDR.

Scripted by **Barlow** and **Ewing**, ***Creating* outputs** included three research-informed videos. Publicly available on YouTube, *Considering Mediation?* (2017) promotes public and mediator awareness of emotional and practical readiness and *Mediating Safely* (2019), explains mediation screening, safeguards and other process options to those separating. A further mediator-training video, *Screening Appropriately?* (2019), similarly uses real experiences and words of *Mapping* study participants voiced by actors, but here exposes poor screening practice.

3. References to the research

1. **Barlow A**; Hunter R; Smithson J; Ewing J *Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times* (pp. 211). Palgrave Macmillan, London, England (2017). (Book - **Winner of the SLISA-Hart 2018 Book Prize.**) *Submitted to REF2021*
2. **Barlow, A** 'Rising to the post-LASPO challenge: How should mediation respond?' *JSWFL* 39(2):203-222, 2017. (Article in peer-reviewed socio-legal journal.) *Submitted to REF2021* <https://doi.org/10.1080/09649069.2017.1306348>
3. Smithson J; **Barlow A**; Hunter R; Ewing J The 'child's best interests' as an argumentative resource in family mediation sessions *Discourse Studies*, 17(5): 609–623, 2015.

(Article in an international, peer-reviewed cross-disciplinary journal.)

<https://doi.org/10.1177/1461445615590722>

4. Ewing J; Hunter R; **Barlow A** and Smithson J 'Children's voices: Centre-stage or side-lined in out-of-court dispute resolution in England and Wales?' *Child and Family Quarterly* 27(1):43-61, 2015. (Article in a peer-reviewed specialist law journal.)
5. **Barlow A**; Hunter R; Smithson J; Ewing J [*Mapping Paths to Family Justice: Briefing Paper and Report on Key Findings, University of Exeter, Exeter \(2014\) \(pp. 34\).*](#)
6. **Barlow A**; Hunter R; Smithson J; Ewing J [*Creating Paths to Family Justice: Briefing Paper and Report on Key Findings University of Exeter, Exeter \(2017\) \(pp. 27\).*](#)

4. Details of the impact

As summarised by the relationships charity, OnePlusOne, the *Mapping* research '*galvanised the practitioner and third sector community*'.**[5.2]** Bringing these groups together with key policy makers in the *Creating* collaboration to explore how to embed the findings in new family justice initiatives led by Government, mediation organisations and charities, led the research to achieve far-reaching effects on practice. As a result, it contributed to recorded increases, seen since 2017, in legally aided mediation starts (up 20%) and mediation agreements (up 13%), benefitting individuals and families by reducing costs and trauma of going to court.**[5.1c]**

i. Shaped the development of government policy to improve understanding of the benefits of mediation

Mapping evidence demonstrated user confusion with, and navigation of, the proliferation of online information on non-court FDR processes. It also showed separating couples need clear information (from a trusted source) on the advantages and disadvantages of available non-court FDR processes (not just mediation) to inform choice.**[3.1]** In 2017, the Head of Family Justice and Head of Private Family Law Reform at MoJ confirmed that these findings demonstrated '*the need for clear information and signposting [and] helped increase [MoJ's] understanding of this area, define user needs and develop concepts for testing with users.*'**[5.1]** This **led MoJ to improve signposting of routes to and through its online legal information, advice and FDR guidance**, as now reflected on the gov.uk website. The MoJ website also directly links to the *Creating* videos as a means of reassuring individuals of the benefits of mediation.**[5.1]**

The importance of the research to policy developments is demonstrated both by **Barlow's appointment to the government's Family Mediation Taskforce, 2014 [5.1b]** and her later invitations (with Ewing) to participate in DWP's Separated Families workshops 2015 – 2016 and MoJ's workshop on digital design of online legal information services in 2016. MoJ's subsequent Family Justice Out-of-Court Pathways Showcase in August 2016, cited the research as key. MoJ also valued the opportunity for its digital experts '*to engage in open policy making*' that this '*new collaborative way of working with academics provided.*'**[5.1]**

ii. Improved the provision of public information on family mediation

In addition to the MoJ's use of the *Creating* videos, the FMA also finds the video, *Considering Mediation?* (2017) **[5.7]** '*an excellent way to bring... home to clients*' the need for them both to be emotionally ready.**[5.4]** It is featured on the websites of the FMC and FMA, **[5.4]** as well as those of Resolution **[5.6]** and Cafcass.**[5.3]** Other practitioner websites also independently make the video available to assist new clients. The *Creating* recommendation for a joined-up approach to providing clear, trusted online information led to MoJ, Cafcass and OnePlusOne jointly developing The Co-Parent Hub in April 2020.**[5.7]** This improved the consistency in online information for separated parents, helping to plug the professional advice gap for users.

Relate, the UK's largest provider of relationship support (helping two million people a year), used the *Mapping* findings to shape their signposting of appropriate online support services. The Head of Innovation and Development at Relate, confirmed that the *Mapping* findings '*helped to inform [Relate's] initial business case that secured the internal go-ahead for the development*' and '*substantially influenced the design*' of its proposed online mediation service and online tool to assess emotional readiness in 2016. The findings, learning and pooled *Creating* expertise fed into

the development in 2019 of Relate's online Separation Planner, which 73% of users reported had improved or significantly improved readiness to take next steps.[5.2]

iii. Changed mediation practice and training in and beyond the UK on 'emotional readiness' assessment and screening through online tools and training materials

The *Mapping* findings identified lack of 'emotional readiness' as a key predictor of mediation failure.[3.1][3.6] This **led policymakers and practitioners to fundamentally change their approach to assessing suitability to mediate** and to accept that the right process at the right time is critical. The findings informed new emotional readiness information for those separating on the gov.uk [5.1] and Cafcass websites.[5.3] The Chair of the FMA (and FMC Board member) confirmed the findings also '*raised awareness and consideration of this important issue within the mediation community and spurred ... a series of emotional readiness seminars for 2017.*'[5.4] OnePlusOne's response to *Mapping's* '*pivotal and ground-breaking evidence*' on emotional readiness [5.5], was to develop the "Emotional Readiness Scale" and, (with *Creating* partner Cafcass), the digital Emotional Readiness Tool. Their subsequent 'Emotional Readiness Assessment' scale was found to be a reliable and valid measure of emotional readiness in six studies with 1029 parents.[5.5] Recommended by FMC [5.4], which oversees and regulates family mediation nationally, the *Considering Mediation?* video is used in mediator training across the UK to demonstrate research-informed best practice on emotional (and practical) readiness. The video and research findings have also been used in family mediation training in Russia, Italy, Denmark, Switzerland, Ukraine and in Turkey in Council of Europe approved training.[5.7] Responding to the need to ensure emotional and practical readiness before mediation, DWP funded a Crewe-based law firm to deliver local support service for disadvantaged families through the initiative, 'Mediation in Mind', which drew directly on the *Mapping/Creating* findings. The formal evaluation by Exeter for DWP reported that providing disadvantaged separated parents with triage and signposting, legal information, and counselling increased engagement in mediation and **improved mediation uptake following MIAMs to 10% above the national average.**[5.10]

FMA mediator trainers have used the *Screening Appropriately?* (2019) mediator training video nationally to challenge and avoid poor screening practice and spread best practice. The FMA Chair indicated that it has had '*enormous impact, undoubtedly sobering, and resulting in some real, detailed consideration of the necessity for good screening and thought-through processes to facilitate safe mediation.*' [5.4] Links to the screening videos were shared at Resolution's national 'Dispute Resolution' Conference (June 2019) [5.4] and FMA's Annual Conference 2020, reaching over 2,000 mediators and family lawyers.

iv) Influencing FMC standards and professional practice on screening for suitability to mediate and identification of domestic abuse

The project's recommendations [3.1][3.6] have led to safer mediation for prospective mediation clients by prompting the FMC to approach appropriate screening for abuse with '*renewed vigour*' and causing it to introduce mandatory annual training on domestic abuse screening.[5.9] *Mapping's* strong recommendation that individual, not joint, MIAMs should be the default position to facilitate abuse disclosure and ensure appropriate screening for abuse and coercive control [3.5] **led directly to the FMC amending the Code of Practice for Family Mediators** (November 2018).[5.9] This now requires MIAMs to include an individual element with each participant for appropriate domestic abuse screening. The research findings were used by FMC to '*educate the Legal Aid Agency in understanding the need for the move from joint assessment meetings to individual assessment meetings*', and '*to demonstrate to the Legal Aid Agency*' the need for change. As a direct result, individual assessment meetings are '*now the presumption*'. [5.9]

Nationally, *Mapping* found the most common reason for refusing mediation was 'fear of a partner'. [3.1] *Mediating Safely* (2019) was co-created to explain the safeguards and FDR options for those separating and unsure of their safety. Available on YouTube and the FMC website, this has been viewed 1,532 times (17.01.19-31.12.20). Short 'Talking Heads' from this video recounting the experiences of 5 (anonymised) *Mapping* participants (Family Mediation Experiences) have been viewed on YouTube 1106 times (15.01.19-31.12.20) [5.7]. Both the MoJ and FMA websites link

directly to these videos and *Mediating Safely* and “Kim's story” (one of the 5 experiences) also featured in the Family Mediation Week, 2019 campaign and are on the FMA website.[5.1][5.4]

iv) Influencing FMC standards and professional practice on Child-inclusive mediation (CIM)

Young people consistently report that they wish to be heard in mediation. CIM ‘can promote more durable outcomes, reduce parental conflict, significantly enhance the co-parental relationship and the relationship between children and both their parents’ (Family Mediation Task Force, 2014). Yet *Mapping* [3.1] found that it was seldom utilised. *Mapping’s* call for children’s voices to be heard more consistently in non-court FDR processes **caused the FMC to amend its ‘Standards Framework’** in 2018 to require all mediators to attend CIM awareness training and explain CIM to prospective clients. The ‘Final Report of the Voice of the Child Dispute Resolution Advisory Group, 2015’ (The Report) [5.8b] acknowledges *Mapping’s* call for a more systematic inclusion of children’s voices in all non-court processes resulting in the Advisory Group, making strong recommendations about the need for robust practice requirements for child inclusive non-court processes. In response, the FMC set up a CIM working group to draft an action plan on the Report’s recommendations, culminating in the changes to the Standards’ Framework outlined above. **As a result, child-inclusive mediation uptake has almost doubled since 2017**, up from 14% to 26% of cases involving children aged 10+ (FMC Survey 2017 and FMC Survey 2019),[5.9] bringing significant benefits as outlined above to young people and their parents following parental separation. Engaging with the FJYPB in *Creating* [3.6] influenced the Board’s work to lobby for better inclusion of children’s voices in non-court processes.[5.3] It also ‘enabled [*Cafcass*] to strengthen the voice of the child in the Parenting Plan’.[5.3] The *Creating* work with FJYPB has since led FMA to produce a web-based Young Person’s Guide to Mediation.[5.4] Most recently, the research recommendations for a holistic, child-inclusive approach to FDR are cited and endorsed as **informing the ongoing response** to the family justice crisis.[5.8a]

5. Sources to corroborate the impact

1. **Ministry of Justice:** letter (22.11.17) and email (06.02.19); the MoJ website now signposting assistance - see Professional mediation resources section – “Listen to real mediation stories from a University of Exeter Study” <https://helpwithchildarrangements.service.justice.gov.uk/professional-mediation>; **b.** Annex A of the *Report of Family Mediation Task Force*; **c.** [Legal Aid Statistics July-September, 2020, Tables 7.1 & 7.2.](#)
2. **Third sector:** Relate (letter, 21.11.17; email, 13.03.19); OnePlusOne letter (21.11.17)
3. **Child and Family Court Advisory Support Service (Cafcass):** letters (22.11.17) and (13.01.17); guidance web pages <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/childs-voice-separation/> and direct reference to the videos <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/family-mediation/>.
4. **FMA:** letters (2 dated 22.11.17) and **FMA/FMC** emails (06.03.19, 08.03.19 and 02.04.19) and [Young Person’s Guide to Mediation.](#)
5. Houlston, C., Millings, A., Mansfield, P. and Hirst, S. (2019), Development and Practical use of an Emotional Readiness Assessment for Support in Family Justice Processes. *Family Court Review*, 57: 332-341. doi:[10.1111/fcre.12426](https://doi.org/10.1111/fcre.12426).
6. **Resolution:** letter (21.11.17) and email (07.06.19)
7. Use of digital resources: [Considering Mediation?](#) (8,520 YouTube views (06.09.17-31.12.20). [Mediating Safely and Family Mediation Experiences:](#) Nationally (letter, 20.11.17) and linked to on: [The Co-Parent Hub](#); [Progressive Mediation](#); [SE London Family Mediation Bureau](#) and [Stone Rowe Brewer](#). Internationally: letter (05.2.19) Council of Europe, Turkey (email, 22.11.17).
8. **Official Reports citing the research:** **a.** [Report of the Family Solutions Group](#) (12/12/20) to President of Family Division .(This cites the research 18 times. See para. 42 et seq.); **b.** [Final Report of the Voice of the Child: Dispute Resolution Advisory Board](#) (2015), para.208.
9. **Family Mediation Council:** Email (12.07.20); [FMC Survey 2017](#) & [FMC Survey 2019.](#)
10. [Barlow & Ewing, Evaluation of Mediation in Mind, Exeter: University of Exeter, 2020, p.2.](#)